

1 HOUSE BILL NO. 115

2 INTRODUCED BY GRIMES, SHEA

3 BY REQUEST OF THE DEPARTMENT OF LABOR

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR VOLUNTARY WITHHOLDING OF TAXES FROM
6 UNEMPLOYMENT INSURANCE BENEFITS; PROVIDING FOR DEDUCTIONS FROM UNEMPLOYMENT
7 BENEFITS TO REPAY OVERISSUANCE OF FOOD STAMP COUPONS; ADDING PARTNERS IN A LIMITED
8 LIABILITY PARTNERSHIP TO THE TYPES OF EMPLOYING ENTITIES SUBJECT TO PENALTIES FOR UNPAID
9 TAXES; CHANGING THE CRITERIA FOR DISQUALIFYING AN INDIVIDUAL FOR UNEMPLOYMENT
10 BENEFITS; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-403, 39-51-1213, 39-51-1214,
11 39-51-1303, 39-51-1304, 39-51-2302, 39-51-2303, 39-51-3105, AND 39-51-3201, MCA; AND
12 PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **NEW SECTION. Section 1. Voluntary and other withholding of taxes from benefits -- procedures.**

17 (1) The department shall advise an individual at the time the individual files a new claim for unemployment
18 compensation that:

19 (a) unemployment compensation is subject to federal income tax;

20 (b) requirements exist pertaining to estimated tax payments;

21 (c) the individual may elect to have federal income tax deducted and withheld from the individual's
22 unemployment compensation at the rate or amount specified in the Internal Revenue Code; and

23 (d) the individual may change a previously elected withholding status in a manner and at a
24 frequency prescribed by the department.

25 (2) Funds deducted and withheld from unemployment compensation must remain in the
26 unemployment insurance fund provided for in 39-51-401 until the funds are transferred as income tax
27 payments to the internal revenue service.

28 (3) The department shall:

29 (a) follow all procedures specified by the United States department of labor and the internal revenue
30 service pertaining to the voluntary deduction and withholding of income tax from unemployment

1 compensation; and

2 (b) deduct and withhold from unemployment compensation amounts of federal income tax other
3 than those specified in subsection (1)(c) in accordance with the priorities established by the department
4 by rule.

5
6 **NEW SECTION. Section 2. Deduction and withholding of unemployment benefits to repay**
7 **overissuance of food stamps -- definitions.** (1) For the purposes of this section, the following definitions
8 apply:

9 (a) "State food stamp agency" means any agency of a state or a political subdivision of a state that
10 is responsible for enforcing the repayment of an obligation for overissuance of food stamp coupons.

11 (b) "Unemployment benefits" means benefits payable under the Montana unemployment insurance
12 law, including amounts payable by the department pursuant to an agreement under any federal law that
13 provides for benefits, assistance, or allowances with respect to unemployment.

14 (2) An individual filing a new claim for unemployment benefits shall disclose at the time of filing the
15 claim whether or not the individual owes for an uncollected overissuance of food stamp coupons as defined
16 in section 13(c)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2022(c)(1)). If an individual discloses that the
17 individual has an uncollected obligation for overissuance of food stamp coupons and if the department finds
18 that the individual is eligible for unemployment benefits, the department shall notify the state food stamp
19 agency that the individual is eligible for unemployment benefits.

20 (3) The department shall deduct and withhold from any unemployment benefits payable to an
21 individual who has an obligation for an uncollected overissuance of food stamp coupons:

22 (a) the amount specified by the individual to the department to be deducted and withheld; in which
23 case subsections (3)(b) and (3)(c) are not applicable;

24 (b) the amount, if any, determined by a state food stamp agency for enforcing obligations for
25 overissuance of food stamp coupons, pursuant to an agreement submitted to the department under section
26 13(c)(3)(A) of the Food Stamp Act of 1977 (7 U.S.C. 2022(c)(3)(A)), unless subsection (3)(c) is applicable;
27 or

28 (c) any amount otherwise required to be deducted and withheld from unemployment benefits
29 pursuant to section 13(c)(3)(B) of the Food Stamp Act of 1977 (7 U.S.C. 2022 (c)(3)(B)).

30 (4) The department shall pay any amount deducted and withheld under subsection (3) to the

1 appropriate state food stamp agency responsible for enforcing an obligation for overissuance of food stamp
2 coupons.

3 (5) Deductions may be made pursuant to this section only if appropriate arrangements have been
4 made for reimbursement by the state food stamp agency for the administrative costs incurred by the
5 department under this section.

6 (6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to
7 the individual as unemployment benefits and then paid by the individual to the state food stamp agency
8 in satisfaction of the individual's uncollected overissuance of food stamp coupons.

9

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

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

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

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

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

26 (4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning
27 with the first day of the calendar week in which the individual files a valid claim for benefits, except that
28 the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base
29 year of a previously filed new claim. A subsequent benefit year may not be established until the expiration
30 of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement

1 approved by the secretary of labor of the United States, the base period is the period applicable under the
2 unemployment law of the paying state.

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

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

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

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

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

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

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

29 (12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law,
30 for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates

1 a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the
2 employer.

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

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

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

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

10 (15) (a) "Institution of higher education", for the purposes of this part, means an educational
11 institution that:

12 (i) admits as regular students only individuals having a certificate of graduation from a high school
13 or the recognized equivalent of a certificate;

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

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

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

20 (b) Notwithstanding subsection (15)(a), all universities in this state are institutions of higher
21 education for purposes of this part.

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

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

26 (18) "Unemployment insurance administration fund" means the unemployment insurance
27 administration fund established by this chapter from which administrative expenses under this chapter must
28 be paid.

29 (19) (a) "Wages" means all remuneration payable for personal services, including commissions and
30 bonuses, the cash value of all remuneration payable in any medium other than cash, and back pay received

1 pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any
2 medium other than cash must be estimated and determined pursuant to rules prescribed by the department.

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

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

7 (A) retirement;

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

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

10 (D) death;

11 (ii) remuneration paid by a county welfare office from public assistance funds for services performed
12 at the direction and request of the county welfare office; or

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

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

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

18

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

20 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not
21 include:

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

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

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

30 (b) household and domestic service in a private home, local college club, or local chapter of a

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

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

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

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

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

12 (e) service performed in the employ of any other state or its political subdivisions or of the United
13 States government or of an instrumentality of any other state or states or their political subdivisions or of
14 the United States, except that national banks organized under the national banking law may not be entitled
15 to exemption under this subsection and are subject to this chapter the same as state banks, provided that
16 the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment
17 Tax Act (26 U.S.C. 3306(c)(7));

18 (f) service in which unemployment insurance is payable under an unemployment insurance system
19 established by an act of congress if the department enters into agreements with the proper agencies under
20 an act of congress and those agreements become effective in the manner prescribed in the Montana
21 Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who
22 have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment
23 insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance
24 under the act of congress, acquired rights to benefits under this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (iii) may perform services for anyone without limitation;

15 (iv) may accept or reject any job;

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

17 (vi) works under a written contract that:

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

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

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

23 (p) employment of a direct seller as defined in 26 U.S.C. 3508;

24 (q) services performed by a petroleum land professional. As used in this subsection, "petroleum
 25 land professional" means a person who:

26 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
 27 negotiating a business agreement for the exploration or development of minerals;

28 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
 29 than on an hourly wage basis; and

30 (iii) performs all services as an independent contractor pursuant to a written contract.

- 1 (2) Employment does not include elected public officials.
- 2 (3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:
- 3 (a) in the employ of a church or convention or association of churches or an organization that is
- 4 operated primarily for religious purposes and that is operated, supervised, controlled, or principally
- 5 supported by a church or convention or association of churches;
- 6 (b) by an ordained, commissioned, or licensed minister of a church in the exercise of the church's
- 7 ministry or by a member of a religious order in the exercise of duties required by the order;
- 8 (c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals
- 9 whose earning capacity is impaired by age or physical or mental deficiency or injury or providing
- 10 remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily
- 11 absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;
- 12 (d) as part of an unemployment work-relief or work-training program assisted or financed in whole
- 13 or in part by a federal agency or any agency of a state or political subdivision of the state by an individual
- 14 receiving work relief or work training; or
- 15 (e) for a state prison or other state correctional or custodial institution by an inmate of that
- 16 institution.
- 17 (4) An individual found to be an independent contractor by the department under the terms of
- 18 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
- 19 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
- 20 39-51-2402.
- 21 (5) This section does not apply to a state or local governmental entity or a nonprofit organization
- 22 defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from
- 23 employment as defined in the Federal Unemployment Tax Act."

