

House BILL NO. 561

INTRODUCED BY

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Handwritten names: Kanev, Newlin, BENEDICT, [unclear], [unclear], [unclear], [unclear], [unclear]

A BILL FOR AN ACT ENTITLED: "AN ACT FURTHERING THE RENEWAL OF STATE GOVERNMENT BY HARMONIZING THE DEFINITIONS OF "WAGES" AND "EMPLOYMENT"; BY REENGINEERING RESTRUCTURING, AND COMBINING THE REPORTING AND REMITTANCE OF EMPLOYER TAXES; BY COORDINATING THE ADMINISTRATION OF THE STATE'S INCOME TAX AND OLD FUND LIABILITY TAX WITHHOLDING, UNEMPLOYMENT INSURANCE TAX, AND THE EMPLOYERS' SHARE OF THE OLD FUND LIABILITY TAX SO THAT ALL REPORTS AND REMITTANCES MUST BE MADE TO THE DEPARTMENT OF REVENUE THEREBY PROVIDING AN EMPLOYER THE CONVENIENCE OF DEALING WITH ONLY ONE STATE AGENCY; AND AMENDING SECTIONS 15-1-302, 15-2-302, 15-30-201, 15-30-202, 15-30-203, 15-30-204, 15-30-207, 15-30-208, 15-30-209, 37-31-101, 39-51-201, 39-51-204, 39-51-301, 39-51-1109, 39-51-1110, 39-51-1301, 39-51-1303, 39-51-2108, 39-51-2402, 39-71-123, 39-71-401, 39-71-2501, 39-71-2503, AND 39-71-2505, MCA."

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

NEW SECTION. Section 1. Confidentiality. Reports and returns required to be filed under this part are confidential, subject to the limitations contained in 39-51-603(3) and (4).

NEW SECTION. Section 2. Application and distribution of payments. (1) Except as provided by rule, tax payments including delinquent tax, penalty, and interest must be applied to the taxpayer's account, prorated on the basis of the amount of each tax due to the amount of the total tax due, and distributed to the appropriate fund accounts as required by law.

(2) Payment of a penalty assessed for late filing of a report for which there is no tax due for the period must be applied to the employer's liability for the penalties and equally distributed to the fund accounts specified by law among the tax types the report covers.

NEW SECTION. Section 3. Statute of limitations. (1) In the case of a nonfiled return, the department may, at any time, audit the employer or estimate the tax due from any information in its



1 possession and issue an assessment for the amount of the tax, penalty, and interest the department
2 determines to be due.

3 (2) If the department determines, pursuant to a review conducted pursuant to 15-30-145, that any
4 return is incorrect, it may revise the return within 5 years of the due date of the original return, within 5
5 years of the date the return was filed, or 1 year from the date an amended return was filed, whichever is
6 later.

7 (3) Notwithstanding the provisions of subsection (2), if an employer purposely or knowingly files
8 a false or fraudulent return, with intent to evade the tax, the amount of tax, penalty, and interest due may
9 be determined at any time after the return is filed and collected at any time after it becomes due.

10 (4) For the purposes of this section, a return filed before the due date is considered to be filed on
11 the due date.

12 (5) The statute of limitations is suspended during any time in which an employer-employee
13 relationship determination has been appealed as provided in 15-1-211, and the time for assessment extends
14 for an additional 1 year from the date the decision becomes final.

15

16 **NEW SECTION. Section 4. Credits and refunds -- period of limitations.** (1) If the department
17 determines by examination of an employer's account, or upon claim filed by an employer, that the employer
18 has overpaid the amount of tax, penalty, or interest, the amount of the overpayment may be refunded to
19 the employer or applied to current or future obligations of any tax, penalty, or interest for any tax contained
20 in this title at the discretion of the taxpayer.

21 (2) A credit or refund may be allowed only if the claim is filed or the determination is made within
22 5 years of the due date prescribed for filing a report or 1 year from the date of the notification of the
23 overpayment by the department.

24 (3) The department shall notify the employer of the overpayment and the credit or refund options
25 available to the employer. A credit must be applied to the employer account unless directed otherwise by
26 the employer.

27 (4) If a claim is disallowed, the department shall notify the employer. The decision disallowing the
28 claim is subject to review as provided in 15-1-211.

29 (5) Interest is:

30 (a) allowed on an overpayment at the same rate as charged for late tax payments under this part;

1 (b) payable from the due date of the payment or the date overpayment was verified, whichever
2 is later;

3 (c) not payable if the overpayment is applied to current or future obligations with the department.

4 (6) Interest is not allowed if the overpayment is refunded within 45 days from the date the
5 employer directs the department to refund the overpayment.

6 (7) If additional information is required to verify the amount of the overpayment, the 45-day period
7 in subsection (6) does not begin until the information is provided.

8
9 **NEW SECTION. Section 5. Employment defined and exclusions from definition of employment.**

10 (1) As used in this part "employment", subject to the provisions of subsection (2), means the service by
11 an employee for an employer.

12 (2) The term "employment" does not include:

13 (a) household and domestic service in a private home, local college club, or local chapter of a
14 college fraternity or sorority, except as provided in 15-30-201(4)(c);

15 (b) service performed by a dependent, as defined in 26 U.S.C. 152, of a sole proprietor for whom
16 an exemption may be claimed by the employer under the Internal Revenue Code or service performed by
17 a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole
18 proprietor pursuant to 26 U.S.C. 7703;

19 (c) service performed as a freelance correspondent or newspaper carrier if the person performing
20 the service, or a parent or guardian of the person performing the service in the case of a minor, has
21 previously acknowledged or acknowledges in writing that the person performing the service and the service
22 are not covered for unemployment insurance purposes. As used in this subsection:

23 (i) "freelance correspondent" is a person who submits articles or photographs for publication and
24 is paid by the article or by the photograph; and

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

28 (d) service performed as a licensed real estate broker or salesperson under Title 37, chapter 51;

29 (e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber
30 who is licensed under Title 37, chapter 30, and;

- 1 (i) who has acknowledged in writing that the cosmetologist or barber working under contract is not
2 covered by unemployment insurance and workers' compensation;
- 3 (ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined
4 in 37-30-101, which contract must show that the cosmetologist or barber:
5 (A) is free from all control and direction of the owner in the contract;
6 (B) receives payment for service from individual clientele; and
7 (C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or
8 knowledge; and
- 9 (iii) whose contract gives rise to an action for breach of contract in the event of contract
10 termination. The existence of a single license for the cosmetology salon or barbershop may not be
11 construed as a lack of freedom from control or direction under this subsection.
- 12 (f) casual labor not in the course of an employer's trade or business performed in any calendar
13 quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by
14 an individual who is regularly employed by the employer to perform the service. "Regularly employed"
15 means that the service is performed during at least 24 days in the same quarter.
- 16 (g) service performed by sole proprietors, working members of a partnership or a limited liability
17 partnership, or members of a member-managed limited liability company that has filed articles of
18 organization with the secretary of state;
- 19 (h) service performed for the installation of floor coverings if the installer:
20 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;
21 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
22 (iii) may perform service for anyone without limitation;
23 (iv) may accept or reject any job;
24 (v) furnishes substantially all tools and equipment necessary to provide the service; and
25 (vi) works under a written contract that:
26 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
27 contract obligations;
28 (B) states that the installer is not covered by unemployment insurance; and
29 (C) requires the installer to provide a current workers' compensation policy or to obtain an
30 exemption from workers' compensation requirements;

- 1 (i) service performed by a direct seller. As used in this subsection, "direct seller" means a person:
- 2 (i) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,
- 3 vacuum cleaners, and cleaning products at the home of the consumer;
- 4 (ii) whose pay is determined by the quantity of product sold; and
- 5 (iii) who works under a written contract that states the person will not be treated as an employee;
- 6 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land
- 7 professional" means a person who:
- 8 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
- 9 negotiating a business agreement for the exploration or development of minerals;
- 10 (ii) is paid for service that is directly related to the completion of a contracted specific task rather
- 11 than on an hourly wage basis; and
- 12 (iii) performs all service as an independent contractor pursuant to a written contract;
- 13 (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
- 14 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 15 (l) service performed by an individual receiving rehabilitation or remunerative work in a facility
- 16 conducted for the purpose of carrying out a program of rehabilitation for those individuals whose earning
- 17 capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for
- 18 individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the
- 19 competitive labor market;
- 20 (m) service performed as part of an unemployment work-relief or work-training program assisted
- 21 or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the
- 22 state by an individual receiving work relief or work training;
- 23 (n) service performed by an inmate of a state prison or other state correctional or custodial
- 24 institution;
- 25 (o) service by an individual who is sentenced to perform court-ordered community service or similar
- 26 work;
- 27 (p) service performed for aid or sustenance only;
- 28 (q) active service as members of the regular armed forces of the United States, as defined in 10
- 29 U.S.C. 101(33);
- 30 (r) agricultural labor; or

1 (s) service performed by an independent contractor.

2

3 **NEW SECTION. Section 6. Employment defined and exclusions from definition of employment.**

4 (1) As used in this part "employment", subject to the provisions of subsection (2), means the service by
5 an employee for an employer.

6 (2) The term "employment" does not include:

7 (a) household and domestic service in a private home, local college club, or local chapter of a
8 college fraternity or sorority, except as provided in 39-71-2501(4)(c);

9 (b) service performed by a dependent, as defined in 26 U.S.C. 152, of a sole proprietor for whom
10 an exemption may be claimed by the employer under the Internal Revenue Code or service performed by
11 a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole
12 proprietor under 26 U.S.C. 7703;

13 (c) service performed as a freelance correspondent or newspaper carrier if the person performing
14 the service, or a parent or guardian of the person performing the service in the case of a minor, has
15 previously acknowledged or acknowledges in writing that the person performing the service and the service
16 are not covered for unemployment insurance purposes. As used in this subsection:

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

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

22 (d) service performed as a licensed real estate broker or salesperson under Title 37, chapter 51;

23 (e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber
24 who is licensed under Title 37, chapter 30, and:

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

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

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

30 (B) receives payment for service from individual clientele; and

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

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

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

10 (g) service performed by sole proprietors, working members of a partnership or a limited liability
11 partnership, or members of a member-managed limited liability company that has filed articles of
12 organization with the secretary of state;

13 (h) service performed for the installation of floor coverings if the installer:

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

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

16 (iii) may perform service for anyone without limitation;

17 (iv) may accept or reject any job;

18 (v) furnishes substantially all tools and equipment necessary to provide the service; and

19 (vi) works under a written contract that:

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

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

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

25 (i) service performed by a direct seller. As used in this subsection, "direct seller" means a person:

26 (i) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,
27 vacuum cleaners, and cleaning products at the home of the consumer;

28 (ii) whose pay is determined by the quantity of product sold; and

29 (iii) who works under a written contract that states the person will not be treated as an employee;

30 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land

1 professional" means a person who:

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

4 (ii) is paid for service that is directly related to the completion of a contracted specific task rather
5 than on an hourly wage basis; and

6 (iii) performs all service as an independent contractor pursuant to a written contract;

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

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

14 (m) service performed as part of an unemployment work-relief or work-training program assisted
15 or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the
16 state by an individual receiving work relief or work training;

17 (n) service performed by an inmate of a state prison or other state correctional or custodial
18 institution;

19 (o) service by an individual who is sentenced to perform court-ordered community service or similar
20 work;

21 (p) service performed for aid or sustenance only; or

22 (q) service performed by an independent contractor.

23

24 **NEW SECTION. Section 7. Special review procedure for certain tax issues that involve**
25 **unemployment insurance benefit claim -- notice -- appeal.** (1) As used in this section, the following
26 definitions apply:

27 (a) "Administrator" means the administrator of the income and miscellaneous tax division,
28 department of revenue.

29 (b) "Board" means the state tax appeal board established by 15-2-101.

30 (c) "Claimant" means an individual who has filed a claim for unemployment insurance benefits

1 under Title 39, chapter 51, and has asserted that the individual's employer inaccurately or incompletely
2 reported the individual's wages.

3 (d) "Employer" means an employer as defined in 39-51-202, that has a potential tax liability arising
4 from the inaccurate or incomplete reporting of a claimant's wages.

5 (e) "Interested party" means the claimant, the employer, or the department of labor and industry.

6 (2) (a) The department shall promptly investigate whether wages earned by the claimant were
7 properly reported by the employer. Upon completion of the investigation, the department shall issue a
8 written determination stating whether the wages were properly reported and, if not, the correct amount
9 of reportable wages earned by the claimant. A copy of the determination must be mailed to each interested
10 party at the last-known address of each party.

11 (b) The determination is final unless an interested party, within 10 calendar days of the mailing of
12 the determination, makes a written application for reconsideration of the determination or makes a written
13 appeal of the determination. A late-filed application for reconsideration may be accepted by the department
14 upon a showing of good cause in writing.

15 (c) The written application or appeal must specify the reasons for the application or appeal and
16 provide any other information relevant to the application or appeal.

17 (d) An interested party may appeal the reconsideration of a determination by making a written
18 appeal within 10 calendar days of the mailing of the notice of the redetermination. A late-filed application
19 for reconsideration may be accepted by the department upon a showing of good cause in writing.

20 (3) (a) Upon appeal of a determination or redetermination, the administrator or a person appointed
21 by the administrator shall hold an informal hearing that may be conducted by telephone or video
22 conference. After the hearing, the administrator or a designee shall promptly make findings of fact and
23 conclusions of law and affirm, modify, reverse, or remand the determination or redetermination. A copy
24 of the decision, with supporting findings of fact and conclusions of law, must be mailed to each interested
25 party at the last-known address of each party.

26 (b) (i) The decision is binding on the interested parties unless a written appeal is made to the board.
27 The appeal must be filed with the board within 10 calendar days after notice of the decision was mailed.
28 A late-filed application for reconsideration may be accepted by the board upon a showing of good cause
29 in writing.

30 (ii) If the decision becomes final, the department shall proceed as provided in subsection (5).

1 (4) (a) An appeal to the board, pursuant to 15-2-302, is initiated by filing a complaint with the
2 board. The board shall promptly mail a copy of the complaint to each interested party at the last known
3 address of each party.

4 (b) Any interested party who wants to file an answer must do so within 10 calendar days after the
5 board mails a copy of the complaint. An answer up to 10 days late may be accepted by the board upon
6 a showing of good cause in writing.

7 (c) The decision of the board is final and binding upon all interested parties unless reversed or
8 modified by judicial review. Proceedings for judicial review under this section are subject to the provisions
9 of the Montana Administrative Procedure Act.

10 (5) When the department's decision becomes final, whether as the result of appeal, judicial review,
11 or the lapse of time during which to take an appeal, the interested parties are bound by the decision and
12 may not contest any issue that was decided as part of the decision either administratively or judicially. An
13 employer who is determined to have inaccurately or incompletely reported wages may not contest the issue
14 of whether wages should have been reported, or the amount of the wages that should have been reported,
15 once the department assesses taxes on those wages.

16

17 **Section 8.** Section 15-1-302, MCA, is amended to read:

18 "**15-1-302. Witnesses -- oaths, contempt, and fees.** (1) Oaths to witnesses in any investigation
19 by the department may be administered by the director of revenue or ~~his~~ the director's agent.

20 (2) ~~(a) In case any~~ If a witness shall fail ~~fails~~ fails to obey ~~any~~ a summons to appear before the
21 department or ~~shall refuse~~ refuses to testify or answer any material question or to produce records, books,
22 papers, or documents when required to do so, ~~such failure or refusal shall be reported to the attorney~~
23 ~~general, who~~ the department shall ~~thereupon~~ institute proceedings in the ~~proper~~ district court to compel
24 obedience to ~~any~~ a summons or order of the board or to punish the witness for ~~such~~ neglect or refusal to
25 obey the summons.

26 (b) As required by 15-30-209, the department, in addition to instituting proceedings to compel
27 obedience to a summons or order shall, as a part of the proceedings, request the court to issue an order
28 requiring the payment of all penalties assessed for the employer's failure to report.

29 (3) ~~Any~~ A person who ~~shall testify~~ testifies falsely in any material matter under consideration by
30 the department ~~shall be~~ is guilty of perjury and shall be punished accordingly.

1 (4) Witnesses attending an investigation by the department shall must receive like the same
 2 compensation as witnesses in the district court. ~~Such~~ The compensation ~~shall~~ must be charged to the
 3 proper appropriation for the department."
 4

5 **Section 9.** Section 15-2-302, MCA, is amended to read:

6 "**15-2-302. Direct appeal from department decision to state tax appeal board -- hearing.** (1) A
 7 person may appeal to the state tax appeal board a final decision of the department of revenue involving:

- 8 (a) property centrally assessed under chapter 23 ~~of this title~~;
 9 (b) classification of property as new industrial property;
 10 (c) any other tax, ~~{other than the property tax}~~, imposed under this title; or
 11 (d) any other matter in which the appeal is provided by law.

12 (2) ~~(a) The~~ Except as provided in subsection (2)(b), the appeal is made by filing a complaint with
 13 the board within 30 days following receipt of notice of the department's final decision. The complaint must
 14 set forth the grounds for relief and the nature of relief demanded. The board shall immediately transmit a
 15 copy of the complaint to the department.

16 (b) An appeal from the department's determination of whether wages earned by an unemployment
 17 insurance benefit claimant were properly reported to the department is initiated by filing a complaint with
 18 the board within 10 days following receipt of notice of the department's final determination. The board shall
 19 promptly mail a copy of the complaint to each interested party at the last-known address of each party.

20 (3) The department shall file with the board an answer within 30 days following filing of a
 21 complaint, or in cases involving a determination of whether wages earned by an unemployment insurance
 22 benefit claimant were properly reported to the department, any interested party as defined in [section
 23 7(1)(e)] and the department may file an answer with the board within 10 days after receipt of a copy of
 24 the complaint filed with the board, and at that time mail a copy to the complainant. The answer must set
 25 forth the department's response to each ground for and type of relief demanded in the complaint.

26 (4) ~~(a) The~~ Except as provided in subsection (4)(b), the board shall conduct the appeal in
 27 accordance with the contested case provisions of the Montana Administrative Procedure Act.

28 (b) (i) An appeal regarding the determination of whether wages earned by an unemployment
 29 insurance claimant were properly reported to the department, the appeal must be conducted informally and
 30 may, in the discretion of the board, be conducted by telephone or other electronic means. The appeal is

1 not a contested case under provisions of the Montana Administrative Procedure Act. The board, in
 2 conducting the hearing or making its decision, is not bound by the Montana Rules of Evidence.

3 (ii) The board shall make its final decision within 45 days of the date the appeal is received by the
 4 board.

5 (5) The decision of the state tax appeal board is final and binding upon all interested parties unless
 6 reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal
 7 board under this section are subject to the provisions of 15-2-303 and the Montana Administrative
 8 Procedure Act to the extent that it does not conflict with 15-2-303."

9

10 **Section 10.** Section 15-30-201, MCA, is amended to read:

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

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

17 (2) "Domestic or household service" means employment of persons other than members of the
 18 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
 19 family, including but not limited to housecleaning and yard work but does not include employment beyond
 20 the scope of normal household or domestic duties such as home health care or domiciliary care.

21 ~~(2)(3)~~ "Employee" means:

22 (a) an officer, employee, or elected public official of the United States, the state of Montana, or
 23 any political subdivision of the United States or Montana or any agency or instrumentality of the United
 24 States, the state of Montana, or a political subdivision of the United States or Montana. The term also
 25 includes;

26 (b) an officer of a corporation;

27 (c) any individual who performs services for another individual or organization having the right to
 28 control the employee as to the services to be performed and as to the manner of performance;

29 (d) all classes, grades, or types of employees including minors and aliens, superintendents,
 30 managers, and other supervisory personnel.

1 ~~(3)~~(4) "Employer" means:

2 (a) the person for whom an individual performs or performed any service, of whatever nature, as
3 an employee of the person. ~~However, if the person for whom the individual performs or performed the~~
4 ~~service does not have control of the payment of the wages for the service, the term means the person who~~
5 ~~has control of the payment of wages;~~

6 (b) a person who pays \$1,000 or more in wages within the current calendar year;

7 (c) a person who pays \$1,000 or more in cash for domestic or household service in any quarter
8 during the current calendar year;

9 (d) any individual or organization, including state government and any of its political subdivisions
10 or instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited
11 liability company or a limited liability partnership that has filed with the secretary of state, or domestic or
12 foreign corporation or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal
13 representative of a deceased person who has or had in its employ one or more individuals performing
14 services for it within this state; or

15 (e) any person found to be an employer under Title 39, chapter 51, for unemployment insurance
16 purposes is considered an employer for state income tax withholding purposes.

17 ~~(4)~~(5) "Independent contractor" means an individual who renders service in the course of an
18 occupation and:

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

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

22 ~~(5)~~(6) "Lookback period" means the 12-month period ending the preceding June 30.

23 ~~(6)~~(7) (a) "Wages", ~~unless specifically exempted under subsection (7)(b)~~ means all remuneration,
24 ~~other than fees paid to a public official,~~ for services performed by an employee for the employer, including
25 the cash value of all remuneration paid in any medium other than cash, ~~except that the term does not~~
26 ~~include remuneration paid;~~ and includes but is not limited to the following:

27 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations and
28 sickness periods;

29 (ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous
30 service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

1 and

2 (iii) except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by
3 the employee, to the extent that the tips or gratuities are:

4 (A) documented by the employee to the employer for tax purposes;

5 (B) disbursed by the employer from a tip pool; or

6 (C) added to the customer's bill by the employer.

7 ~~(a) for active service as a member of the regular armed forces of the United States, as defined in~~
8 ~~10 U.S.C. 101(33);~~

9 ~~(b) for agricultural labor;~~

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

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

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

19 ~~(ii) the individual was regularly employed, as determined under subsection (6)(d)(ii), by the employer~~
20 ~~in the performance of service during the preceding calendar quarter.~~

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

23 ~~(f) for services performed by an ordained, commissioned, or licensed minister of a church in the~~
24 ~~exercise of the ministry or by a member of a religious order in the exercise of duties required by the order;~~

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

28 ~~(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines~~
29 ~~to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by~~
30 ~~the individual at a fixed price, with the individual's compensation based on the retention of the excess of~~

1 ~~the price over the amount at which the newspapers or magazines are charged to the individual, whether~~
 2 ~~or not the individual is guaranteed a minimum amount of compensation for the service or is entitled to be~~
 3 ~~credited with the unsold newspapers or magazines turned back;~~

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

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

10 ~~(j) as tips or gratuities that are in accordance with section 3402(k) or service charges that are~~
 11 ~~covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1,~~
 12 ~~1983, received by persons for services rendered by them to patrons of premises licensed to provide food,~~
 13 ~~beverage, or lodging;~~

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

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

19 (i) the amount of any payment made by the employer if the payment was made pursuant to a
 20 qualified plan as defined under the provisions of the Internal Revenue Code established for employees for:

21 (A) retirement or pension;

22 (B) sickness or accident disability under a workers' compensation policy;

23 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
 24 health insurance for the employee or the employee's immediate family; or

25 (D) death, including life insurance for the employee or the employee's immediate family;

26 (ii) compensation in the form of meals and lodging, provided the compensation is not includable
 27 in gross income for state individual income tax purposes;

28 (iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C.
 29 1002(40)(A), to a qualified individual employee;

30 (iv) payments made by an employee to any group plan or program to the extent that the payments

1 are not taxable for state income tax purposes;

2 (v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are
3 covered by 26 U.S.C. 3401 of the Internal Revenue Code, as amended and applicable on January 1, 1983,
4 received by persons for services rendered by them to patrons of premises licensed to provide food,
5 beverage, or lodging; or

6 (vi) payments that may not be taxed under federal law."

7

8 **Section 11.** Section 15-30-202, MCA, is amended to read:

9 **"15-30-202. Withholding of tax from wages.** (1) Each employer making payment of wages for
10 employment as defined in [section 5] shall withhold from wages a tax determined in accordance with the
11 withholding tax tables prepared and issued by the department. ~~Persons on active service as members of~~
12 ~~the regular armed forces of the United States, as defined in 10 U.S.C. 101(33), are not subject to the~~
13 ~~provisions of this section.~~

14 (2) An employer who maintains two or more separate establishments within this state is considered
15 to be a single employer for the purposes of this part."

16

17 **Section 12.** Section 15-30-203, MCA, is amended to read:

18 **"15-30-203. Employer liable for ~~withholding~~ employment taxes.** (1) Each employer is liable for the
19 reports and payments required by 15-30-204, the amounts required to be deducted and withheld under this
20 part, and the amounts plus interest due on the amounts are a tax. With respect to the tax, the employer
21 is the taxpayer.

22 (2) The officer or employee of a corporation whose duty it is to collect, truthfully account for, and
23 pay to the state the amounts withheld from the corporation's employees and who fails to pay the
24 withholdings is liable to the state for the amounts withheld and the penalty and interest due on the
25 amounts.

26 (3) (a) Each officer or employee of the corporation is individually liable along with the corporation
27 for filing reports to the extent that the officer or employee has access to the requisite records and for
28 unpaid taxes, penalties, and interest upon a determination that the officer or employee:

29 (i) possessed the authority, duty, and responsibility to file reports and pay taxes on behalf of the
30 corporation;

1 (ii) possessed the authority on behalf of the corporation to direct the filing of reports and payment
 2 of taxes by other employees or agents of the corporation; or

3 (iii) possessed the authority on behalf of the corporation for directing the filing of tax reports or
 4 the payment of other corporate obligations and exercised that authority resulting in the corporation's failure
 5 to file reports required by this part or pay taxes due as required by this part.

6 (b) The department is not limited to considering the elements set forth in subsection (3)(a) to
 7 establish individual liability and may consider any other available information.

8 (4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the
 9 discharge of penalty and interest against the corporation. The individual remains liable for any reports and
 10 the amount of taxes, penalties, and interest unpaid by the corporation.

11 (5) For the purpose of determining liability for the filing of reports and the remittance of taxes,
 12 penalties, and interest owed under this part, a member-managed limited liability company must be treated
 13 as a partnership with liability for filing reports and remitting taxes, penalties, and interest owed extending
 14 to each member who was a member at the time the report or taxes were due.

15 (6) For determining personal liability for the failure to file reports and remit taxes, penalties, and
 16 interest owed by a manager-managed limited liability company, the managers of the limited liability
 17 company are jointly and severally liable along with the limited liability company for reports and any taxes,
 18 penalties, and interest owed.

19 (7) For determining personal liability for the failure to file reports and remit taxes, penalties, and
 20 interest owed by a limited liability partnership, the partners of the limited liability partnership are jointly and
 21 severally liable, along with the limited liability partnership, for reports and any taxes, penalties, and interest
 22 due.

23 ~~(3)(8)~~ (8) If the employer fails to deduct and withhold the amounts specified in 15-30-202 and
 24 thereafter the tax against which the deducted and withheld amounts would have been credited is paid, the
 25 amounts required to be deducted and withheld may not be collected from the employer."

26
 27 **Section 13.** Section 15-30-204, MCA, is amended to read:

28 **"15-30-204. ~~Weekly, monthly, or annual payment Reporting and remittance requirements.~~ (1) An**
 29 **employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings during**
 30 **the preceding lookback period was \$12,000 or greater shall file a return in the form and containing the**

1 information that may be required by the department and shall pay the amount required by 15-30-202 to
2 be deducted and withheld by the employer from wages paid during the preceding payroll period. The
3 payment must be submitted on or before the date on which federal income tax weekly withholding
4 payments are due. On or before the last day of April, July, October, and January, the employer shall file
5 a return in the form and containing the information required by the department. The quarterly returns for
6 employers subject to this subsection must be used to summarize and adjust payments and to request
7 refunds of overpayments. The employer shall also file the annual statement as required by 15-30-207.