24

25 **Section 5.** Section 39-51-403, MCA, is amended to read:

26 **"39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of**

27 **benefits -- exception.** (1) Money ~~shall~~ may be requisitioned from this state's account in the unemployment

28 trust fund solely for the payment of benefits and in accordance with regulations prescribed by the

29 department, except that money credited to this state's account pursuant to section 903 of the Social

30 Security Act (42 U.S.C. 1103), as amended, may also be withdrawn for the payment of expenses for the

1 administration of this chapter and of public employment offices, as provided by this chapter. Money
 2 withheld by the department from a benefits payment at the request of an individual or in accordance with
 3 the department's rules pertaining to deductions and withholding for federal income tax purposes pursuant
 4 to [section 1] or money withheld for repayment of an overissuance of food stamp coupons pursuant to
 5 [section 2] must be considered benefits for the purposes of this subsection.

6 (2) The department shall from time to time requisition from the unemployment trust fund ~~such the~~
 7 amounts, not exceeding the amounts ~~standing to in~~ this state account ~~therein in the fund~~, as it ~~deems~~
 8 considers necessary for the payment of benefits for a reasonable future period. Upon receipt ~~thereof of a~~
 9 requisition, the treasurer shall deposit ~~such the~~ money in the benefit account and shall issue ~~his~~ warrants
 10 for the payment of benefits ~~solely~~ from ~~such the~~ benefit account.

11 (3) Expenditures of ~~such~~ money in the benefit account and refunds from the clearing account ~~shall~~
 12 are not be subject to any provisions of law requiring specific appropriations or other formal release by state
 13 officers of money in their custody.

14 (4) Any balance of money requisitioned from the unemployment trust fund ~~which that~~ remains
 15 unclaimed or unpaid in the benefit account after the expiration of the period for which ~~such the~~ sums were
 16 requisitioned ~~shall must~~ either be deducted from estimates for and may be ~~utilized~~ used for the payment
 17 of benefits during succeeding periods or, in the discretion of the department, ~~shall must~~ be redeposited with
 18 the secretary of the treasury of the United States to the credit of this state's account in the unemployment
 19 trust fund, as provided in 39-51-402."
 20

21 **Section 6.** Section 39-51-1213, MCA, is amended to read:

22 **"39-51-1213. Classification of employers for experience rating purposes.** (1) The department shall
 23 for each calendar year classify employers in accordance with their actual experience in the payment of
 24 contributions and with respect to benefits charged against their accounts, with contribution rates reflecting
 25 benefit experience. Each employer's rate for a calendar year ~~shall must~~ be determined on the basis of the
 26 employer's record as of October 1 of the preceding calendar year.

27 (2) In making the classification, each eligible and deficit employer's contribution rate is determined
 28 in the manner set forth below:

29 (a) Each employer is given an "experience factor", which is contributions paid since October 1,
 30 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the

1 employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years
 2 immediately preceding the computation date. The computation of the "experience factor" ~~shall~~ must be to
 3 six decimal places.

4 (b) Schedules ~~shall~~ must be prepared listing all eligible and deficit employers in inverse numerical
 5 order of their experience factors. There ~~shall~~ must be listed on ~~such~~ the schedules for each employer in
 6 addition to the experience factor:

7 (i) the amount of the employer's taxable payroll for the fiscal year ending on the computation date;
 8 and

9 (ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year
 10 ending on the computation date and the corresponding taxable payrolls for all other employers preceding
 11 that employer on the schedules.

12 (3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 ~~shall~~
 13 must be segregated into groups that will yield approximately the average tax rate according to the tax
 14 schedule assigned for that particular taxable year. Each group ~~shall~~ must be identified by the rate class
 15 number listed in the table ~~which~~ that represents the percentage limits of each group. Each employer on the
 16 schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in
 17 effect for the taxable year.

18 (4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's
 19 taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which
 20 the halves of that employer's taxable payroll are ~~so~~ required.

21 (b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an
 22 employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater
 23 part of that employer's taxable payroll is ~~so~~ required.

24 (c) If one or more employers on the schedules have experience factors identical to that of the last
 25 employer included in a particular rate class, all such employers are included in and assigned the contribution
 26 rate specified for ~~such~~ the class, notwithstanding the provisions of 39-51-1214.

27 (5) If the taxable payroll amount, ~~or~~ the experience factor, ~~or both such taxable payroll amount and~~
 28 ~~experience factor~~ of any eligible or deficit employer listed on the schedules is changed, the employer is
 29 placed in that position on the schedules ~~which~~ that the employer would have occupied had that employer's
 30 taxable payroll amount or experience factor as changed been used in determining that employer's position

1 in the first instance, ~~but such~~. However, the change does not affect the position or rate classification of
 2 any other employer listed on the schedules and does not affect the rate determination for previous years.

3 (6) An employer who has not filed all required payroll reports or paid all taxes, penalties, and
 4 interest due by the cutoff date must be assigned ~~the maximum a~~ contribution rate in effect for the taxable
 5 year for ~~his~~ the employer's classification as an eligible, deficit, or new employer, plus an additional
 6 assessment of 50% of the employer's assigned contribution rate, rounded to the nearest 1/10 of 1%."

7

8 **Section 7.** Section 39-51-1214, MCA, is amended to read:

9 **"39-51-1214. Benefit payments chargeable to employer experience rating accounts.** (1) Except
 10 for cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period
 11 employers. The benefit charged must be based on the percentage of wages paid by the employer as
 12 compared to the total wages paid by all employers in the claimant's base period.

13 (2) A charge may not be made to the account of a covered employer with respect to benefits paid
 14 under the following situations:

15 (a) if paid to a worker who terminated services voluntarily without good cause attributable to a
 16 covered employer or who had been discharged or suspended for misconduct in connection with services;

17 (b) if paid in accordance with the extended benefit program triggered by either national or state
 18 indicators;

19 (c) if the base period employer continues to provide employment ~~with no~~ without a reduction in
 20 hours or wages;

21 (d) if benefits are paid to claimants who are in training approved under 39-51-2307; or

22 (e) if the base period employer is ordered to state or federal active duty in the national guard or
 23 reserves."

24

25 **Section 8.** Section 39-51-1303, MCA, is amended to read:

26 **"39-51-1303. Collection of unpaid taxes by civil action.** (1) If, after due notice, any employer,
 27 liable corporate officer or employee, ~~or~~ liable member or manager of a limited liability company referred to
 28 in 39-51-1105, or partner in a limited liability partnership defaults in any payment of taxes, penalties, or
 29 interest on the taxes and penalties, the department may initiate a civil action in the name of the department
 30 to collect the amount due and the employer, liable corporate officer, ~~or~~ liable member or manager of a

1 limited liability company referred to in 39-51-1105, or partner in a limited liability partnership adjudged in
2 default shall pay the costs of the action.

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

5 (3) The department may pursue its remedy under ~~either~~ 39-51-1304, ~~or~~ this section, or both."
6

7 **Section 9.** Section 39-51-1304, MCA, is amended to read:

8 **"39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including
9 penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer, ~~or the~~
10 liable corporate officer or employee or liable member or manager of a limited liability company referred to
11 in 39-51-1105, or a partner in a limited liability partnership, arising at the time that the payments are due.
12 The department may issue a certificate stating the amount of payments due and directing the clerk of the
13 district court of any county of the state to enter the certificate as a judgment in the docket pursuant to
14 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal
15 property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been
16 satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the
17 tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be made by
18 means of a certified letter by an agent authorized to collect the tax. The department may enforce the
19 judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever
20 is later.

21 (2) A judgment lien filed pursuant to this section may be renewed for another 10-year period
22 pursuant to the provisions of 25-13-102.

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

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

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

28 (4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204
29 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed
30 ~~against the employer, liable corporate officer or employee, or liable member or manager of a limited liability~~

1 ~~company referred to in 39-51-1105~~ under 39-51-1303, ~~or~~ this section, or both, to collect the delinquent
2 taxes, penalties, and interest from the:

3 (a) employer;

4 (b) liable corporate officer or employee;

5 (c) liable member or manager of a limited liability company referred to in 39-51-1105; or

6 (d) partner in a limited liability partnership.