8 (2) ~~An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for~~
9 ~~withholdings during the preceding lookback period was less than \$12,000 but greater than \$1,199 shall~~
10 ~~remit a monthly payment to the department for the amount required by 15-30-202 to be deducted and~~
11 ~~withheld by the employer from wages paid during the preceding month. The monthly payment must be~~
12 ~~submitted on or before the 15th day of the month following the payment of the wages. The employer~~
13 ~~subject to this subsection shall, on or before February 28 of the year following payment of the wages, file~~
14 ~~an annual return in the form and containing the information required by the department and the annual~~
15 ~~statement required by 15-30-207. The annual returns for employers subject to this subsection must be used~~
16 ~~to summarize and adjust payments and to request refunds of overpayments.~~

17 (1) For the purposes of this section, employers shall remit their taxes in accordance with the
18 appropriate remittance schedule as follows:

19 (a) Employers whose total liability for state income tax withholding during the preceding lookback
20 period was \$12,000 or more shall remit on an "accelerated schedule", which is the same as the employer's
21 federal due dates for federal tax deposits.

22 (b) Employers whose total liability for state income tax withholding during the preceding lookback
23 period was less than \$12,000 but more than \$1,199 shall remit on a "monthly schedule" for which the
24 remittance due date is on or before the 15th day of the month following the payment of wages.

25 (c) Employers whose total liability for state income tax withholding during the preceding lookback
26 period was less than \$1,200 shall remit on a "quarterly schedule" for which the remittance due date is on
27 or before the last day of the month following the close of each calendar quarter.

28 (d) Employers who are not subject under Title 39, chapter 51, for unemployment insurance and
29 whose total liability for state income tax withholding, or if state income tax withholding is not required,
30 whose total liability for old fund liability tax during the preceding lookback period was less than \$1,200,

1 may remit on an "annual schedule" for which the remittance is due on or before February 28 of the year
 2 following payment of wages.

3 (2) (a) Every employer is required to file a report quarterly in the form required by the department.

4 (b) The report is due on or before the last day of the month following the close of the calendar
 5 quarter.

6 (c) An employer who is not subject under Title 39, chapter 51, to unemployment insurance may
 7 elect to file an annual report on or before February 28 for the preceding calendar year.

8 (d) An employer who has no payroll during a quarter may elect to report "no wages paid this
 9 quarter" using alternative reporting methods provided in department rules.

10 (e) An employer, in addition to the scheduled reports and remittances, must file the annual report
 11 and wage statements as required by 15-30-207.

12 ~~(3) (a) If the total amount of the tax withheld by an employer under the provisions of 15-30-202~~
 13 ~~upon the wages of all employees of any employer is less than \$1,200 for the preceding lookback period,~~
 14 ~~the employer shall, on or before February 28 of the year succeeding that in which the wages were paid,~~
 15 ~~file an annual return in the form required by the department, together with the annual statement required~~
 16 ~~by 15-30-207, and shall at the same time pay the amount required to be deducted and withheld by the~~
 17 ~~employer from all wages paid during the preceding calendar year.~~

18 ~~(b) An employer subject to the provisions of this subsection (3) may elect to remit monthly~~
 19 ~~payments. If an employer elects to make monthly payments, the employer shall remit monthly payments~~
 20 ~~during the entire year and is subject to the same interest and penalty provisions as employers subject to~~
 21 ~~the provisions of subsection (2).~~

22 (3) (a) Except as provided in subsection (3)(g), payments are due as required according to the
 23 remittance schedule for each employer.

24 ~~(b)~~ (b) If an employer subject to the provisions of this subsection (3) (1)(d) does not file the annual
 25 return required by subsection (3)(a), comply with the requirements of this section, the employer is may be
 26 subject to the payment and filing provisions of quarterly reporting schedule provided in subsection (2)(a)
 27 and to the quarterly remittance schedule provided in subsection (1)(c) until the department determines from
 28 the employer's subsequent filing and payment history that the employer will file and remit in a timely
 29 fashion.

30 ~~(4)(a)(c)~~ (c) On or before November 1 of each year, the department shall notify the employers subject

1 to the provisions of this section of the employers' remittance schedules for the following calendar year
2 based upon the department's review of the preceding lookback period.

3 ~~(b)(d)~~ A Except as provided in subsection (3)(g), a new employer or an employer with no filing
4 history is subject to the provisions of subsection (2) the quarterly remittance schedule in subsection (1)(c)
5 until the department is able to determine the employer's proper remittance schedule by a review of the
6 employer's first complete lookback period.

7 (e) An employer who is subject to the quarterly schedule in subsection (1)(c) may elect to remit
8 payments on a more frequent basis. An employer who is on an annual schedule may elect to remit monthly
9 or quarterly payments.

10 (f) An employer who exceeds either threshold as defined in 15-30-201(4)(b) and (4)(c), must begin
11 withholding state income tax on or before the last day of the month following the quarter in which the
12 wages paid exceeded the threshold requirements. The employer is subject to the quarterly remittance
13 schedule until the department is able to determine the employer's proper remittance schedule by a review
14 of the employer's first complete lookback period.

15 (g) An employer who is not subject to unemployment insurance under Title 39, chapter 51, and
16 whose estimated annual state income tax withholding, or if state income tax withholding is not required,
17 whose estimated old fund liability tax, is not expected to exceed \$1,199 for the calendar year may remit
18 according to the annual schedule and report annually on or before February 28.

19 (h) An employer may use alternative remittance methods in conjunction with the department's
20 electronic remittance program in accordance with department rules.

21 ~~(5)(4)~~ If the department has reason to believe that collection of the amount of any tax withheld is
22 in jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of
23 income tax 15-1-703.

24 (5) Each employer shall keep true and accurate payroll records containing the information that the
25 department may prescribe by rule. Those records must be open to inspection and audit and may be copied
26 by the department or its authorized representative at any reasonable time and as often as may be
27 necessary. An employer who maintains its records outside Montana shall furnish copies of those records
28 to the department at the employer's expense."

29

30 **Section 14.** Section 15-30-207, MCA, is amended to read:

1 **"15-30-207. Annual statement by employer.** (1) Every employer shall, on or before February 28
2 in each year, file with the department a wage and tax statement for each employee in ~~such~~ the form and
3 summarizing ~~such~~ information as the department requires, including the total wages paid to the employee
4 during the preceding calendar year or any part ~~thereof~~ of the calendar year and showing the total amount
5 of the federal income tax deducted and withheld from ~~such~~ the wages and the total amount of the tax
6 deducted and withheld ~~therefrom~~ from the wages under the provisions of 15-30-201 through 15-30-209
7 and 39-71-2503.

8 (2) The annual statement filed by an employer with respect to the wage payments reported
9 constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents,
10 and ~~no~~ additional information return is not required with respect to ~~such~~ the wage payments.

11 ~~(3) In addition to any other penalty provided by law, the failure of an employer to furnish a~~
12 ~~statement as required by subsection (1) subjects the employer to a penalty of \$5 for each failure, provided~~
13 ~~that the minimum penalty for failure to file the statements required on or before February 28 of each year~~
14 ~~shall be \$50. This penalty may be abated by the department upon a showing of good cause by the~~
15 ~~employer. The penalty may be collected in the same manner as are other tax debts."~~

16
17 **Section 15.** Section 15-30-208, MCA, is amended to read:

18 **"15-30-208. Withheld taxes held in trust for state —~~warrants to collect.~~** (1) Every employer who
19 deducts and withholds any amounts under the provisions of 15-30-201 through 15-30-209 shall hold the
20 same amounts in trust for the state of Montana.

21 ~~(2) If any tax imposed by 15-30-201 through 15-30-209 or any portion of such tax is not paid~~
22 ~~when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The~~
23 ~~priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as~~
24 ~~indicated on the warrant for distraint.~~

25 ~~(3) The tax lien provided for in subsection (2) is not valid against any third party owning an interest~~
26 ~~in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if~~
27 ~~the third party receives from the most recent grantor of the interest an affidavit stating that all taxes,~~
28 ~~assessments, penalties, and interest due from the grantor have been paid.~~

29 ~~(4) A grantor who signs and delivers to the third party an affidavit as provided in subsection (3)~~
30 ~~is subject to the penalties imposed by 15-30-321(3) if any part of the affidavit is untrue. Notwithstanding~~

1 the provisions of 15-30-321(3), the department may bring an action as provided for in that subsection in
2 the name of the state to recover the civil penalty and any delinquent taxes."

3

4 **Section 16.** Section 15-30-209, MCA, is amended to read:

5 **"15-30-209. Violations by employer -- penalties, interest, and remedies.** (1) ~~If any employer shall~~
6 ~~fail to pay over to the state the tax deducted and withheld under the provisions of 15-30-201 through~~
7 ~~15-30-208 or shall fail to file or furnish any statement provided for within the time prescribed therefor, the~~
8 ~~same additions to the amount of such tax shall be imposed and added as those specified in 15-30-321 with~~
9 ~~respect to failure to make a return of income or to pay any income tax, and any individual, corporation, or~~
10 ~~partnership or any officer or employee thereof who, with intent to evade any tax or any requirement of~~
11 ~~15-30-201 through 15-30-208, or who, with like intent, files or supplies any false or fraudulent statement~~
12 ~~or information shall be liable to the same penalties as those imposed by 15-30-321 with respect to filing~~
13 ~~or supplying any false or fraudulent statement or information with respect to income taxes~~ The first time
14 in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the
15 department shall issue a warning notice explaining to the employer that the employer failed to file a report
16 on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due
17 date as required by law and the department shall notify the employer of the consequences of any further
18 subsequent late reporting or late remittance.

19 (2) (a) A late report penalty may not be assessed if an employer files the late report prior to the
20 issuance of a notice of delinquent report.

21 (b) If the report is not received prior to the issuance of a notice of delinquent report, a \$50 penalty
22 must be assessed at the same time the notice is issued.

23 (3) (a) Taxes unpaid on the date on which they are due and payable are subject to a penalty of 2%
24 per month, or any portion of a month, on the late paid tax with a maximum penalty of 24%.

25 (b) A late payment penalty may be suspended if an acceptable payment agreement is made between
26 the department and the employer. An employer's failure to meet the terms of the payment agreement voids
27 the suspension and the penalty must be recomputed from the due date on the unpaid tax.

28 (4) An employer must be assessed interest at the rate of 18% a year, computed at 1 1/2% a
29 month or fraction of a month, on any remaining unpaid tax required to be paid.

30 (5) (a) A subpoena penalty of \$50 must be assessed whenever, as the result of a refusal of an

1 employer to furnish wage information or pay taxes on time, the department issues a subpoena pursuant
 2 to 15-1-302, to obtain wage information or make a summary or jeopardy assessment pursuant to 15-1-703.

3 (b) If an employer fails to honor the subpoena provided in subsection (5)(a), an additional \$100
 4 penalty must be added to the liability.

5 (6) In addition to any other penalty provided by law, the failure of an employer to furnish a wage
 6 and tax statement as required by 15-30-207(1) subjects the employer to a penalty of \$5 for each failure
 7 with a minimum of \$50.

8 (7) Penalties may be waived by the department upon a showing of good cause by the employer.
 9 The penalty may be collected in the same manner as are other tax debts including a tax lien.

10 (8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the
 11 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date
 12 of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the
 13 warrant for distraint.

14 (9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest
 15 in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if
 16 the third party receives from the most recent grantor of the interest an affidavit stating that all taxes,
 17 assessments, penalties, and interest due from the grantor have been paid.

18 (10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9)
 19 is subject to the penalties imposed by 15-30-321(3) if any part of the affidavit is untrue. Notwithstanding
 20 the provisions of 15-30-321(3), the department may bring an action as provided in that subsection in the
 21 name of the state to recover the civil penalty and any delinquent taxes.

22 ~~(2)(11)~~ All of the remedies available to the state for the administration, enforcement, and collection
 23 of income taxes shall be are available and shall apply to the tax required to be deducted and withheld under
 24 the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed in this part."

25
 26 **Section 17.** Section 37-31-101, MCA, is amended to read:

27 **"37-31-101. Definitions.** Unless the context requires otherwise, in this chapter, the following
 28 definitions apply:

29 (1) "Board" means the board of cosmetologists provided for in 2-15-1857.

30 (2) "Booth" means any part of a cosmetology salon or manicuring salon that is rented or leased

1 for the performance of cosmetologist services, as specified in 39-51-204(1)(e).

2 (3) "Cosmetology salon" means premises, building, or part of a building in which is practiced a
3 branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or
4 cosmetologist and that must have a manager-operator in charge.

5 (4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

6 (5) "Manicuring" includes nail care of the hands and feet and the application and maintenance of
7 artificial nails.

8 (6) "Manicuring salon" means premises, a building, or part of a building in which the art of
9 manicuring is practiced.

10 (7) "Practice and teaching of cosmetology" means work included in the terms "hairdressing",
11 "manicuring", and "beauty culture" and performed in cosmetology salons, in booths, or by itinerant
12 cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp,
13 face, arms, feet, or hands. The practice and teaching of cosmetology may not be construed to include
14 itinerant cosmetologists who perform their services without compensation for demonstration purposes in
15 any regularly established store or place of business holding a license from the state of Montana as a store
16 or place of business."

17

18 **Section 18.** Section 39-51-201, MCA, is amended to read:

19 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires
20 otherwise, the following definitions apply:

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

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

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

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

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

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

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

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

17 (9) "Domestic or household service" means employment of persons other than members of the
18 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
19 family, including but not limited to housecleaning and yard work but does not include employment beyond
20 the scope of normal household or domestic duties such as home health care or domiciliary care.

21 ~~(9)~~(10) "Employing unit" means any individual or organization (including the state government and
22 any of its political subdivisions or instrumentalities), partnership, association, trust, estate, joint-stock
23 company, insurance company, limited liability company that has filed with the secretary of state, or
24 corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's
25 successor, or legal representative of a deceased person that has or had in its employ one or more
26 individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(b)
27 and (1)(g). All individuals performing services within this state for any employing unit that maintains two
28 or more separate establishments within this state are considered to be employed by a single employing unit
29 for all the purposes of this chapter. Each individual employed to perform or assist in performing the work
30 of any agent or employee of an employing unit is considered to be employed by the employing unit for the

1 purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the
2 agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

3 ~~(10)~~(11) "Employment office" means a free public employment office or branch of an office
4 operated by this state or maintained as a part of a state-controlled system of public employment offices
5 or ~~such~~ other free public employment offices operated and maintained by the United States government
6 or its instrumentalities as the department may approve.

7 ~~(11)~~(12) "Fund" means the unemployment insurance fund established by this chapter to which all
8 contributions and payments in lieu of contributions are required to be paid and from which all benefits
9 provided under this chapter must be paid.

10 ~~(12)~~(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic
11 law, for which an individual has been convicted in a criminal court or has admitted or conduct that
12 demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee
13 or the employer.

14 ~~(13)~~(14) "Hospital" means an institution that has been licensed, certified, or approved by the state
15 as a hospital.

16 ~~(14)~~(15) "Independent contractor" means an individual who renders service in the course of an
17 occupation and:

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

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

21 ~~(15)~~(16) (a) "Institution of higher education", for the purposes of this part, means an educational
22 institution that:

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

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

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

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

1 (b) Notwithstanding subsection ~~(15)(a)~~ (16)(a), all universities in this state are institutions of higher
2 education for purposes of this part.

3 ~~(16)~~(17) "State" includes, in addition to the states of the United States of America, the District of
4 Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

5 ~~(17)~~(18) "Taxes" means contributions and assessments required under this chapter but does not
6 include penalties or interest for past-due or unpaid contributions or assessments.

7 ~~(18)~~(19) "Unemployment insurance administration fund" means the unemployment insurance
8 administration fund established by this chapter from which administrative expenses under this chapter must
9 be paid.

10 ~~(19)~~(20) (a) "Wages" ~~, unless specifically exempted under subsection (20)(b),~~ means all remuneration
11 payable for personal services, including ~~commissions and bonuses,~~ the cash value of all remuneration
12 ~~payable paid~~ in any medium other than cash, ~~and backpay received pursuant to a dispute related to~~
13 ~~employment.~~ The reasonable cash value of remuneration payable in any medium other than cash must be
14 estimated and determined pursuant to rules prescribed by the department. The term includes but is not
15 limited to:

16 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations and
17 sickness periods;

18 (ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous
19 service by the employee for the employer, other than retirement or pension benefits from a qualified plan;
20 and

21 (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are:

22 (A) documented by the employee to the employer for tax purposes;

23 (B) disbursed by the employer from a tip pool; or

24 (C) added to the customer's bill by the employer.

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

26 (i) the amount of any payment made by the employer, if the payment was made under a qualified
27 plan as defined under the provisions of the Internal Revenue Code, established for the employees ~~in general~~
28 ~~or for a specific class or classes of employees, to or on behalf of the employee~~ for:

29 (A) retirement or pension;

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

1 (C) medical ~~and~~ or hospitalization expenses in connection with sickness or accident disability
2 including health insurance for the employee or the employee's immediate family; or

3 (D) death~~;~~ including life insurance for the employee or the employee's immediate family; or

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

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

8 ~~(20)~~(21) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

9 ~~(21)~~(22) An individual's "weekly benefit amount" means the amount of benefits that the individual
10 would be entitled to receive for 1 week of total unemployment."
11

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

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

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

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

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

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

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

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

1 household service.

2 ~~(e) service performed as an officer or member of the crew of a vessel on the navigable waters of~~
3 ~~the United States;~~

4 ~~(d)(b) service performed by an individual in the employ of that individual's son, daughter, or spouse~~
5 ~~and service performed by a child under the age of 21 in the employ of the child's father or mother a~~
6 ~~dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or~~
7 ~~service performed by a sole proprietor's spouse for whom an exemption based on marital status may be~~
8 ~~claimed by the sole proprietor under 26 U.S.C. 7703;~~

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

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

22 ~~(g)(c) services service performed as a freelance correspondent or newspaper carrier or free-lance~~
23 ~~correspondent if the person performing the services service, or a parent or guardian of the person~~
24 ~~performing the services service in the case of a minor, has acknowledged in writing that the person~~
25 ~~performing the services service and the services service are not covered. As used in this subsection:~~

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

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

1 ~~(h)(d) services~~ service performed by as a real estate, securities, and insurance salespeople paid
 2 solely by commissions and without guarantee of minimum earnings broker or salesperson who is licensed
 3 pursuant to Title 37, chapter 51;

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

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

17 ~~(k) service performed in the employ of a hospital if the service is performed by a patient of the~~
 18 ~~hospital;~~

19 ~~(#)(e) services~~ service performed by a cosmetologist who is licensed under Title 37, chapter 31,
 20 or a barber who is licensed under Title 37, chapter 30, and:

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

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

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

26 (B) receives payment for ~~services~~ service from individual clientele; and

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

29 (iii) whose contract gives rise to an action for breach of contract in the event of contract
 30 termination, ~~the~~ The existence of a single license for the cosmetology salon or barbershop may not be

1 construed as a lack of freedom from control or direction under this subsection~~7~~.

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

6 ~~(n)(g)~~ employment of service performed by sole proprietors, working members of a partnership,
7 or members of a member-managed limited liability company that has filed with the secretary of state or
8 partners in a limited liability partnership that has filed with the secretary of state;

9 ~~(e)(h)~~ services service performed for the installation of floor coverings if the installer:

- 10 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;
11 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
12 (iii) may perform ~~services~~ service for anyone without limitation;
13 (iv) may accept or reject any job;
14 (v) furnishes substantially all tools and equipment necessary to provide the ~~services~~ service; and
15 (vi) works under a written contract that:
16 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
17 contract obligations;
18 (B) states that the installer is not covered by unemployment insurance; and
19 (C) requires the installer to provide a current workers' compensation policy or to obtain an
20 exemption from workers' compensation requirements;

21 ~~(p)(i)~~ employment of service performed as a direct seller, as defined in 26 U.S.C. 3508 As used
22 in this section, "direct seller" means a person:

- 23 (i) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,
24 vacuum cleaners, and cleaning products at the home of the consumer;
25 (ii) whose pay is determined by the quantity of product sold; and
26 (iii) who works under a written contract that states the person will not be treated as an employee;

27 ~~(q)(i)~~ services service performed by a petroleum land professional. As used in this subsection,
28 "petroleum land professional" means a person who:

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

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

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

4 ~~(2) Employment does not include elected public officials.~~

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

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

9 ~~(b)(k) service performed~~ by an ordained, commissioned, or licensed minister of a church in the
10 exercise of the church's ministry or by a member of a religious order in the exercise of duties required by
11 the order;

12 ~~(e)(l) service performed by an individual receiving rehabilitation or remunerative work~~ in a facility
13 conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity
14 is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals
15 who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor
16 market ~~by an individual receiving rehabilitation or remunerative work;~~

17 ~~(d)(m) service performed~~ as part of an unemployment work-relief or work-training program assisted
18 or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the
19 state by an individual receiving work relief or work training; ~~or~~

20 ~~(e)(n) service performed~~ for a state prison or other state correctional or custodial institution by an
21 inmate of that institution;

22 ~~(o) service performed by an individual who is sentenced to perform court-ordered community~~
23 ~~service or similar work;~~

24 ~~(p) service performed by elected public officials;~~

25 ~~(q) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to~~
26 ~~this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded~~
27 ~~from coverage under this chapter if the employer;~~

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

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

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

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

15 (t) service performed in the employ of a school or university if the service is performed by a student
16 who is enrolled and is regularly attending classes at a school or university or by the spouse of a student
17 if the spouse is advised, at the time that the spouse commences to perform the service, that the
18 employment of the spouse to perform the service is provided under a program to provide financial
19 assistance to the student by the school or university and that the employment is not covered by any
20 program of unemployment insurance;

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

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

30 (w) service performed by an alien admitted to the United States to perform agricultural labor

1 pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act.

2 ~~(4)(2)~~ An individual found to be an independent contractor by the department under the terms of
3 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
4 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
5 39-51-2402.

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

9

10 **Section 20.** Section 39-51-301, MCA, is amended to read:

11 **"39-51-301. Administration -- duties and powers of department.** (1) It ~~shall be~~ is the duty of the
12 department to administer this chapter and it ~~shall have power and authority to~~ may adopt, amend, or
13 rescind ~~such~~ rules, to employ ~~such~~ persons, make ~~such~~ expenditures, require ~~such~~ reports, make ~~such~~
14 investigations, and take ~~such other~~ action as it ~~deems~~ considers necessary or suitable ~~to that end in~~
15 administering this chapter.

16 (2) The department shall determine its own organization and methods of procedure in accordance
17 with the provisions of this chapter and shall have an official seal, which ~~shall be~~ is judicially noticed.

18 (3) Whenever the department believes that a change in contribution or benefit rates will become
19 necessary to protect the solvency of the fund, it shall promptly ~~so~~ inform the governor and the legislature
20 and make recommendations with respect ~~thereto~~ to the change.

21 (4) The department and the board may issue subpoenas and compel testimony and the production
22 of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

23 (5) The department shall delegate to the department of revenue duties associated with the
24 administration of unemployment insurance contributions and the employment security account so long as
25 the duties are carried out in conformity with the requirements of the program budget plan with the United
26 States department of labor. The delegated duties do not include oversight duties such as revenue quality
27 control, risk management, and trust fund management. The department of revenue must receive funds
28 from the department for the performance of the delegated duties.

29 (6) Employees transferring from the department to the department of revenue as a result of a
30 delegation of duties in subsection (5), are entitled to all rights including those under 2-15-131, possessed

1 as a state officer or employee before transferring, including rights to tenure in office and of rank or grade,
2 rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union
3 contract, rights to compensatory time earned, and any other rights under any law or administrative policy
4 including the State Employee Protection Act. Employees transferring must be considered internal applicants
5 by the department of revenue for recruitment purposes for the period from July 1, 1997, through June 30,
6 1998.

7 (7) The department of revenue shall succeed the department in its rights to property relating to the
8 delegation of duties in subsection (5) to the extent that is consistent with federal property transfer policy.
9 The property includes real property, records, office equipment, forms, supplies, and contracts other than
10 the program budget plan with the United States department of labor.

11 (8) (a) The delegation of duties in subsection (5) does not affect the validity of any pending judicial
12 or administrative proceeding.

13 (b) Appeals that were filed with the board of labor appeals or the department's hearings bureau
14 before July 1, 1997, must follow the procedures and processes in effect when the appeal was first taken.
15 An appeal that is filed on or after July 1, 1997, must be taken in accordance with the procedures and
16 processes in effect on the date the appeal is filed.

17 (c) The department of revenue must be substituted for the department and succeed to all audits,
18 determinations, and other actions that have not been appealed to the board of labor appeals or the
19 department's hearings bureau prior to July 1, 1997.

20 (9) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the
21 parties to contracts, leases, indentures, and other transactions entered into before the delegation of duties
22 in subsection (5) remain in effect, and none of those rights, privileges, duties, covenants, or agreements
23 are impaired or diminished by reason of the delegation of duties. The department of revenue is substituted
24 for the department and subject to the provisions of subsection (5), succeeds to the rights and duties under
25 the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this
26 subsection (9) do not apply to the program budget plan agreement between the department and the United
27 States department of labor."

28
29 **Section 21.** Section 39-51-1109, MCA, is amended to read:

30 **"39-51-1109. Tax appeals -- procedure. (1)** A decision, determination, or redetermination of the

1 department involving ~~contribution liability, contribution rate, application for refund, employment status, an~~
 2 employer-employee relationship or the charging of benefit payments to employers ~~making payment in lieu~~
 3 ~~of contributions~~ is final unless an interested party entitled to notification submits a written appeal of the
 4 decision, determination, or redetermination. The appeal must be made in the same manner as provided in
 5 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory
 6 rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be conducted
 7 by telephone or by videoconference. The decision of the appeals referee and any subsequent appeal must
 8 be made in the same manner as prescribed in 39-51-2403 through 39-51-2410.

9 (2) A decision, determination, or redetermination involving contribution liability, contribution rate,
 10 application for refund, subject wages, or other tax-related issues must be issued by the department of
 11 revenue as provided in Title 15, chapter 1, part 2 and [section 7], if applicable. The decision is final unless
 12 an interested party entitled to notification follows the uniform tax review procedures as prescribed in
 13 15-1-211 and [section 7], if applicable."

14
 15 **Section 22.** Section 39-51-1110, MCA, is amended to read:

16 "**39-51-1110. Refunds to employers.** (1) ~~If not later than 3 years after the date on which any~~
 17 ~~taxes or interest thereon became due or not later than 1 year from the date on which payment was made,~~
 18 ~~whichever is later, an employer who has paid such taxes or interest thereon shall make application for an~~
 19 ~~adjustment thereof in connection with subsequent tax payments or for a refund thereof because such~~
 20 ~~adjustment cannot be made and the department shall determine that such taxes or interest or any portion~~
 21 ~~thereof was erroneously collected, the department shall allow such employer to make an adjustment~~
 22 ~~thereof, without interest, in connection with subsequent tax payments by him or, if such adjustment cannot~~
 23 ~~be made, the department shall refund said amount, without interest, from the fund. For like cause and~~
 24 ~~within the same period, adjustment or refund may be so made on the department's own initiative. If an~~
 25 employer claims an adjustment or the department or its delegate, as provided in 39-51-301, determines
 26 through an examination of the employer's account that the employer has overpaid the amount due, the
 27 amount of the overpayment must be applied to future unemployment insurance obligations or must be
 28 refunded to the employer. The credit or refund may be allowed only if the claim is filed, or the determination
 29 is made, within a 5-year period after the date on which any taxes, penalty, or interest became due or within
 30 one year from the date the payment is made, whichever is later. The department or its delegate pursuant

1 to 39-51-301(5), shall credit or refund the amount to the employer, without interest.