7 (5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid
8 taxes, penalties, and accumulated interest. The department may release or may partially release the lien
9 upon partial payment or whenever the department determines that the release or partial release of the lien
10 will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if
11 it determines that the lien is unenforceable."

12
13 **Section 10.** Section 39-51-2302, MCA, is amended to read:

14 **"39-51-2302. Disqualification for leaving work without good cause.** (1) An individual ~~shall~~ must
15 be disqualified for benefits if ~~he~~ the individual has left work without good cause attributable to ~~his~~ the
16 individual's employment.

17 (2) ~~He~~ The individual may not be disqualified if the individual ~~department finds that he left his~~
18 leaves:

19 (a) employment because of personal illness or injury not associated with misconduct upon the
20 advice of a licensed and practicing physician and, after recovering from ~~his~~ the illness or injury when
21 recovery is certified by a licensed and practicing physician, ~~he~~ the individual returned to ~~his~~ and offered
22 service to the individual's employer ~~and offered his service~~ and ~~his~~ the individual's regular or comparable
23 suitable work was not available, ~~if so found~~ as determined by the department, provided ~~he~~ the individual
24 is otherwise eligible; or

25 (b) temporary work accepted during a period of unemployment caused by a lack of work with the
26 individual's regular employer if upon leaving the temporary work the individual returned immediately to work
27 for the individual's regular employer, provided that the individual is unemployed for nondisqualifying
28 reasons.

29 (3) To requalify for benefits, an individual ~~must~~ shall perform services other than self-employment
30 for which remuneration is received equal to or in excess of six times ~~his~~ the individual's weekly benefit

1 amount subsequent to the week in which the act causing the disqualification occurred unless ~~he~~ the
 2 individual has been in regular attendance at an educational institution accredited by the state of Montana
 3 for at least 3 consecutive months from the date of ~~his~~ the individual's enrollment."

4
 5 **Section 11.** Section 39-51-2303, MCA, is amended to read:

6 **"39-51-2303. Disqualification for discharge due to misconduct.** An individual ~~shall~~ must be
 7 disqualified for benefits after being discharged or suspended:

8 (1) for misconduct connected with the individual's work or affecting the individual's employment
 9 until the individual has performed services, other than self-employment, for which remuneration is received
 10 equal to or in excess of eight times the individual's weekly benefit amount subsequent to the week in which
 11 the act causing the disqualification occurred; or

12 (2) for gross misconduct connected with the individual's work or committed on the employer's
 13 premises, as determined by the department, for a period of 52 weeks."

14
 15 **Section 12.** Section 39-51-3105, MCA, is amended to read:

16 **"39-51-3105. Assignment, pledge, or encumbrance of right to benefits void -- benefits exempt**
 17 **from levy, execution, attachment, or other remedy for collection of debt -- exception.** Any assignment,
 18 pledge, or encumbrance of any right to benefits that are or may become due or payable under this chapter
 19 is void, and the rights to benefits are exempt from levy, execution, attachment, or any other remedy
 20 provided for the collection of debt, ~~and benefits.~~ Benefits received by ~~any~~ an individual, ~~so~~ as long as they
 21 are not mingled with other funds of the recipient, are exempt from ~~any~~ an remedy for the collection of all
 22 debts except as provided in 39-51-3106, [section 1], [section 2], and 39-51-3206. Any waiver of ~~any~~ an
 23 exemption provided for in this section is void."

24
 25 **Section 13.** Section 39-51-3201, MCA, is amended to read:

26 **"39-51-3201. Making false statement or representation or failing to disclose material fact in order**
 27 **to obtain or increase benefits -- administrative penalty and remedy.** (1) A person who makes a false
 28 statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order
 29 to obtain or increase any benefit or other payment under this chapter or under an employment security law
 30 of any other state or territory or the federal government, either for ~~himself~~ the individual or for any other

1 person, is:

2 (a) disqualified for benefits ~~thereafter~~ for a period of not more than 52 weeks, beginning with the
3 first compensable week following the date of ~~such~~ determination by the department, ~~the~~ The length of time
4 of the disqualification ~~as herein described to~~ must be determined by the department in accordance with the
5 severity of each case; and

6 (b) required to repay to the department, either directly or as authorized by the department, by
7 offset of future benefits to which ~~he~~ the individual may be entitled, or by a combination of both ~~such~~
8 methods, a sum equal to the amount wrongfully received by ~~him~~ the individual, plus the department may
9 assess a penalty not to exceed 100% of the fraudulently obtained benefits, ~~except that future~~ Future
10 benefits may not be used to offset the penalty due. However, ~~he~~ the individual is not required to repay any
11 amount wrongfully obtained more than 5 years prior to the date of the department's determination that ~~he~~
12 the individual made false statements, willful nondisclosure, or misrepresentation.

13 (2) An individual, other than a person with a bona fide disability that prevents the individual from
14 making or filing a claim for benefits on the individual's own behalf, who allows or authorizes another person
15 to make or file a claim for benefits on the individual's behalf is subject to the penalties prescribed in
16 subsection (1).

17 (3) All money accruing from the penalty under subsection (1)(b) must be deposited in the federal
18 special revenue account. Money deposited in that account may be appropriated to the department to be
19 used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant
20 revenues are inadequate for these purposes. Money in the account not appropriated for these purposes
21 must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal
22 year."

23
24 NEW SECTION. Section 14. Codification instruction. [Sections 1 and 2] are intended to be
25 codified as an integral part of Title 39, chapter 51, and the provisions of Title 39, chapter 51, apply to
26 [sections 1 and 2].

27
28 NEW SECTION. Section 15. Retroactive applicability. [Sections 1, 5, and 12] apply retroactively,
29 within the meaning of 1-2-109, to January 1, 1997, in order to comply with federal requirements.

30

1 NEW SECTION. **Section 16. Effective dates.**

2 (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

3 (2) [Section 2] is effective October 1, 1997.

4 (3) [Section 6] is effective January 1, 1998.

5 -END-

APPROVED BY COM ON
BUSINESS & LABOR

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HOUSE BILL NO. 115
INTRODUCED BY GRIMES, SHEA
BY REQUEST OF THE DEPARTMENT OF LABOR

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR VOLUNTARY WITHHOLDING OF TAXES FROM UNEMPLOYMENT INSURANCE BENEFITS; PROVIDING FOR DEDUCTIONS FROM UNEMPLOYMENT BENEFITS TO REPAY OVERISSUANCE OF FOOD STAMP COUPONS; ADDING PARTNERS IN A LIMITED LIABILITY PARTNERSHIP TO THE TYPES OF EMPLOYING ENTITIES SUBJECT TO PENALTIES FOR UNPAID TAXES; CHANGING THE CRITERIA FOR DISQUALIFYING AN INDIVIDUAL FOR UNEMPLOYMENT BENEFITS; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-403, 39-51-1213, ~~39-51-1214,~~ 39-51-1303, 39-51-1304, 39-51-2302, ~~39-51-2303,~~ 39-51-3105, AND 39-51-3201, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. Section 1. Voluntary and other withholding of taxes from benefits -- procedures.

(1) The department shall advise an individual at the time the individual files a new claim for unemployment compensation that:

- (a) unemployment compensation is subject to federal income tax;
- (b) requirements exist pertaining to estimated tax payments;
- (c) the individual may elect to have federal income tax deducted and withheld from the individual's unemployment compensation at the rate or amount specified in the Internal Revenue Code; and
- (d) the individual may change a previously elected withholding status in a manner and at a frequency prescribed by the department.

(2) Funds deducted and withheld from unemployment compensation must remain in the unemployment insurance fund provided for in 39-51-401 until the funds are transferred as income tax payments to the internal revenue service.

- (3) The department shall:
 - (a) follow all procedures specified by the United States department of labor and the internal revenue service pertaining to the voluntary deduction and withholding of income tax from unemployment

1 compensation; and

2 (b) deduct and withhold from unemployment compensation amounts of federal income tax other
3 than those specified in subsection (1)(c) in accordance with the priorities established by the department
4 by rule.

5

6 **NEW SECTION. Section 2. Deduction and withholding of unemployment benefits to repay**
7 **overissuance of food stamps -- definitions.** (1) For the purposes of this section, the following definitions
8 apply:

9 (a) "State food stamp agency" means any agency of a state or a political subdivision of a state that
10 is responsible for enforcing the repayment of an obligation for overissuance of food stamp coupons.