2 (2) If the department ~~shall determine~~ or its delegate pursuant to 39-51-301(5), determines that an
3 employer has paid taxes to this state under this chapter ~~when such~~ but the taxes should have been paid
4 to another state under a similar act of ~~such~~ the other state, a transfer of such the taxes to such the other
5 state ~~shall~~ must be made upon discovery or, upon proof of payment that ~~such~~ the other state has been fully
6 paid, then a refund to such the employer shall must be made ~~at any time~~ upon application without limitation
7 of time.

8 (3) ~~In the event that~~ If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304
9 ~~section 1603 of the Internal Revenue Code, as amended, 1939,~~ for any year, then ~~and in that event~~ refunds
10 ~~shall~~ must be made of all taxes required under this chapter from employers for that year."

11

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

13 "**39-51-1301. Penalty and interest on past-due reports and taxes.** (1) ~~Taxes unpaid on the date~~
14 ~~on which they are due and payable, as provided by 39-51-1103(1) and (2) and 39-51-1125, that are paid~~
15 ~~by the end of the month following the due date are subject to a penalty assessment of \$10 or 10% of the~~
16 ~~taxes due, whichever is greater. If the taxes are not paid by the end of the month following the due date,~~
17 ~~the employer is subject to a penalty assessment of \$15 or 15% of the taxes due, whichever is greater. All~~
18 ~~past due taxes bear interest at the rate of 18% a year, to be prorated on a daily basis.~~

19 (2) ~~A penalty of \$40 must be assessed whenever, as the result of a willful refusal of an employer~~
20 ~~to furnish wage information or pay taxes on time, the department issues a subpoena to obtain wage~~
21 ~~information or makes a summary or jeopardy assessment pursuant to 39-51-1302. Failure to file reports~~
22 ~~and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may~~
23 ~~subject an employer to penalty and interest, as provided by 15-30-209.~~

24 (3) ~~(2)~~ There is an account in the federal special revenue fund. Penalties and interest collected ~~under~~
25 ~~this section~~ for unemployment insurance obligations are distributed as provided in [section 2], and must
26 be deposited in that account. Money deposited in that account and appropriated to the department or
27 transferred by the department to its delegate, pursuant to 39-51-301(5), may only be used by the
28 department or its delegate to administer this chapter, including the detection and collection of unpaid taxes
29 and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated
30 for this purpose. Money in the account not appropriated for these purposes must be transferred by the

1 department to the unemployment insurance trust fund at the end of each fiscal year.

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

4 ~~(5)(3)~~ (3) All money accruing to the unemployment insurance trust fund from interest and penalties
5 collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment
6 insurance benefits and may not be used for any other purpose."

7

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

9 "**39-51-1303. Collection of unpaid taxes by civil action.** (1) The department, or its delegate
10 pursuant to 39-51-301(5), has authority to enter into payment agreements with an employer to resolve
11 unpaid taxes, penalty, and interest. Penalty or interest, or both penalty and interest may be abated if an
12 acceptable payment agreement is entered into and adhered to. Failure to meet the terms of the payment
13 agreement voids the penalty and interest abatement and penalty and interest must be recomputed from the
14 due date of the unpaid tax.

15 (2) If, after due notice, any employer, liable corporate officer or employee, or liable member or
16 manager of a limited liability company referred to in 39-51-1105 or partner in a limited liability partnership
17 defaults in any payment of taxes, penalties, or interest on the taxes and penalties, the department, or its
18 delegate pursuant to 39-51-301(5), may initiate a civil action in the name of the department state to collect
19 the amount due, and the employer, liable corporate officer or employee, ~~or~~ liable member or manager of
20 a limited liability company referred to in 39-51-1105, or partner in a limited liability partnership adjudged
21 in default shall pay the costs of the action.

22 ~~(2)(3)~~ (3) An action for the collection of taxes due must be brought within 5 years ~~after~~ from the due
23 date ~~of~~ the original or amended report was filed or assessment became due, whichever is later, taxes or
24 it is barred.

25 ~~(3)(4)~~ (4) The department, or its delegate pursuant to 39-51-301(5), may pursue its remedy under
26 either 39-51-1304 or this section, or both."

27

28 **Section 25.** Section 39-51-2108, MCA, is amended to read:

29 "**39-51-2108. Payment of benefits based on service in public, charitable, or educational**
30 **organizations.** (1) Benefits based on service in employment defined in ~~subsections (5) and (6) of~~

1 39-51-203(5) and (6) ~~and subsections (2) and (3) of 39-51-204~~ are payable in the same amount, on the
 2 same terms, and subject to the same conditions as compensation payable on the basis of other service
 3 subject to this chapter, except that benefits based on service in an instructional, research, or principal
 4 administrative capacity for an educational institution may not be paid to an individual for any week of
 5 unemployment which begins during the period between two successive academic years or during a similar
 6 period between two regular terms, whether or not successive, or during a period of paid sabbatical leave
 7 provided for in the individual's contract if the individual has a contract or reasonable assurance of a
 8 contract to perform services in any ~~such~~ the capacity for ~~any such~~ the educational institution for both ~~such~~
 9 academic years or both ~~such~~ terms.

10 (2) Benefits based on services in any other capacity for an educational institution ~~shall~~ must be
 11 denied to any individual for any week which commences during a period between 2 successive academic
 12 years or terms if the individual performs ~~such the~~ the services in the first of ~~such the~~ the academic years or terms
 13 and there is a reasonable assurance that the individual will perform ~~such the~~ the services in the second of ~~such~~
 14 the academic years or terms. If any individual is denied benefits and was not offered an opportunity to
 15 perform ~~such the~~ the service for the educational institution for the second of ~~such the~~ the academic years or terms,
 16 ~~such the~~ the individual ~~shall be~~ is entitled to a retroactive payment of the benefits for each week for which the
 17 individual filed a timely claim for benefits and for which benefits were denied solely by reason of the denial
 18 provided for in this section.

19 (3) Benefits based on services described in subsections (1) and (2) of this section ~~shall~~ must be
 20 denied to any individual for any week ~~which that~~ that commences during an established and customary vacation
 21 period or holiday recess if ~~such the~~ the individual performs ~~such the~~ the services in the period immediately before
 22 ~~such the~~ the vacation period or holiday recess and there is reasonable assurance that ~~such the~~ the individual will
 23 perform ~~such the~~ the service in the period immediately following ~~such the~~ the vacation period or holiday recess.

24 (4) Benefits based on services described in subsections (1) and (2) ~~of this section~~ to an individual
 25 who performed ~~such the~~ the services for an educational institution while in the employ of an educational service
 26 agency ~~shall~~ must be denied as specified in subsections (1), ~~(2), and~~ through (3) ~~of this section~~. The term
 27 "educational service agency" means a governmental agency or governmental entity which is established
 28 and operated exclusively for the purpose of providing ~~such the~~ the service to one or more educational
 29 institutions."
 30

1 **Section 26.** Section 39-51-2402, MCA, is amended to read:

2 "**39-51-2402. Initial determination -- redetermination.** (1) A representative designated by the
3 department and ~~hereinafter~~ referred to as a deputy shall promptly examine the claim and, on the basis of
4 the facts the deputy has found, ~~by the deputy~~, shall ~~either~~ determine whether or not ~~such the~~ claim is valid,
5 ~~and, if the claim is valid, the deputy will determine the week with respect to which the benefits shall~~
6 commence, the weekly benefit amount payable, and the maximum benefit amount, ~~or shall~~ The deputy may
7 refer ~~such the~~ claim or any question involved ~~therein in the claim~~ to an appeals referee who shall make the
8 decision ~~with respect thereto~~ on the claim in accordance with the procedure prescribed in 39-51-2403.
9 With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must
10 be resolved in accordance with procedures for unemployment insurance benefit claimant appeals as
11 prescribed in [section 7] and 15-2-302. The deputy shall promptly notify the claimant and any other
12 interested party of the decision and the reasons ~~therefor~~ for reaching the decision.

13 (2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant
14 and ~~such~~ other interested parties of the amended decision and the reasons ~~therefor~~ for the decision.

15 (3) ~~No~~ A determination or redetermination of an initial or additional claim may not be made under
16 this section unless 5 days' notice of the time and place of the claimant's interview for examination of the
17 claim is mailed to each interested party.

18 (4) A determination or redetermination ~~shall be deemed~~ is final unless an interested party entitled
19 to notice ~~thereof~~ of the decision applies for reconsideration of the determination or appeals ~~therefrom the~~
20 decision within 10 days after ~~such the~~ notification was mailed to the interested party's last-known address,
21 ~~provided that such~~ The 10-day period may be extended for good cause.

22 (5) Except as provided in subsection (6), ~~no~~ a redetermination of a claim for benefits may not be
23 made after 2 years from the date of the initial determination.

24 (6) A redetermination may be made within 3 years from the date of the initial determination of a
25 claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a
26 material fact by the claimant or the employer."
27

28 **Section 27.** Section 39-71-123, MCA, is amended to read:

29 "**39-71-123. Wages defined.** (1) "Wages" means ~~the gross all~~ remuneration paid ~~in money, or in~~
30 ~~a substitute for money~~, for services ~~rendered~~ performed by an employee for an employer, or income

1 provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium
 2 other than cash. The term includes but are is not limited to:

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

5 (b) ~~board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is~~
 6 ~~based on its actual value~~ severance or continuation pay, back pay, and any similar pay made for or in
 7 regards to previous service by the employee for the employer, other than retirement or pension benefits
 8 from a qualified plan;

9 (c) ~~payments made to an employee on any basis other than time worked, including but not limited~~
 10 ~~to piecework, an incentive plan, or profit-sharing arrangement~~ tips or other gratuities received by the
 11 employee, to the extent that tips or gratuities are:

12 (i) documented by the employee to the employer for tax purposes;

13 (ii) disbursed by the employer from a tip pool; or

14 (iii) added to the customer's bill by the employer; ~~and~~

15 (d) income or payment in the form of a draw, wage, net profit, or substitute for money received
 16 or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed
 17 work or provided services for that remuneration;

18 (e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is
 19 based on its actual value; and

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

22 (2) ~~Wages do~~ The term "wages" does not include any of the following:

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

25 (b) ~~special rewards for individual invention or discovery~~ the amount of the payment made by the
 26 employer, if the payment was made under a qualified plan, established for the employees for the purpose
 27 of providing for:

28 (i) retirement or pension;

29 (ii) sickness or accident disability under a workers' compensation policy;

30 (iii) medical or hospitalization expenses in connection with sickness or accident disability, including

- 1 health insurance for the employee or the employee's immediate family; or
2 (iv) death, including life insurance for the employee or the employee's immediate family;
3 ~~(c) tips and other gratuities received by the employee in excess of those documented to the~~
4 ~~employer for tax purposes;~~
5 ~~(d) contributions made by the employer to a group insurance or pension plan; or~~
6 ~~(e)(c) vacation or sick leave benefits accrued but not paid; or~~
7 (d) special rewards for individual invention or discovery.

8 (3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average
9 actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except
10 that if the term of employment for the same employer is less than four pay periods, the employee's wages
11 are the hourly rate times the number of hours in a week for which the employee was hired to work.

12 (b) For good cause shown, if the use of the last four pay periods does not accurately reflect the
13 claimant's employment history with the employer, the wage may be calculated by dividing the total earnings
14 for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks
15 in that period, including periods of idleness or seasonal fluctuations.

16 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent
17 employments, the average actual wages must be calculated as provided in subsection (3). As used in this
18 subsection, "concurrent employment" means employment in which the employee was actually employed
19 at the time of the injury and would have continued to be employed without a break in the term of
20 employment if not for the injury.

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

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

28

29 **Section 28.** Section 39-71-401, MCA, is amended to read:

30 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in

1 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
2 all employees, as defined in 39-71-118. An employer who has any employee in service under any
3 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
4 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
5 Compensation Act is subject to and bound by the compensation plan that has been elected by the
6 employer.

7 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
8 allows an election, the Workers' Compensation Act does not apply to any of the following employments:

9 (a) household and domestic employment;

10 (b) casual employment as defined in 39-71-116;

11 (c) employment of a dependent member of an employer's family for whom an exemption may be
12 claimed by the employer under the federal Internal Revenue Code;

13 (d) employment of sole proprietors, working members of a partnership, or working members of a
14 member-managed limited liability company, except as provided in subsection (3);

15 (e) employment of a broker or salesman performing under a license issued by the board of realty
16 regulation;

17 (f) employment ~~of~~ as a direct seller, as defined in 26 U.S.C. 3508 ~~as defined in 26 U.S.C. 3508~~ As used in this section, "direct
18 seller" means a person:

19 (i) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,
20 vacuum cleaners, and cleaning products at the home of the consumer;

21 (ii) whose pay is determined by the quantity of product sold; and

22 (iii) who works under a written contract that states the person will not be treated as an employee;

23 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
24 under the laws of the United States;

25 (h) employment of a person performing services in return for aid or sustenance only, except
26 employment of a volunteer under 67-2-105;

27 (i) employment with a railroad engaged in interstate commerce, except that railroad construction
28 work is included in and subject to the provisions of this chapter;

29 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
30 event, unless the person is otherwise employed by a school district;

1 (k) employment of a person performing services as a newspaper carrier or ~~free-lance~~ freelance
2 correspondent if the person performing the services or a parent or guardian of the person performing the
3 services in the case of a minor has acknowledged in writing that the person performing the services and
4 the services are not covered. As used in this subsection, "~~free-lance~~ freelance correspondent" is a person
5 who submits articles or photographs for publication and is paid by the article or by the photograph. As used
6 in this subsection, "newspaper carrier":

7 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
8 bundles; but

9 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
10 carries or delivers papers.

11 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

12 (m) a person who is employed by an enrolled tribal member or an association, business,
13 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
14 business is conducted solely within the exterior boundaries of an Indian reservation;

15 (n) employment of a jockey performing under a license issued by the board of horseracing from the
16 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
17 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
18 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

19 (o) employment of an employer's spouse for whom an exemption based on marital status may be
20 claimed by the employer under 26 U.S.C. 7703;

21 (p) a person who performs services as a petroleum land professional. As used in this subsection,
22 a "petroleum land professional" is a person who:

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

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

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

28 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
29 liability company who qualifies under one or more of the following provisions:

30 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the

1 limited liability company and does not receive any pay from the corporation or the limited liability company
2 for performance of the duties;

3 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
4 limited liability company;

5 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
6 or owns 20% or more of the limited liability company; or

7 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
8 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
9 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

10 (r) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
11 of the church's ministry or by a member of a religious order in the exercise of duties required by the order.

12 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
13 member-managed limited liability company who represents to the public that the person is an independent
14 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
15 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

16 (b) The application must be made in accordance with the rules adopted by the department. There
17 is no fee for the initial application. Any subsequent application must be accompanied by a \$25 application
18 fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset
19 the costs of administering the program.

20 (c) When an application is approved by the department, it is conclusive as to the status of an
21 independent contractor and precludes the applicant from obtaining benefits under this chapter.

22 (d) The exemption, if approved, remains in effect for 1 year following the date of the department's
23 approval. To maintain the independent contractor status, an independent contractor shall annually submit
24 a renewal application. A renewal application must be submitted for all independent contractor exemptions
25 approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee
26 must be received by the department at least 30 days prior to the anniversary date of the previously
27 approved exemption.

28 (e) A person who makes a false statement or misrepresentation concerning that person's status
29 as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose
30 the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured

1 employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

2 (f) If the department denies the application for exemption, the applicant may contest the denial by
3 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
4 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with
5 the procedure established in 39-51-2403 and 39-51-2404.

6 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
7 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
8 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
9 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
10 manner:

11 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
12 delivering the notice to the board of directors of the corporation or to the management organization of the
13 manager-managed limited liability company; or

14 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
15 delivering the notice to the board of directors of the corporation or to the management organization of the
16 manager-managed limited liability company and to the insurer.

17 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
18 the employer shall again serve notice to its insurer and to its board of directors or the management
19 organization of the manager-managed limited liability company if the employer elects to be bound.

20 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
21 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
22 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
23 exemption from coverage.

24 (6) Each employer shall post a sign in the workplace at the locations where notices to employees
25 are normally posted, informing employees about the employer's current provision of workers' compensation
26 insurance. A workplace is any location where an employee performs any work-related act in the course of
27 employment, regardless of whether the location is temporary or permanent, and includes the place of
28 business or property of a third person while the employer has access to or control over the place of
29 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
30 The sign must be provided by the department, distributed through insurers or directly by the department,

1 and posted by employers in accordance with rules adopted by the department. An employer who purposely
 2 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

3

4 **Section 29.** Section 39-71-2501, MCA, is amended to read:

5 **"39-71-2501. Definitions.** As used in this part, the following definitions apply:

6 (1) "Account" means the workers' compensation bond repayment account established in
 7 39-71-2504.

8 (2) "Department" means the department of revenue provided for in 2-15-1301.

9 (3) "Domestic or household service" means employment of persons other than members of the
 10 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
 11 family, including but not limited to housecleaning and yard work but does not include employment beyond
 12 the scope of normal household or domestic duties, such as home health care or domiciliary care.

13 ~~(3)(4)~~ "Employee" includes:

14 (a) an officer, employee, or elected public official of the United States, the state of Montana, or
 15 any political subdivision of the United States or the state of Montana or any agency or instrumentality of
 16 the United States, the state of Montana, or a political subdivision of the United States or the state of
 17 Montana. The term "employee" also includes:

18 (b) an officer of a corporation;

19 (c) any individual who performs services for another individual or organization having the right to
 20 control the employee as to the services to be performed and as to the manner of performance; and

21 (d) all classes, grades or types of employees, including minors and aliens, superintendents,
 22 managers, and other supervisory personnel.

23 ~~(4)(a)(5)~~ (a) "Employer" means:

24 ~~(i) except as provided in subsection (4)(b), the person for whom an individual performs or~~
 25 ~~performed any service, of whatever nature, as an employee of the person;~~

26 ~~(b) if the person for whom the individual performs or performed the service does not have control~~
 27 ~~of the payment of the wages for the service, the term "employer" means the person who has control of~~
 28 ~~the payment of wages.~~

29 (ii) a person who pays \$1,000 or more in wages within the current calendar year;

30 (iii) a person who pays \$1,000 or more in cash for domestic service in any quarter during the

1 current calendar year; or

2 (iv) any individual or organization, including state government and any of its political subdivision
3 or instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited
4 liability company or a limited liability partnership that has filed or registered with the secretary of state,
5 corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's
6 successor, or legal representative of a deceased person that has or had in its employ one or more
7 individuals performing services for it within this state.

8 (b) Any person found to be an employer under Title 39, chapter 51, for unemployment insurance
9 purposes is considered an employer for old fund liability tax purposes.

10 ~~(5)(6)~~ "Federal workers' compensation legislation" means federal legislation that provides an
11 employee with compensation or remuneration for accidental injury or death. This legislation includes but
12 is not limited to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the
13 Defense Base Act.

14 ~~(6)(7)~~ "Ongoing activities" means obligations or occurrences that are continuous, rather than
15 intermittent or occasional, that exist for a definite period of time during the year, or that are intended to
16 cover or apply to successive and similar obligations or occurrences.

17 ~~(7)(8)~~ "Publicly traded limited partnership" means a business entity that issues shares or similar
18 ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders
19 on a public exchange recognized by the securities exchange commission.

20 ~~(8)(9)~~ "State fund" means the state compensation insurance fund.

21 ~~(9)(10)~~ "Tax" or "old fund liability tax" means the workers' compensation old fund liability tax
22 provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from
23 accidents that occurred before July 1, 1990.

24 ~~(10)(11)~~ (a) "Wages" means all remuneration for services performed in the state of Montana by
25 an employee for an employer, including the cash value of all remuneration paid in any medium other than
26 cash. The term ~~does not include remuneration paid~~ includes but is not limited to the following:

27 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and
28 sickness periods;

29 (ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous
30 service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

1 and

2 (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are:

3 (A) documented by the employee to the employer for tax purposes;

4 (B) disbursed by the employer from a tip pool; or

5 (C) added to the customer's bill by the employer.

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

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

13 ~~(ii) the individual was regularly employed, as determined under subsection (10)(a)(i), by the~~
 14 ~~employer in the performance of service during the preceding calendar quarter.~~

15 ~~(b) for services not in the course of the employer's trade or business, to the extent that~~
 16 ~~remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals~~
 17 ~~and the payments are received by the employee at the request of and for the convenience of the employer;~~

18 ~~(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or~~
 19 ~~program that benefits the employee, including but not limited to life insurance, hospitalization insurance for~~
 20 ~~the employee or the employee's dependents, and employees' club activities;~~

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

22 (i) the amount of any payment made by the employer, if the payment was made under a qualified
 23 plan as defined under the provisions of the Internal Revenue Code established for employees for:

24 (A) retirement or pension;

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

26 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
 27 health insurance for the employee or the employee's immediate family; or

28 (D) death, including life insurance for the employee or the employee's immediate family;

29 (ii) compensation in the form of meals and lodging, provided the compensation is not includable
 30 in gross income for state individual income tax purposes;

1 ~~(d)(iii) as payments~~ distributions from a multiple employer welfare arrangement, as defined in 29
2 U.S.C. 1002, to a qualified individual employee;

3 ~~(e)(iv) as wages or compensation, the taxation of which is prohibited by~~ payments that may not
4 be taxed under federal law; or

5 ~~(f)(v) as~~ wages or compensation for services performed by Montana residents outside the borders
6 of the state of Montana."

7

8 **Section 30.** Section 39-71-2503, MCA, is amended to read:

9 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
10 employer, except an employer whose employees are covered by federal workers' compensation legislation,
11 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
12 old fund liability tax provided in 39-71-2505, of the wages paid for employment as defined in this part by
13 the employer in the preceding payroll period subject to reporting and remittance requirements contained in
14 15-30-204.;

15 ~~(i) for the preceding payroll period for employers subject to the payment schedule contained in~~
16 ~~15-30-204(1);~~

17 ~~(ii) for the preceding month for employers subject to the payment schedule contained in~~
18 ~~15-30-204(2); and~~

19 ~~(iii) for the preceding year for employers subject to the payment schedule contained in~~
20 ~~15-30-204(3)(a).~~

21 (b) There is imposed on each employee, except an employee who is covered by federal workers'
22 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages
23 paid for employment, as defined in this part. An employer paying wages for ~~services performed~~
24 employment, as defined in this part, in Montana shall deduct and withhold the tax from the wages.

25 (c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
26 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
27 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
28 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
29 partner, or member or manager derived from ongoing activities.

30 (ii) The tax imposed in this subsection (1)(c) applies only to the ordinary income of a shareholder,

1 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

2 (iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this
3 subsection (1)(c).

4 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
5 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
6 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
7 officer's wages.

8 (e) A corporate officer of a closely held corporation who owns stock in a closely held corporation
9 that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives
10 wages as an employee of the corporation is required to pay the old fund liability tax only on the wages
11 received. The corporation is not liable for the tax on the corporate officer's wages.

12 (f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred
13 for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or
14 bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans
15 or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month
16 period if the workers' compensation bond repayment account contains on the first day of that period an
17 amount, regardless of the source, that is in excess of the reserve maintained in the account and that is
18 equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest
19 that must be paid during that period on the outstanding loans or bonds.

20 (g) Each employer shall maintain the records that the department requires concerning the old fund
21 liability tax. The records are subject to inspection by the department and its employees and agents during
22 regular business hours.

23 (h) An employee does not have any right of action against an employer for any money deducted
24 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
25 this section.

26 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
27 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
28 old fund liability tax required by this section.

29 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
30 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and

1 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
2 the old fund liability tax required by this section.

3 (2) All collections of the tax must be deposited as received in the account. The tax is in addition
4 to any other tax or fee assessed against persons subject to the tax.

5 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made pursuant
6 to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any
7 remainder to the account provided for in 39-71-2504.

8 (b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of
9 partnerships, and members or managers of limited liability companies must be made with and at the same
10 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment
11 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided
12 for in 39-71-2504.

13 (c) An employer who exceeds either threshold, as defined in 39-71-2501(5)(a)(ii) or (5)(a)(iii), shall
14 begin withholding old fund liability tax on or before the last day of the month following the quarter in which
15 the wages paid exceed the threshold requirement. The employer shall begin reporting and remitting the
16 employer and employee portions of the old fund liability tax. The report and remittance are due the last
17 day of the month of the subsequent quarter following the quarter in which the wages paid exceeded the
18 threshold requirement. The employer is subject to the quarterly remittance schedule until the department
19 is able to determine the employer's proper remittance schedule by a review of the employer's first complete
20 lookback period.

21 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
22 department the amounts due under this section who fails to pay an amount is liable to the state for the
23 unpaid amount and any penalty and interest relating to that amount.

24 (5) Returns and remittances under subsection (3) and any information obtained by the department
25 during an audit are subject to the provisions of ~~15-30-303, [section 1]~~ but the department may disclose
26 the information to the department of labor and industry for the purpose of investigation and prevention of
27 noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under
28 circumstances and conditions that ensure the continued confidentiality of the information.

29 (6) The department of labor and industry (6) and the state fund shall give the department a list of all
30 employers having coverage under any plan administered or regulated by the department of labor and

1 industry and the state fund. The department of labor and industry and the state fund shall update the lists
 2 weekly. The department of labor and industry and the state fund shall provide the department with access
 3 to their computer data bases and paper files and records for the purpose of the department's administration
 4 of the tax imposed by this section.

5 (7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part
 6 regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments,
 7 credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking
 8 authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation
 9 shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the
 10 department."

11
 12 **Section 31.** Section 39-71-2503, MCA, is amended to read:

13 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
 14 employer, except an employer whose employees are covered by federal workers' compensation legislation,
 15 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
 16 old fund liability tax provided in 39-71-2505, of the wages paid for employment as defined in this part by
 17 the employer in the preceding payroll period, subject to reporting and remittance requirements contained
 18 in 15-30-204.

19 ~~(i) for the preceding payroll period for employers subject to the payment schedule contained in~~
 20 ~~15-30-204(1);~~

21 ~~(ii) for the preceding month for employers subject to the payment schedule contained in~~
 22 ~~15-30-204(2); and~~

23 ~~(iii) for the preceding year for employers subject to the payment schedule contained in~~
 24 ~~15-30-204(3)(a).~~

25 (b) There is imposed on each employee, except an employee who is covered by federal workers'
 26 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages
 27 paid for employment, as defined in this part. An employer paying wages for ~~services performed~~
 28 employment, as defined in this part, in Montana shall deduct and withhold the tax from the wages.

29 (c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
 30 shareholder, on each partner of a partnership, and on each member or manager of a limited liability

1 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
2 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
3 partner, or member or manager derived from ongoing activities.