11 (b) "Unemployment benefits" means benefits payable under the Montana unemployment insurance
12 law, including amounts payable by the department pursuant to an agreement under any federal law that
13 provides for benefits, assistance, or allowances with respect to unemployment.

14 (2) An individual filing a new claim for unemployment benefits shall disclose at the time of filing the
15 claim whether or not the individual owes for an uncollected overissuance of food stamp coupons as defined
16 in section 13(c)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2022(c)(1)). If an individual discloses that the
17 individual has an uncollected obligation for overissuance of food stamp coupons and if the department finds
18 that the individual is eligible for unemployment benefits, the department shall notify the state food stamp
19 agency that the individual is eligible for unemployment benefits.

20 (3) The department shall deduct and withhold from any unemployment benefits payable to an
21 individual who has an obligation for an uncollected overissuance of food stamp coupons:

22 (a) the amount specified by the individual to the department to be deducted and withheld; in which
23 case subsections (3)(b) and (3)(c) are not applicable;

24 (b) the amount, if any, determined by a state food stamp agency for enforcing obligations for
25 overissuance of food stamp coupons, pursuant to an agreement submitted to the department under section
26 13(c)(3)(A) of the Food Stamp Act of 1977 (7 U.S.C. 2022(c)(3)(A)), unless subsection (3)(c) is applicable;
27 or

28 (c) any amount otherwise required to be deducted and withheld from unemployment benefits
29 pursuant to section 13(c)(3)(B) of the Food Stamp Act of 1977 (7 U.S.C. 2022 (c)(3)(B)).

30 (4) The department shall pay any amount deducted and withheld under subsection (3) to the

1 appropriate state food stamp agency responsible for enforcing an obligation for overissuance of food stamp
2 coupons.

3 (5) Deductions may be made pursuant to this section only if appropriate arrangements have been
4 made for reimbursement by the state food stamp agency for the administrative costs incurred by the
5 department under this section.

6 (6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to
7 the individual as unemployment benefits and then paid by the individual to the state food stamp agency
8 in satisfaction of the individual's uncollected overissuance of food stamp coupons.

9

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

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

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

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

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

26 (4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning
27 with the first day of the calendar week in which the individual files a valid claim for benefits, except that
28 the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base
29 year of a previously filed new claim. A subsequent benefit year may not be established until the expiration
30 of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement

1 approved by the secretary of labor of the United States, the base period is the period applicable under the
2 unemployment law of the paying state.

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

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

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

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

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

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

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

29 (12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law,
30 for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates

1 a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the
2 employer.

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

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

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

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

10 (15) (a) "Institution of higher education", for the purposes of this part, means an educational
11 institution that:

12 (i) admits as regular students only individuals having a certificate of graduation from a high school
13 or the recognized equivalent of a certificate;

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

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

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

20 (b) Notwithstanding subsection (15)(a), all universities in this state are institutions of higher
21 education for purposes of this part.

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

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

26 (18) "Unemployment insurance administration fund" means the unemployment insurance
27 administration fund established by this chapter from which administrative expenses under this chapter must
28 be paid.

29 (19) (a) "Wages" means all remuneration payable for personal services, including commissions and
30 bonuses, the cash value of all remuneration payable in any medium other than cash, and back pay received

1 pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any
2 medium other than cash must be estimated and determined pursuant to rules prescribed by the department.

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

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

7 (A) retirement;

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

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

10 (D) death;

11 (ii) remuneration paid by a county welfare office from public assistance funds for services performed
12 at the direction and request of the county welfare office; or

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

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

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

18

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

20 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not
21 include:

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

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

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

30 (b) household and domestic service in a private home, local college club, or local chapter of a

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

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

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

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

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

12 (e) service performed in the employ of any other state or its political subdivisions or of the United
13 States government or of an instrumentality of any other state or states or their political subdivisions or of
14 the United States, except that national banks organized under the national banking law may not be entitled
15 to exemption under this subsection and are subject to this chapter the same as state banks, provided that
16 the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment
17 Tax Act (26 U.S.C. 3306(c)(7));

18 (f) service in which unemployment insurance is payable under an unemployment insurance system
19 established by an act of congress if the department enters into agreements with the proper agencies under
20 an act of congress and those agreements become effective in the manner prescribed in the Montana
21 Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who
22 have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment
23 insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance
24 under the act of congress, acquired rights to benefits under this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (iii) may perform services for anyone without limitation;

15 (iv) may accept or reject any job;

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

17 (vi) works under a written contract that:

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

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

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

23 (p) employment of a direct seller as defined in 26 U.S.C. 3508;

24 (q) services performed by a petroleum land professional. As used in this subsection, "petroleum
25 land professional" means a person who:

26 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
27 negotiating a business agreement for the exploration or development of minerals;

28 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
29 than on an hourly wage basis; and

30 (iii) performs all services as an independent contractor pursuant to a written contract.

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

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

3 (a) in the employ of a church or convention or association of churches or an organization that is
4 operated primarily for religious purposes and that is operated, supervised, controlled, or principally
5 supported by a church or convention or association of churches;

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

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

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

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

17 (4) An individual found to be an independent contractor by the department under the terms of
18 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
19 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
20 39-51-2402.

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

24

25 **Section 5.** Section 39-51-403, MCA, is amended to read:

26 **"39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of**
27 **benefits -- exception.** (1) Money ~~shall~~ may be requisitioned from this state's account in the unemployment
28 trust fund solely for the payment of benefits and in accordance with regulations prescribed by the
29 department, except that money credited to this state's account pursuant to section 903 of the Social
30 Security Act (42 U.S.C. 1103), as amended, may also be withdrawn for the payment of expenses for the

1 administration of this chapter and of public employment offices, as provided by this chapter. Money
 2 withheld by the department from a benefits payment at the request of an individual or in accordance with
 3 the department's rules pertaining to deductions and withholding for federal income tax purposes pursuant
 4 to [section 1] or money withheld for repayment of an overissuance of food stamp coupons pursuant to
 5 [section 2] must be considered benefits for the purposes of this subsection.

6 (2) The department shall from time to time requisition from the unemployment trust fund ~~such the~~
 7 amounts, not exceeding the amounts ~~standing to in~~ this state account ~~therein in the fund~~, as it ~~deems~~
 8 considers necessary for the payment of benefits for a reasonable future period. Upon receipt ~~thereof of a~~
 9 requisition, the treasurer shall deposit ~~such the~~ money in the benefit account and shall issue ~~his~~ warrants
 10 for the payment of benefits ~~solely~~ from ~~such the~~ benefit account.

11 (3) Expenditures of ~~such~~ money in the benefit account and refunds from the clearing account ~~shall~~
 12 are not be subject to any provisions of law requiring specific appropriations or other formal release by state
 13 officers of money in their custody.

14 (4) Any balance of money requisitioned from the unemployment trust fund ~~which that~~ remains
 15 unclaimed or unpaid in the benefit account after the expiration of the period for which ~~such the~~ sums were
 16 requisitioned ~~shall must~~ either be deducted from estimates for and may be ~~utilized~~ used for the payment
 17 of benefits during succeeding periods or, in the discretion of the department, ~~shall must~~ be redeposited with
 18 the secretary of the treasury of the United States to the credit of this state's account in the unemployment
 19 trust fund, as provided in 39-51-402."
 20

21 **Section 6.** Section 39-51-1213, MCA, is amended to read:

22 **"39-51-1213. Classification of employers for experience rating purposes.** (1) The department shall
 23 for each calendar year classify employers in accordance with their actual experience in the payment of
 24 contributions and with respect to benefits charged against their accounts, with contribution rates reflecting
 25 benefit experience. Each employer's rate for a calendar year ~~shall must~~ be determined on the basis of the
 26 employer's record as of October 1 of the preceding calendar year.

27 (2) In making the classification, each eligible and deficit employer's contribution rate is determined
 28 in the manner set forth below:

29 (a) Each employer is given an "experience factor", which is contributions paid since October 1,
 30 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the

1 employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years
2 immediately preceding the computation date. The computation of the "experience factor" ~~shall~~ must be to
3 six decimal places.