4 (ii) The tax imposed in this subsection (1)(c) applies only to the ordinary income of a shareholder,
5 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

6 (iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this
7 subsection (1)(c).

8 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
9 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
10 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
11 officer's wages.

12 (e) A corporate officer of a closely held corporation who owns stock in a closely held corporation
13 that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives
14 wages as an employee of the corporation is required to pay the old fund liability tax only on the wages
15 received. The corporation is not liable for the tax on the corporate officer's wages.

16 (f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred
17 for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or
18 bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans
19 or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month
20 period if the workers' compensation bond repayment account contains on the first day of that period an
21 amount, regardless of the source, that is in excess of the reserve maintained in the account and that is
22 equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest
23 that must be paid during that period on the outstanding loans or bonds.

24 (g) Each employer shall maintain the records that the department requires concerning the old fund
25 liability tax. The records are subject to inspection by the department and its employees and agents during
26 regular business hours.

27 (h) An employee does not have any right of action against an employer for any money deducted
28 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
29 this section.

30 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and

1 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
2 old fund liability tax required by this section.

3 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
4 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and
5 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
6 the old fund liability tax required by this section.

7 (2) All collections of the tax must be deposited as received in the account. The tax is in addition
8 to any other tax or fee assessed against persons subject to the tax.

9 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) are due on or before the
10 last day of the month following the close of each calendar quarter and must be made pursuant to
11 15-30-204. The department shall ~~first credit a payment to the liability under 15-30-202 and credit any~~
12 ~~remainder to the account provided for in 39-71-2504~~ payments as provided for in [section 2].

13 (b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of
14 partnerships, and members or managers of limited liability companies must be made with and at the same
15 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment
16 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided
17 for in 39-71-2504.

18 (c) An employer who exceeds either threshold, as defined in 39-71-2501(5)(a)(ii) or (5)(a)(iii), shall
19 begin withholding old fund liability tax on or before the last day of the month following the quarter in which
20 the wages paid exceed the threshold requirement. The employer shall begin reporting and remitting the
21 employer and employee portions of the old fund liability tax. The report and remittance are due the last
22 day of the month of the subsequent quarter following the quarter in which the wages paid exceeded the
23 threshold requirement. The employer is subject to the quarterly remittance schedule until the department
24 is able to determine the employer's proper remittance schedule by a review of the employer's first complete
25 lookback period.

26 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
27 department the amounts due under this section who fails to pay an amount is liable to the state for the
28 unpaid amount and any penalty and interest relating to that amount.

29 (5) Returns and remittances under subsection (3) and any information obtained by the department
30 during an audit are subject to the provisions of ~~15-30-303 [section 1], but the department may disclose~~

1 ~~the information to the department of labor and industry for the purpose of investigation and prevention of~~
2 ~~noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under~~
3 ~~circumstances and conditions that ensure the continued confidentiality of the information.~~

4 (6) The department of labor and industry and the state fund shall give the department a list of all
5 employers having coverage under any plan administered or regulated by the department of labor and
6 industry and the state fund. The department of labor and industry and the state fund shall update the lists
7 weekly. The department of labor and industry and the state fund shall provide the department with access
8 to their computer data bases and paper files and records for the purpose of the department's administration
9 of the tax imposed by this section.

10 (7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part
11 regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments,
12 credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking
13 authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation
14 shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the
15 department."

16

17 **Section 32.** Section 39-71-2505, MCA, is amended to read:

18 **"39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before**
19 **July 1, 1990.** (1) The state fund shall pay for the cost of administering and paying claims for injuries
20 resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by
21 borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable
22 on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the
23 state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to
24 pay for administering and paying the claims for the ensuing year.

25 (2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall
26 forward to the budget director information pertaining to the amount that the state fund will borrow for the
27 ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in
28 subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected
29 liability payments and cash needs on which the amount to be borrowed is based. The schedule must include
30 but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old

1 fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend
2 cash for the year 2007.

3 (b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided
4 in 39-71-2503. The employer old fund liability tax is an amount equal to 0.5% of the employer's payroll
5 for wages paid in the preceding ~~calendar quarter~~ payroll period for wages paid for employment, as defined
6 in this part.

7 (ii) The employee old fund liability tax is an amount equal to 0.2% of the employee's wages in the
8 preceding ~~calendar quarter~~ payroll period for wages paid for employment, as defined in this part.

9 (iii) The old fund liability tax is an amount equal to 0.2% on the profit of each separate business
10 of a sole proprietor and on the distributive share of ordinary income of each subchapter S. corporation
11 shareholder, partner of a partnership, or member or manager of a limited liability company.

12 (iv) The rate of the employer old fund liability tax determined by this section includes the 0.28%
13 employer old fund liability tax provided for in 39-71-2503.

14 (v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in
15 39-71-2503 terminates at the end of fiscal year 2007.

16 (B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are
17 outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.

18 (vi) The old fund liability tax described in this section must be collected and deposited as provided
19 in 39-71-2503 and 39-71-2504.

20 (3) If in any January the cumulative projected amount to be borrowed by the state fund from
21 reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1,
22 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990,
23 not including any outstanding bonds as of May 13, 1993, exceeds \$80 million for the following fiscal year,
24 the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the
25 following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance
26 for the current fiscal year exceeds \$25 million, the tax rate on the persons subject to the old fund liability
27 tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

28 (4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.

29 (5) The budget director shall certify the cash flow projections of the state fund required by this
30 section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected

1 pursuant to this section."

2

3 **NEW SECTION. Section 33. Severability.** If a part of [this act] is invalid, all valid parts that are
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
5 applications, the part remains in effect in all valid applications that are severable from the invalid
6 applications.

7

8 **NEW SECTION. Section 34. Saving clause.** [This act] does not affect rights and duties that
9 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
10 act].

11

12 **NEW SECTION. Section 35. Codification instruction.** (1) [Sections 1 through 5 and 7] are intended
13 to be codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30,
14 part 2, apply to [sections 1 through 5 and 7].

15 (2) [Section 6] is intended to be codified as an integral part of Title 39, chapter 71, part 25, and
16 the provisions of Title 39, chapter 71, part 25, apply to [section 6].

17

18 **NEW SECTION. Section 36. Coordination instruction.** If Senate Bill No. 119 is passed and
19 approved, then [section 4], amending 15-30-204, [section 5], amending 39-71-2503, and [section 6],
20 amending 39-71-2505 in Senate Bill No. 119, are void.

21

22 **NEW SECTION. Section 37. Effective dates.** (1) [Sections 1, 20 and 33 through 36 and this
23 section] are effective July 1, 1997.

24 (2) [Sections 3 through 7, 9 through 12, 17 through 19, 21, 22, 24 through 30, and 32 are
25 effective January 1, 1998.

26 (3) [Sections 2, 8, 13 through 16, 23, and 31] are effective January 1, 1999.

27

-END-

STATE OF MONTANA - FISCAL NOTE
Fiscal Note for HB0561, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act furthering the renewal of state government by harmonizing the definitions of "wages" and "employment"; by reengineering, restructuring, and combining the reporting and remittance of employer taxes; by coordinating the administration of the state's income tax and old fund liability tax withholding, unemployment insurance tax, and the employers' share of the old fund liability tax so that all reports and remittances must be made to the department of revenue thereby providing an employer the convenience of dealing with only one state agency.

ASSUMPTIONS.

1. Section 19 of this bill would amend 39-51-204(3)(a), to make church employees (non-clergy) subject to Unemployment Insurance tax. Many churches currently elect to have UI coverage on their employees. As this section is written, UI benefits would become available to church employees. Also, The UI system does not track or collect information that would allow us to determine the number of potential claimants that would be able to draw benefits. The impact to the UI Trust Fund would be minimal.
2. Section 19 of this bill would amend 39-51-204(1)(d), to exempt licensed real estate brokers or sales persons; make insurance and securities salespersons subject to UI. Also, 39-51-204(1)(k) eliminates the exclusion for those who perform service in the employ of a hospital if the service is performed by a patient of the hospital. And, 39-51-201(1)(o) excludes service performed by an individual who is sentenced to perform court-ordered community service or similar work. There would be minimal impact to the UI Trust Fund. There is no data available on these groups to determine how many would draw benefits or how many more employers would pay UI tax.

FISCAL IMPACT:

Expenditures:

The consolidation of payroll-based functions proposed in this bill will require one-time implementation costs of \$973,000 in FY98 and \$359,000 in FY99 as follows:

	FY98		FY99
	<u>Difference</u>		<u>Difference</u>
Contracted Services	\$247,000		\$197,000
Bus. Process Reengineering	316,000		0
Computer Processing	210,000		162,000
Equipment	200,000		0
Total	\$973,000		\$359,000

These costs will be funded 50% general fund, and 50% federal funds. These initial implementation costs are based upon a proposed implementation date of January 1, 1999 for the new system.

LONG RANGE EFFECTS OF PROPOSED LEGISLATION

A cost/benefit feasibility study performed by Andersen Consulting, projects the proposal to be cost effective, within five years. Andersen Consulting estimated integration benefits to the state of Montana to be \$1 - \$5 million over five years:

A. System Benefits (in millions)

	Low	High
Cost Reductions:		
Personnel, Space		
System Charges	\$ 2.2	\$ 3.1
Revenue Enhancements		
Audit Revenue,		
Increased Collections	\$ 3.2	\$ 6.4
TOTAL BENEFITS	\$ 5.4	\$ 9.5

Dave Lewis 2-18-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Betty Lou Kasten
BETTY LOU KASTEN, PRIMARY SPONSOR DATE

LONG-TERM IMPACTS, cont.

B. System Costs (in millions).

Audit personnel,		
Space and relocation,		
Business Process		
Reengineering, and		
Systems		
TOTAL COSTS	<u>\$(4.3)</u>	<u>\$(4.4)</u>

C. NET INTEGRATION BENEFITS \$ 1.1 \$ 5.1

The Andersen estimate includes systems costs of \$885,600 (\$285,600 to modify the current Withholding System plus \$600,000 to maintain and enhance the system during the two-year, re-write period). After the study was completed, the Department of Revenue determined, and Andersen concurred, it was not cost beneficial to modify the current system given the age and condition of the current system. The technology direction of the Department is reflected in House Bill 188.

The Departments have since revised the Andersen estimates to reflect updated revenue estimates, benefits and cost savings and system costs. The Departments estimate benefits will exceed costs by \$1 million over five years.

Employer Savings:

Andersen Consulting, in their cost/benefit analysis, estimated that approximately 28,300 Montana employers would each save \$400 - \$1,000 per year through reduced compliance burden under the new initiative. The firm estimates total savings each year to Montana employers of nearly \$13 million. That figure is based upon the full integration of employer registration, wage reporting and report processing, enforcement, audit and examination, and appeals and dispute resolution between the two agencies.

Other Impacts:

Section 23 of this bill amends 39-51-1301 which allows for penalty and interest as provided in Section 16 of this same bill. Section 16 of this bill states that a \$50 penalty will be assessed for a delinquent report. It is estimated that currently there is an average of 6,259 UI notices of delinquent reports. A \$50 penalty would generate \$312,966. Assuming that these same employers who are assessed the penalty are also delinquent on income tax withholding and old fund liability tax, the UI portion of the penalty assessment would be 1/3 of the \$312,966, or \$104,322.

Section 16 of this bill allows in 15-30-209 (3) the penalty due to change from 10% and 15% on unpaid taxes to 2% per month with a maximum of 24%. We do not have data that track the number of employers that have paid their delinquent accounts by the 8-9 month period or the point to where the 2% per month would exceed the current UI rate of 10%-15%. It is therefore, not possible to determine the increase or decrease resulting from this change in interest rate.

In Section 16 of this bill, 15-30-209 (5) would increase the penalty assessed for filing a subpoena. Currently UI assesses a \$40 penalty and this bill would change that penalty to \$50. There has been an average of 207 subpoenas filed for a penalty of \$8,280. The additional \$10 charge would result in another \$2,070 in UI penalty collected.

In Section 16, in 15-30-209 (5)b allows for an additional \$100 in penalty charged to employers who fail to honor the subpoena. There are approximately 18 employers a year who fall into this category which would create an additional \$1,800 in penalty revenue.

Additional revenues to the Unemployment Insurance Trust Fund would be minimal.

Penalty and Interest revenue would increase possibly \$108,192 in CY99, only one quarter of which would be attributable to FY99:

6,259 delinquent notice @\$50 each	\$104,322
207 subpoenas additional \$10 each	2,070
18 fail to respond to subpoena @\$100 ea	<u>\$ 1,800</u>
	\$108,192

03277 UI Penalty & Interest

1 HOUSE BILL NO. 561

2 INTRODUCED BY KASTEN, RANEY, DEVLIN, BENEDICT, SIMON, VAN VALKENBURG, STANG,
3 BARTLETT, FOSTER, HALLIGAN, THOMAS, HARP, MERCER, KEATING, FELAND, STORY, JERGESON,
4 CHRISTIAENS, FRANKLIN, HIBBARD

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT FURTHERING THE RENEWAL OF STATE GOVERNMENT BY
7 HARMONIZING THE DEFINITIONS OF "WAGES" AND "EMPLOYMENT"; BY REENGINEERING,
8 RESTRUCTURING, AND COMBINING THE REPORTING AND REMITTANCE OF EMPLOYER TAXES; BY
9 COORDINATING THE ADMINISTRATION OF THE STATE'S INCOME TAX AND OLD FUND LIABILITY TAX
10 WITHHOLDING, UNEMPLOYMENT INSURANCE TAX, AND THE EMPLOYERS' SHARE OF THE OLD FUND
11 LIABILITY TAX SO THAT ALL REPORTS AND REMITTANCES MUST BE MADE TO THE DEPARTMENT OF
12 REVENUE THEREBY PROVIDING AN EMPLOYER THE CONVENIENCE OF DEALING WITH ONLY ONE STATE
13 AGENCY; AND AMENDING SECTIONS 15-1-302, 15-2-302, 15-30-201, 15-30-202, 15-30-203,
14 15-30-204, 15-30-207, 15-30-208, 15-30-209, 37-31-101, 39-51-201, 39-51-204, 39-51-301,
15 39-51-1109, 39-51-1110, 39-51-1301, 39-51-1303, 39-51-2108, 39-51-2402, 39-71-123, 39-71-401,
16 39-71-2501, 39-71-2503, AND 39-71-2505, MCA."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
20 NEW SECTION. **Section 1. Confidentiality.** Reports and returns required to be filed under this part
21 are confidential, subject to the limitations contained in 39-51-603(3) and (4).