4 (b) Schedules ~~shall~~ must be prepared listing all eligible and deficit employers in inverse numerical
5 order of their experience factors. There ~~shall~~ must be listed on ~~such~~ the schedules for each employer in
6 addition to the experience factor:

7 (i) the amount of the employer's taxable payroll for the fiscal year ending on the computation date;
8 and

9 (ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year
10 ending on the computation date and the corresponding taxable payrolls for all other employers preceding
11 that employer on the schedules.

12 (3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 ~~shall~~
13 must be segregated into groups that will yield approximately the average tax rate according to the tax
14 schedule assigned for that particular taxable year. Each group ~~shall~~ must be identified by the rate class
15 number listed in the table ~~which~~ that represents the percentage limits of each group. Each employer on the
16 schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in
17 effect for the taxable year.

18 (4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's
19 taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which
20 the halves of that employer's taxable payroll are ~~so~~ required.

21 (b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an
22 employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater
23 part of that employer's taxable payroll is ~~so~~ required.

24 (c) If one or more employers on the schedules have experience factors identical to that of the last
25 employer included in a particular rate class, all such employers are included in and assigned the contribution
26 rate specified for ~~such~~ the class, notwithstanding the provisions of 39-51-1214.

27 (5) If the taxable payroll amount, ~~or~~ the experience factor, ~~or both such taxable payroll amount and~~
28 ~~experience factor~~ of any eligible or deficit employer listed on the schedules is changed, the employer is
29 placed in that position on the schedules ~~which~~ that the employer would have occupied had that employer's
30 taxable payroll amount or experience factor as changed been used in determining that employer's position

1 in the first instance, ~~but such.~~ However, the change does not affect the position or rate classification of
 2 any other employer listed on the schedules and does not affect the rate determination for previous years.

3 (6) An employer who has not filed all required payroll reports or paid all taxes, penalties, and
 4 interest due by the cutoff date must be assigned ~~the maximum~~ a contribution rate in effect for the taxable
 5 year for ~~his~~ the employer's classification as an eligible, deficit, or new employer, plus an additional
 6 assessment of 50% of the employer's assigned contribution rate, rounded to the nearest 1/10 of 1%."

7
 8 **Section 7.** Section ~~39-51-1214~~, MCA, is amended to read:

9 ~~"39-51-1214. Benefit payments chargeable to employer experience rating accounts. (1) Except~~
 10 ~~for cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period~~
 11 ~~employers. The benefit charged must be based on the percentage of wages paid by the employer as~~
 12 ~~compared to the total wages paid by all employers in the claimant's base period.~~

13 ~~(2) A charge may not be made to the account of a covered employer with respect to benefits paid~~
 14 ~~under the following situations:~~

15 ~~(a) if paid to a worker who terminated services voluntarily without good cause attributable to a~~
 16 ~~covered employer or who had been discharged or suspended for misconduct in connection with services;~~

17 ~~(b) if paid in accordance with the extended benefit program triggered by either national or state~~
 18 ~~indicators;~~

19 ~~(c) if the base period employer continues to provide employment with no without a reduction in~~
 20 ~~hours or wages;~~

21 ~~(d) if benefits are paid to claimants who are in training approved under 39-51-2307; or~~

22 ~~(e) if the base period employer is ordered to state or federal active duty in the national guard or~~
 23 ~~reserves."~~

24
 25 **Section 7.** Section 39-51-1303, MCA, is amended to read:

26 **"39-51-1303. Collection of unpaid taxes by civil action.** (1) If, after due notice, any employer,
 27 liable corporate officer or employee, ~~or~~ liable member or manager of a limited liability company referred to
 28 in 39-51-1105, or partner in a limited liability partnership defaults in any payment of taxes, penalties, or
 29 interest on the taxes and penalties, the department may initiate a civil action in the name of the department
 30 to collect the amount due and the employer, liable corporate officer, ~~or~~ liable member or manager of a

1 limited liability company referred to in 39-51-1105, or partner in a limited liability partnership adjudged in
2 default shall pay the costs of the action.

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

5 (3) The department may pursue its remedy under ~~either 39-51-1304, or~~ this section, or both."
6

7 **Section 8.** Section 39-51-1304, MCA, is amended to read:

8 **"39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including
9 penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer, ~~or the~~
10 liable corporate officer or employee or liable member or manager of a limited liability company referred to
11 in 39-51-1105, or a partner in a limited liability partnership, arising at the time that the payments are due.
12 The department may issue a certificate stating the amount of payments due and directing the clerk of the
13 district court of any county of the state to enter the certificate as a judgment in the docket pursuant to
14 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal
15 property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been
16 satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the
17 tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be made by
18 means of a certified letter by an agent authorized to collect the tax. The department may enforce the
19 judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever
20 is later.

21 (2) A judgment lien filed pursuant to this section may be renewed for another 10-year period
22 pursuant to the provisions of 25-13-102.

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

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

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

28 (4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204
29 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed
30 ~~against the employer, liable corporate officer or employee, or liable member or manager of a limited liability~~

1 ~~company referred to in 39-51-1105~~ under 39-51-1303, ~~or~~ this section, or both, to collect the delinquent
2 taxes, penalties, and interest from the:

3 (a) employer;

4 (b) liable corporate officer or employee;

5 (c) liable member or manager of a limited liability company referred to in 39-51-1105; or

6 (d) partner in a limited liability partnership.

7 (5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid
8 taxes, penalties, and accumulated interest. The department may release or may partially release the lien
9 upon partial payment or whenever the department determines that the release or partial release of the lien
10 will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if
11 it determines that the lien is unenforceable."

12

13 **Section 9.** Section 39-51-2302, MCA, is amended to read:

14 **"39-51-2302. Disqualification for leaving work without good cause.** (1) An individual ~~shall~~ must
15 be disqualified for benefits if ~~he~~ the individual has left work without good cause attributable to ~~his~~ the
16 individual's employment.

17 (2) ~~He~~ The individual may not be disqualified if the individual ~~department finds that he left his~~
18 leaves:

19 (a) employment because of personal illness or injury not associated with misconduct upon the
20 advice of a licensed and practicing physician and, after recovering from ~~his~~ the illness or injury when
21 recovery is certified by a licensed and practicing physician, ~~he~~ the individual returned to ~~his~~ and offered
22 service to the individual's employer and ~~offered his service~~ and ~~his~~ the individual's regular or comparable
23 suitable work was not available, if ~~so found~~ as determined by the department, provided ~~he~~ the individual
24 is otherwise eligible; or

25 (b) temporary work accepted during a period of unemployment caused by a lack of work with the
26 individual's regular employer if upon leaving the temporary work the individual returned immediately to work
27 for the individual's regular employer, provided that the individual is unemployed for nondisqualifying
28 reasons.

29 (3) To requalify for benefits, an individual ~~must~~ shall perform services other than self-employment
30 for which remuneration is received equal to or in excess of six times ~~his~~ the individual's weekly benefit

1 amount subsequent to the week in which the act causing the disqualification occurred unless ~~he~~ the
 2 individual has been in regular attendance at an educational institution accredited by the state of Montana
 3 for at least 3 consecutive months from the date of ~~his~~ the individual's enrollment."

4
 5 ~~Section 11. Section 39-51-2303, MCA, is amended to read:~~

6 ~~"39-51-2303. Disqualification for discharge due to misconduct. An individual shall must be~~
 7 ~~disqualified for benefits after being discharged or suspended:~~

8 ~~(1) for misconduct connected with the individual's work or affecting the individual's employment~~
 9 ~~until the individual has performed services, other than self-employment, for which remuneration is received~~
 10 ~~equal to or in excess of eight times the individual's weekly benefit amount subsequent to the week in which~~
 11 ~~the act causing the disqualification occurred; or~~

12 ~~(2) for gross misconduct connected with the individual's work or committed on the employer's~~
 13 ~~premises, as determined by the department, for a period of 52 weeks."~~

14
 15 **Section 10.** Section 39-51-3105, MCA, is amended to read:

16 **"39-51-3105. Assignment, pledge, or encumbrance of right to benefits void -- benefits exempt**
 17 **from levy, execution, attachment, or other remedy for collection of debt -- exception.** Any assignment,
 18 pledge, or encumbrance of any right to benefits that are or may become due or payable under this chapter
 19 is void, and the rights to benefits are exempt from levy, execution, attachment, or any other remedy
 20 provided for the collection of debt, ~~and benefits.~~ Benefits received by ~~any~~ an individual, ~~so~~ as long as they
 21 are not mingled with other funds of the recipient, are exempt from ~~any~~ an ANY remedy for the collection
 22 of all debts except as provided in 39-51-3106, [section 1], [section 2], and 39-51-3206. Any waiver of ~~any~~
 23 an exemption provided for in this section is void."

24
 25 **Section 11.** Section 39-51-3201, MCA, is amended to read:

26 **"39-51-3201. Making false statement or representation or failing to disclose material fact in order**
 27 **to obtain or increase benefits -- administrative penalty and remedy.** (1) A person who makes a false
 28 statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order
 29 to obtain or increase any benefit or other payment under this chapter or under an employment security law
 30 of any other state or territory or the federal government, either for ~~himself~~ the individual or for any other

1 person, is:

2 (a) disqualified for benefits ~~thereafter~~ for a period of not more than 52 weeks, beginning with the
3 first compensable week following the date of ~~such~~ determination by the department, ~~the~~ The, WITH THE
4 length of time of the disqualification ~~as herein described to~~ must TO be determined by the department in
5 accordance with the severity of each case; and

6 (b) required to repay to the department, either directly or as authorized by the department, by
7 offset of future benefits to which ~~he~~ the individual may be entitled, or by a combination of both ~~such~~
8 methods, a sum equal to the amount wrongfully received by ~~him~~ the individual, plus the department may
9 assess a penalty not to exceed 100% of the fraudulently obtained benefits, ~~except that future~~ Future
10 benefits may not be used to offset the penalty due. However, ~~he~~ the individual is not required to repay any
11 amount wrongfully obtained more than 5 years prior to the date of the department's determination that ~~he~~
12 the individual made false statements, willful nondisclosure, or misrepresentation.

13 (2) An individual, other than a person with a bona fide disability that prevents the individual from
14 making or filing a claim for benefits on the individual's own behalf, who allows or authorizes another person
15 to make or file a claim for benefits on the individual's behalf is subject to the penalties prescribed in
16 subsection (1).

17 (3) All money accruing from the penalty under subsection (1)(b) must be deposited in the federal
18 special revenue account. Money deposited in that account may be appropriated to the department to be
19 used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant
20 revenues are inadequate for these purposes. Money in the account not appropriated for these purposes
21 must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal
22 year."

23

24 NEW SECTION. Section 12. Codification instruction. [Sections 1 and 2] are intended to be
25 codified as an integral part of Title 39, chapter 51, and the provisions of Title 39, chapter 51, apply to
26 [sections 1 and 2].

27

28 NEW SECTION. Section 13. Retroactive applicability. [Sections 1, 5, and ~~42~~ 10] apply
29 retroactively, within the meaning of 1-2-109, to January 1, 1997, in order to comply with federal
30 requirements.

1 HOUSE BILL NO. 115

2 INTRODUCED BY GRIMES, SHEA

3 BY REQUEST OF THE DEPARTMENT OF LABOR

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR VOLUNTARY WITHHOLDING OF TAXES FROM
6 UNEMPLOYMENT INSURANCE BENEFITS; PROVIDING FOR DEDUCTIONS FROM UNEMPLOYMENT
7 BENEFITS TO REPAY OVERISSUANCE OF FOOD STAMP COUPONS; ADDING PARTNERS IN A LIMITED
8 LIABILITY PARTNERSHIP TO THE TYPES OF EMPLOYING ENTITIES SUBJECT TO PENALTIES FOR UNPAID
9 TAXES; CHANGING THE CRITERIA FOR DISQUALIFYING AN INDIVIDUAL FOR UNEMPLOYMENT
10 BENEFITS; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-403, 39-51-1213, ~~39-51-1214,~~
11 39-51-1303, 39-51-1304, 39-51-2302, ~~39-51-2303,~~ 39-51-3105, AND 39-51-3201, MCA; AND
12 PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

APPROVED BY COM ON LABOR
& EMPLOYMENT RELATIONS

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12 PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

13

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

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 11 39-51-1303, 39-51-1304, 39-51-2302, ~~39-51-2303,~~ 39-51-3105, AND 39-51-3201, MCA; AND
 12 PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
 16 **NEW SECTION. Section 1. Voluntary and other withholding of taxes from benefits -- procedures.**

17 (1) The department shall advise an individual at the time the individual files a new claim for unemployment
 18 compensation that:

19 (a) unemployment compensation is subject to federal income tax;

20 (b) requirements exist pertaining to estimated tax payments;

21 (c) the individual may elect to have federal income tax deducted and withheld from the individual's
 22 unemployment compensation at the rate or amount specified in the Internal Revenue Code; and

23 (d) the individual may change a previously elected withholding status in a manner and at a
 24 frequency prescribed by the department.

25 (2) Funds deducted and withheld from unemployment compensation must remain in the
 26 unemployment insurance fund provided for in 39-51-401 until the funds are transferred as income tax
 27 payments to the internal revenue service.

28 (3) The department shall:

29 (a) follow all procedures specified by the United States department of labor and the internal revenue
 30 service pertaining to the voluntary deduction and withholding of income tax from unemployment

1 compensation; and

2 (b) deduct and withhold from unemployment compensation amounts of federal income tax other
3 than those specified in subsection (1)(c) in accordance with the priorities established by the department
4 by rule.

5

6 **NEW SECTION. Section 2. Deduction and withholding of unemployment benefits to repay**
7 **overissuance of food stamps -- definitions.** (1) For the purposes of this section, the following definitions
8 apply:

9 (a) "State food stamp agency" means any agency of a state or a political subdivision of a state that
10 is responsible for enforcing the repayment of an obligation for overissuance of food stamp coupons.

11 (b) "Unemployment benefits" means benefits payable under the Montana unemployment insurance
12 law, including amounts payable by the department pursuant to an agreement under any federal law that
13 provides for benefits, assistance, or allowances with respect to unemployment.

14 (2) An individual filing a new claim for unemployment benefits shall disclose at the time of filing the
15 claim whether or not the individual owes for an uncollected overissuance of food stamp coupons as defined
16 in section 13(c)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2022(c)(1)). If an individual discloses that the
17 individual has an uncollected obligation for overissuance of food stamp coupons and if the department finds
18 that the individual is eligible for unemployment benefits, the department shall notify the state food stamp
19 agency that the individual is eligible for unemployment benefits.

20 (3) The department shall deduct and withhold from any unemployment benefits payable to an
21 individual who has an obligation for an uncollected overissuance of food stamp coupons:

22 (a) the amount specified by the individual to the department to be deducted and withheld; in which
23 case subsections (3)(b) and (3)(c) are not applicable;

24 (b) the amount, if any, determined by a state food stamp agency for enforcing obligations for
25 overissuance of food stamp coupons, pursuant to an agreement submitted to the department under section
26 13(c)(3)(A) of the Food Stamp Act of 1977 (7 U.S.C. 2022(c)(3)(A)), unless subsection (3)(c) is applicable;
27 or

28 (c) any amount otherwise required to be deducted and withheld from unemployment benefits
29 pursuant to section 13(c)(3)(B) of the Food Stamp Act of 1977 (7 U.S.C. 2022 (c)(3)(B)).

30 (4) The department shall pay any amount deducted and withheld under subsection (3) to the

1 appropriate state food stamp agency responsible for enforcing an obligation for overissuance of food stamp
2 coupons.

3 (5) Deductions may be made pursuant to this section only if appropriate arrangements have been
4 made for reimbursement by the state food stamp agency for the administrative costs incurred by the
5 department under this section.

6 (6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to
7 the individual as unemployment benefits and then paid by the individual to the state food stamp agency
8 in satisfaction of the individual's uncollected overissuance of food stamp coupons.

9

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

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

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

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

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

26 (4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning
27 with the first day of the calendar week in which the individual files a valid claim for benefits, except that
28 the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base
29 year of a previously filed new claim. A subsequent benefit year may not be established until the expiration
30 of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement

1 approved by the secretary of labor of the United States, the base period is the period applicable under the
2 unemployment law of the paying state.

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

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

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

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

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

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

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

29 (12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law,
30 for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates

1 a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the
2 employer.

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

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

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

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

10 (15) (a) "Institution of higher education", for the purposes of this part, means an educational
11 institution that:

12 (i) admits as regular students only individuals having a certificate of graduation from a high school
13 or the recognized equivalent of a certificate;

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

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

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

20 (b) Notwithstanding subsection (15)(a), all universities in this state are institutions of higher
21 education for purposes of this part.

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

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

26 (18) "Unemployment insurance administration fund" means the unemployment insurance
27 administration fund established by this chapter from which administrative expenses under this chapter must
28 be paid.

29 (19) (a) "Wages" means all remuneration payable for personal services, including commissions and
30 bonuses, the cash value of all remuneration payable in any medium other than cash, and back pay received

1 pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any
2 medium other than cash must be estimated and determined pursuant to rules prescribed by the department.

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

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

7 (A) retirement;

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

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

10 (D) death;

11 (ii) remuneration paid by a county welfare office from public assistance funds for services performed
12 at the direction and request of the county welfare office; or

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

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

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

18

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

20 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not
21 include:

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

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

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

30 (b) household and domestic service in a private home, local college club, or local chapter of a

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

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

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

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

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

12 (e) service performed in the employ of any other state or its political subdivisions or of the United
13 States government or of an instrumentality of any other state or states or their political subdivisions or of
14 the United States, except that national banks organized under the national banking law may not be entitled
15 to exemption under this subsection and are subject to this chapter the same as state banks, provided that
16 the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment
17 Tax Act (26 U.S.C. 3306(c)(7));

18 (f) service in which unemployment insurance is payable under an unemployment insurance system
19 established by an act of congress if the department enters into agreements with the proper agencies under
20 an act of congress and those agreements become effective in the manner prescribed in the Montana
21 Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who
22 have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment
23 insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance
24 under the act of congress, acquired rights to benefits under this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (iii) may perform services for anyone without limitation;

15 (iv) may accept or reject any job;

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

17 (vi) works under a written contract that:

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

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

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

23 (p) employment of a direct seller as defined in 26 U.S.C. 3508;

24 (q) services performed by a petroleum land professional. As used in this subsection, "petroleum
 25 land professional" means a person who:

26 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
 27 negotiating a business agreement for the exploration or development of minerals;

28 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
 29 than on an hourly wage basis; and

30 (iii) performs all services as an independent contractor pursuant to a written contract.

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

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

3 (a) in the employ of a church or convention or association of churches or an organization that is
4 operated primarily for religious purposes and that is operated, supervised, controlled, or principally
5 supported by a church or convention or association of churches;

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

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

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

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

17 (4) An individual found to be an independent contractor by the department under the terms of
18 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
19 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
20 39-51-2402.

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

24

25 **Section 5.** Section 39-51-403, MCA, is amended to read:

26 **"39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of**
27 **benefits -- exception.** (1) Money ~~shall~~ may be requisitioned from this state's account in the unemployment
28 trust fund solely for the payment of benefits and in accordance with regulations prescribed by the
29 department, except that money credited to this state's account pursuant to section 903 of the Social
30 Security Act (42 U.S.C. 1103), as amended, may also be withdrawn for the payment of expenses for the

1 administration of this chapter and of public employment offices, as provided by this chapter. Money
 2 withheld by the department from a benefits payment at the request of an individual or in accordance with
 3 the department's rules pertaining to deductions and withholding for federal income tax purposes pursuant
 4 to [section 1] or money withheld for repayment of an overissuance of food stamp coupons pursuant to
 5 [section 2] must be considered benefits for the purposes of this subsection.

6 (2) The department shall from time to time requisition from the unemployment trust fund ~~such the~~
 7 amounts, not exceeding the amounts ~~standing to~~ in this state account ~~therein in the fund~~, as it ~~deems~~
 8 considers necessary for the payment of benefits for a reasonable future period. Upon receipt ~~thereof of a~~
 9 requisition, the treasurer shall deposit ~~such the~~ money in the benefit account and shall issue ~~his~~ warrants
 10 for the payment of benefits ~~solely~~ from ~~such the~~ benefit account.

11 (3) Expenditures of ~~such~~ money in the benefit account and refunds from the clearing account ~~shall~~
 12 are not be subject to any provisions of law requiring specific appropriations or other formal release by state
 13 officers of money in their custody.

14 (4) Any balance of money requisitioned from the unemployment trust fund ~~which that~~ remains
 15 unclaimed or unpaid in the benefit account after the expiration of the period for which ~~such the~~ sums were
 16 requisitioned ~~shall must~~ either be deducted from estimates for and may be ~~utilized~~ used for the payment
 17 of benefits during succeeding periods or, in the discretion of the department, ~~shall must~~ be redeposited with
 18 the secretary of the treasury of the United States to the credit of this state's account in the unemployment
 19 trust fund, as provided in 39-51-402."

20

21 **Section 6.** Section 39-51-1213, MCA, is amended to read:

22 **"39-51-1213. Classification of employers for experience rating purposes.** (1) The department shall
 23 for each calendar year classify employers in accordance with their actual experience in the payment of
 24 contributions and with respect to benefits charged against their accounts, with contribution rates reflecting
 25 benefit experience. Each employer's rate for a calendar year ~~shall must~~ be determined on the basis of the
 26 employer's record as of October 1 of the preceding calendar year.

27 (2) In making the classification, each eligible and deficit employer's contribution rate is determined
 28 in the manner set forth below:

29 (a) Each employer is given an "experience factor", which is contributions paid since October 1,
 30 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the

1 employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years
 2 immediately preceding the computation date. The computation of the "experience factor" ~~shall~~ must be to
 3 six decimal places.

4 (b) Schedules ~~shall~~ must be prepared listing all eligible and deficit employers in inverse numerical
 5 order of their experience factors. There ~~shall~~ must be listed on ~~such~~ the schedules for each employer in
 6 addition to the experience factor:

7 (i) the amount of the employer's taxable payroll for the fiscal year ending on the computation date;
 8 and

9 (ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year
 10 ending on the computation date and the corresponding taxable payrolls for all other employers preceding
 11 that employer on the schedules.

12 (3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 ~~shall~~
 13 must be segregated into groups that will yield approximately the average tax rate according to the tax
 14 schedule assigned for that particular taxable year. Each group ~~shall~~ must be identified by the rate class
 15 number listed in the table ~~which~~ that represents the percentage limits of each group. Each employer on the
 16 schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in
 17 effect for the taxable year.

18 (4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's
 19 taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which
 20 the halves of that employer's taxable payroll are ~~so~~ required.

21 (b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an
 22 employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater
 23 part of that employer's taxable payroll is ~~so~~ required.

24 (c) If one or more employers on the schedules have experience factors identical to that of the last
 25 employer included in a particular rate class, all such employers are included in and assigned the contribution
 26 rate specified for ~~such~~ the class, notwithstanding the provisions of 39-51-1214.

27 (5) If the taxable payroll amount, ~~or~~ the experience factor, ~~or both such taxable payroll amount and~~
 28 ~~experience factor~~ of any eligible or deficit employer listed on the schedules is changed, the employer is
 29 placed in that position on the schedules ~~which~~ that the employer would have occupied had that employer's
 30 taxable payroll amount or experience factor as changed been used in determining that employer's position

1 in the first instance, ~~but such~~. However, the change does not affect the position or rate classification of
 2 any other employer listed on the schedules and does not affect the rate determination for previous years.

3 (6) An employer who has not filed all required payroll reports or paid all taxes, penalties, and
 4 interest due by the cutoff date must be assigned ~~the maximum~~ a contribution rate in effect for the taxable
 5 year for ~~his~~ the employer's classification as an eligible, deficit, or new employer, plus an additional
 6 assessment of 50% of the employer's assigned contribution rate, rounded to the nearest 1/10 of 1%."

7
 8 **Section 7.** ~~Section 39-51-1214, MCA, is amended to read:~~

9 ~~"39-51-1214. Benefit payments chargeable to employer experience rating accounts. (1) Except~~
 10 ~~for cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period~~
 11 ~~employers. The benefit charged must be based on the percentage of wages paid by the employer as~~
 12 ~~compared to the total wages paid by all employers in the claimant's base period.~~

13 ~~(2) A charge may not be made to the account of a covered employer with respect to benefits paid~~
 14 ~~under the following situations:~~

15 ~~(a) if paid to a worker who terminated services voluntarily without good cause attributable to a~~
 16 ~~covered employer or who had been discharged or suspended for misconduct in connection with services;~~

17 ~~(b) if paid in accordance with the extended benefit program triggered by either national or state~~
 18 ~~indicators;~~

19 ~~(c) if the base period employer continues to provide employment with no without a reduction in~~
 20 ~~hours or wages;~~

21 ~~(d) if benefits are paid to claimants who are in training approved under 39-51-2307; or~~

22 ~~(e) if the base period employer is ordered to state or federal active duty in the national guard or~~
 23 ~~reserves."~~

24
 25 **Section 7.** Section 39-51-1303, MCA, is amended to read:

26 **"39-51-1303. Collection of unpaid taxes by civil action.** (1) If, after due notice, any employer,
 27 liable corporate officer or employee, ~~or~~ liable member or manager of a limited liability company referred to
 28 in 39-51-1105, or partner in a limited liability partnership defaults in any payment of taxes, penalties, or
 29 interest on the taxes and penalties, the department may initiate a civil action in the name of the department
 30 to collect the amount due and the employer, liable corporate officer, ~~or~~ liable member or manager of a

1 limited liability company referred to in 39-51-1105, or partner in a limited liability partnership adjudged in
2 default shall pay the costs of the action.

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

5 (3) The department may pursue its remedy under ~~either 39-51-1304, or this section, or both.~~
6

7 **Section 8.** Section 39-51-1304, MCA, is amended to read:

8 **"39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including
9 penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer, ~~or the~~
10 liable corporate officer or employee or liable member or manager of a limited liability company referred to
11 in 39-51-1105, or a partner in a limited liability partnership, arising at the time that the payments are due.
12 The department may issue a certificate stating the amount of payments due and directing the clerk of the
13 district court of any county of the state to enter the certificate as a judgment in the docket pursuant to
14 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal
15 property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been
16 satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the
17 tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be made by
18 means of a certified letter by an agent authorized to collect the tax. The department may enforce the
19 judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever
20 is later.

21 (2) A judgment lien filed pursuant to this section may be renewed for another 10-year period
22 pursuant to the provisions of 25-13-102.

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

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

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

28 (4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204
29 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed
30 ~~against the employer, liable corporate officer or employee, or liable member or manager of a limited liability~~

1 ~~company referred to in 39-51-1105~~ under 39-51-1303, ~~or~~ this section, or both, to collect the delinquent
2 taxes, penalties, and interest from the:

3 (a) employer;

4 (b) liable corporate officer or employee;

5 (c) liable member or manager of a limited liability company referred to in 39-51-1105; or

6 (d) partner in a limited liability partnership.

7 (5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid
8 taxes, penalties, and accumulated interest. The department may release or may partially release the lien
9 upon partial payment or whenever the department determines that the release or partial release of the lien
10 will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if
11 it determines that the lien is unenforceable."
12

13 **Section 9.** Section 39-51-2302, MCA, is amended to read:

14 **"39-51-2302. Disqualification for leaving work without good cause.** (1) An individual ~~shall~~ must
15 be disqualified for benefits if ~~he~~ the individual has left work without good cause attributable to ~~his~~ the
16 individual's employment.

17 (2) ~~He~~ The individual may not be disqualified if the individual ~~department finds that he left his~~
18 leaves:

19 (a) employment because of personal illness or injury not associated with misconduct upon the
20 advice of a licensed and practicing physician and, after recovering from ~~his~~ the illness or injury when
21 recovery is certified by a licensed and practicing physician, ~~he~~ the individual returned to ~~his~~ and offered
22 service to the individual's employer and offered his service and ~~his~~ the individual's regular or comparable
23 suitable work was not available, ~~if so found~~ as determined by the department, provided ~~he~~ the individual
24 is otherwise eligible; or

25 (b) temporary work accepted during a period of unemployment caused by a lack of work with the
26 individual's regular employer if upon leaving the temporary work the individual returned immediately to work
27 for the individual's regular employer, provided that the individual is unemployed for nondisqualifying
28 reasons.

29 (3) To requalify for benefits, an individual ~~must~~ shall perform services other than self-employment
30 for which remuneration is received equal to or in excess of six times ~~his~~ the individual's weekly benefit

1 amount subsequent to the week in which the act causing the disqualification occurred unless ~~he~~ the
 2 individual has been in regular attendance at an educational institution accredited by the state of Montana
 3 for at least 3 consecutive months from the date of ~~his~~ the individual's enrollment."

4
 5 ~~Section 11. Section 39-51-2303, MCA, is amended to read:~~

6 ~~"39-51-2303. Disqualification for discharge due to misconduct. An individual shall must be~~
 7 ~~disqualified for benefits after being discharged or suspended:~~

8 ~~(1) for misconduct connected with the individual's work or affecting the individual's employment~~
 9 ~~until the individual has performed services, other than self-employment, for which remuneration is received~~
 10 ~~equal to or in excess of eight times the individual's weekly benefit amount subsequent to the week in which~~
 11 ~~the act causing the disqualification occurred; or~~

12 ~~(2) for gross misconduct connected with the individual's work or committed on the employer's~~
 13 ~~premises, as determined by the department, for a period of 52 weeks."~~

14
 15 ~~Section 10. Section 39-51-3105, MCA, is amended to read:~~

16 ~~"39-51-3105. Assignment, pledge, or encumbrance of right to benefits void -- benefits exempt~~
 17 ~~from levy, execution, attachment, or other remedy for collection of debt -- exception. Any assignment,~~
 18 ~~pledge, or encumbrance of any right to benefits that are or may become due or payable under this chapter~~
 19 ~~is void, and the rights to benefits are exempt from levy, execution, attachment, or any other remedy~~
 20 ~~provided for the collection of debt, and benefits. Benefits received by ~~any~~ an individual, ~~as~~ as long as they~~
 21 ~~are not mingled with other funds of the recipient, are exempt from ~~any~~ an ANY remedy for the collection~~
 22 ~~of all debts except as provided in 39-51-3106, [section 1], [section 2], and 39-51-3206. Any waiver of ~~any~~~~
 23 ~~an exemption provided for in this section is void."~~

24
 25 ~~Section 11. Section 39-51-3201, MCA, is amended to read:~~

26 ~~"39-51-3201. Making false statement or representation or failing to disclose material fact in order~~
 27 ~~to obtain or increase benefits -- administrative penalty and remedy. (1) A person who makes a false~~
 28 ~~statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order~~
 29 ~~to obtain or increase any benefit or other payment under this chapter or under an employment security law~~
 30 ~~of any other state or territory or the federal government, either for ~~himself~~ the individual or for any other~~

1 person, is:

2 (a) disqualified for benefits ~~thereafter~~ for a period of not more than 52 weeks, beginning with the
3 first compensable week following the date of ~~such~~ determination by the department, ~~the~~ The, WITH THE
4 length of time of the disqualification ~~as herein described to~~ must TO be determined by the department in
5 accordance with the severity of each case; and

6 (b) required to repay to the department, either directly or as authorized by the department, by
7 offset of future benefits to which ~~he~~ the individual may be entitled, or by a combination of both ~~such~~
8 methods, a sum equal to the amount wrongfully received by ~~him~~ the individual, plus the department may
9 assess a penalty not to exceed 100% of the fraudulently obtained benefits, ~~except that future~~ Future
10 benefits may not be used to offset the penalty due. However, ~~he~~ the individual is not required to repay any
11 amount wrongfully obtained more than 5 years prior to the date of the department's determination that ~~he~~
12 the individual made false statements, willful nondisclosure, or misrepresentation.

13 (2) An individual, other than a person with a bona fide disability that prevents the individual from
14 making or filing a claim for benefits on the individual's own behalf, who allows or authorizes another person
15 to make or file a claim for benefits on the individual's behalf is subject to the penalties prescribed in
16 subsection (1).

17 (3) All money accruing from the penalty under subsection (1)(b) must be deposited in the federal
18 special revenue account. Money deposited in that account may be appropriated to the department to be
19 used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant
20 revenues are inadequate for these purposes. Money in the account not appropriated for these purposes
21 must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal
22 year."

23
24 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 and 2] are intended to be
25 codified as an integral part of Title 39, chapter 51, and the provisions of Title 39, chapter 51, apply to
26 [sections 1 and 2].

27
28 **NEW SECTION. Section 13. Retroactive applicability.** [Sections 1, 5, and ~~42~~ 10] apply
29 retroactively, within the meaning of 1-2-109, to January 1, 1997, in order to comply with federal
30 requirements.