22
23 NEW SECTION. **Section 2. Application and distribution of payments.** (1) Except as provided by
24 rule, tax payments including delinquent tax, penalty, and interest must be applied to the taxpayer's
25 account, prorated on the basis of the amount of each tax due to the amount of the total tax due, and
26 distributed to the appropriate fund accounts as required by law.

27 (2) Payment of a penalty assessed for late filing of a report for which there is no tax due for the
28 period must be applied to the employer's liability for the penalties and equally distributed to the fund
29 accounts specified by law among the tax types the report covers.

1 **NEW SECTION. Section 3. Statute of limitations.** (1) In the case of a nonfiled return, the
2 department may, at any time, audit the employer or estimate the tax due from any information in its
3 possession and issue an assessment for the amount of the tax, penalty, and interest the department
4 determines to be due.

5 (2) If the department determines, pursuant to a review conducted pursuant to 15-30-145, that any
6 return is incorrect, it may revise the return within 5 years of the due date of the original return, within 5
7 years of the date the return was filed, or 1 year from the date an amended return was filed, whichever is
8 later.

9 (3) Notwithstanding the provisions of subsection (2), if an employer purposely or knowingly files
10 a false or fraudulent return, with intent to evade the tax, the amount of tax, penalty, and interest due may
11 be determined at any time after the return is filed and collected at any time after it becomes due.

12 (4) For the purposes of this section, a return filed before the due date is considered to be filed on
13 the due date.

14 (5) The statute of limitations is suspended during any time in which an employer-employee
15 relationship determination has been appealed as provided in 15-1-211, and the time for assessment extends
16 for an additional 1 year from the date the decision becomes final.

17
18 **NEW SECTION. Section 4. Credits and refunds -- period of limitations.** (1) If the department
19 determines by examination of an employer's account, or upon claim filed by an employer, that the employer
20 has overpaid the amount of tax, penalty, or interest, the amount of the overpayment may be refunded to
21 the employer or applied to current or future obligations of any tax, penalty, or interest for any tax contained
22 in this title at the discretion of the taxpayer.

23 (2) A credit or refund may be allowed only if the claim is filed or the determination is made within
24 5 years of the due date prescribed for filing a report or 1 year from the date of the notification of the
25 overpayment by the department.

26 (3) The department shall notify the employer of the overpayment and the credit or refund options
27 available to the employer. A credit must be applied to the employer account unless directed otherwise by
28 the employer.

29 (4) If a claim is disallowed, the department shall notify the employer. The decision disallowing the
30 claim is subject to review as provided in 15-1-211.

1 (5) Interest is:

2 (a) allowed on an overpayment at the same rate as charged for late tax payments under this part;

3 (b) payable from the due date of the payment or the date overpayment was verified, whichever
4 is later;

5 (c) not payable if the overpayment is applied to current or future obligations with the department.

6 (6) Interest is not allowed if the overpayment is refunded within 45 days from the date the
7 employer directs the department to refund the overpayment.

8 (7) If additional information is required to verify the amount of the overpayment, the 45-day period
9 in subsection (6) does not begin until the information is provided.

10

11 **NEW SECTION. Section 5. Employment defined and exclusions from definition of employment.**

12 (1) As used in this part "employment", subject to the provisions of subsection (2), means the service by
13 an employee for an employer.

14 (2) The term "employment" does not include:

15 (a) household and domestic service in a private home, local college club, or local chapter of a
16 college fraternity or sorority, except as provided in 15-30-201(4)(c);

17 (b) service performed by a dependent, as defined in 26 U.S.C. 152, of a sole proprietor for whom
18 an exemption may be claimed by the employer under the Internal Revenue Code or service performed by
19 a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole
20 proprietor pursuant to 26 U.S.C. 7703;

21 (c) service performed as a freelance correspondent or newspaper carrier if the person performing
22 the service, or a parent or guardian of the person performing the service in the case of a minor, has
23 previously acknowledged or acknowledges in writing that the person performing the service and the service
24 are not covered for unemployment insurance purposes. As used in this subsection:

25 (i) "freelance correspondent" is a person who submits articles or photographs for publication and
26 is paid by the article or by the photograph; and

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

30 (d) service performed as a licensed real estate broker or salesperson under Title 37, chapter 51;

1 (e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber
2 who is licensed under Title 37, chapter 30, and:

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

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

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

8 (B) receives payment for service from individual clientele; and

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

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

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

18 (g) service performed by sole proprietors, working members of a partnership or a limited liability
19 partnership, or members of a member-managed limited liability company that has filed articles of
20 organization with the secretary of state;

21 (h) service performed for the installation of floor coverings if the installer:

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

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

24 (iii) may perform service for anyone without limitation;

25 (iv) may accept or reject any job;

26 (v) furnishes substantially all tools and equipment necessary to provide the service; and

27 (vi) works under a written contract that:

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

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

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

3 (i) service performed by a direct seller. As used in this subsection, "direct seller" means a person:

4 (i) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,
5 vacuum cleaners, and cleaning products at the home of the consumer;

6 (ii) whose pay is determined by the quantity of product sold; and

7 (iii) who works under a written contract that states the person will not be treated as an employee;

8 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land
9 professional" means a person who:

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

12 (ii) is paid for service that is directly related to the completion of a contracted specific task rather
13 than on an hourly wage basis; and

14 (iii) performs all service as an independent contractor pursuant to a written contract;

15 (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
16 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

17 (l) service performed by an individual receiving rehabilitation or remunerative work in a facility
18 conducted for the purpose of carrying out a program of rehabilitation for those individuals whose earning
19 capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for
20 individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the
21 competitive labor market;

22 (m) service performed as part of an unemployment work-relief or work-training program assisted
23 or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the
24 state by an individual receiving work relief or work training;

25 (n) service performed by an inmate of a state prison or other state correctional or custodial
26 institution;

27 (o) service by an individual who is sentenced to perform court-ordered community service or similar
28 work;

29 (p) service performed for aid or sustenance only;

30 (q) active service as members of the regular armed forces of the United States, as defined in 10

1 U.S.C. 101(33);

2 (r) agricultural labor; or

3 (s) service performed by an independent contractor.

4

5 **NEW SECTION. Section 6. Employment defined and exclusions from definition of employment.**

6 (1) As used in this part "employment", subject to the provisions of subsection (2), means the service by
7 an employee for an employer.

8 (2) The term "employment" does not include:

9 (a) household and domestic service in a private home, local college club, or local chapter of a
10 college fraternity or sorority, except as provided in 39-71-2501(4)(c);

11 (b) service performed by a dependent, as defined in 26 U.S.C. 152, of a sole proprietor for whom
12 an exemption may be claimed by the employer under the Internal Revenue Code or service performed by
13 a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole
14 proprietor under 26 U.S.C. 7703;

15 (c) service performed as a freelance correspondent or newspaper carrier if the person performing
16 the service, or a parent or guardian of the person performing the service in the case of a minor, has
17 previously acknowledged or acknowledges in writing that the person performing the service and the service
18 are not covered for unemployment insurance purposes. As used in this subsection:

19 (i) "freelance correspondent" is a person who submits articles or photographs for publication and
20 is paid by the article or by the photograph; and

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

24 (d) service performed as a licensed real estate broker or salesperson under Title 37, chapter 51;

25 (e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber
26 who is licensed under Title 37, chapter 30, and:

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

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

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

2 (B) receives payment for service from individual clientele; and

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

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

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

12 (g) service performed by sole proprietors, working members of a partnership or a limited liability
13 partnership, or members of a member-managed limited liability company that has filed articles of
14 organization with the secretary of state;

15 (h) service performed for the installation of floor coverings if the installer:

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

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

18 (iii) may perform service for anyone without limitation;

19 (iv) may accept or reject any job;

20 (v) furnishes substantially all tools and equipment necessary to provide the service; and

21 (vi) works under a written contract that:

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

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

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

27 (i) service performed by a direct seller. As used in this subsection, "direct seller" means a person:

28 (i) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,
29 vacuum cleaners, and cleaning products at the home of the consumer;

30 (ii) whose pay is determined by the quantity of product sold; and

- 1 (iii) who works under a written contract that states the person will not be treated as an employee;
- 2 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land
- 3 professional" means a person who:
- 4 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
- 5 negotiating a business agreement for the exploration or development of minerals;
- 6 (ii) is paid for service that is directly related to the completion of a contracted specific task rather
- 7 than on an hourly wage basis; and
- 8 (iii) performs all service as an independent contractor pursuant to a written contract;
- 9 (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
- 10 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 11 (l) service performed by an individual receiving rehabilitation or remunerative work in a facility
- 12 conducted for the purpose of carrying out a program of rehabilitation for those individuals whose earning
- 13 capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for
- 14 individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the
- 15 competitive labor market;
- 16 (m) service performed as part of an unemployment work-relief or work-training program assisted
- 17 or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the
- 18 state by an individual receiving work relief or work training;
- 19 (n) service performed by an inmate of a state prison or other state correctional or custodial
- 20 institution;
- 21 (o) service by an individual who is sentenced to perform court-ordered community service or similar
- 22 work;
- 23 (p) service performed for aid or sustenance only; or
- 24 (q) service performed by an independent contractor.

25

26 **NEW SECTION. Section 7. Special review procedure for certain tax issues that involve**

27 **unemployment insurance benefit claim -- notice -- appeal.** (1) As used in this section, the following

28 definitions apply:

- 29 (a) "Administrator" means the administrator of the income and miscellaneous tax division,
- 30 department of revenue.

1 (b) "Board" means the state tax appeal board established by 15-2-101.

2 (c) "Claimant" means an individual who has filed a claim for unemployment insurance benefits
3 under Title 39, chapter 51, and has asserted that the individual's employer inaccurately or incompletely
4 reported the individual's wages.

5 (d) "Employer" means an employer as defined in 39-51-202, that has a potential tax liability arising
6 from the inaccurate or incomplete reporting of a claimant's wages.

7 (e) "Interested party" means the claimant, the employer, or the department of labor and industry.

8 (2) (a) The department shall promptly investigate whether wages earned by the claimant were
9 properly reported by the employer. Upon completion of the investigation, the department shall issue a
10 written determination stating whether the wages were properly reported and, if not, the correct amount
11 of reportable wages earned by the claimant. A copy of the determination must be mailed to each interested
12 party at the last-known address of each party.

13 (b) The determination is final unless an interested party, within 10 calendar days of the mailing of
14 the determination, makes a written application for reconsideration of the determination or makes a written
15 appeal of the determination. A late-filed application for reconsideration may be accepted by the department
16 upon a showing of good cause in writing.

17 (c) The written application or appeal must specify the reasons for the application or appeal and
18 provide any other information relevant to the application or appeal.

19 (d) An interested party may appeal the reconsideration of a determination by making a written
20 appeal within 10 calendar days of the mailing of the notice of the redetermination. A late-filed application
21 for reconsideration may be accepted by the department upon a showing of good cause in writing.

22 (3) (a) Upon appeal of a determination or redetermination, the administrator or a person appointed
23 by the administrator shall hold an informal hearing that may be conducted by telephone or video
24 conference. After the hearing, the administrator or a designee shall promptly make findings of fact and
25 conclusions of law and affirm, modify, reverse, or remand the determination or redetermination. A copy
26 of the decision, with supporting findings of fact and conclusions of law, must be mailed to each interested
27 party at the last-known address of each party.

28 (b) (i) The decision is binding on the interested parties unless a written appeal is made to the board.
29 The appeal must be filed with the board within 10 calendar days after notice of the decision was mailed.
30 A late-filed application for reconsideration may be accepted by the board upon a showing of good cause

1 in writing.

2 (ii) If the decision becomes final, the department shall proceed as provided in subsection (5).

3 (4) (a) An appeal to the board, pursuant to 15-2-302, is initiated by filing a complaint with the
4 board. The board shall promptly mail a copy of the complaint to each interested party at the last-known
5 address of each party.

6 (b) Any interested party who wants to file an answer must do so within 10 calendar days after the
7 board mails a copy of the complaint. An answer up to 10 days late may be accepted by the board upon
8 a showing of good cause in writing.

9 (c) The decision of the board is final and binding upon all interested parties unless reversed or
10 modified by judicial review. Proceedings for judicial review under this section are subject to the provisions
11 of the Montana Administrative Procedure Act.

12 (5) When the department's decision becomes final, whether as the result of appeal, judicial review,
13 or the lapse of time during which to take an appeal, the interested parties are bound by the decision and
14 may not contest any issue that was decided as part of the decision either administratively or judicially. An
15 employer who is determined to have inaccurately or incompletely reported wages may not contest the issue
16 of whether wages should have been reported, or the amount of the wages that should have been reported,
17 once the department assesses taxes on those wages.

18

19 **Section 8.** Section 15-1-302, MCA, is amended to read:

20 "**15-1-302. Witnesses -- oaths, contempt, and fees.** (1) Oaths to witnesses in any investigation
21 by the department may be administered by the director of revenue or ~~his~~ the director's agent.

22 (2) (a) ~~in case any~~ If a witness shall fail ~~fails~~ fails to obey ~~any a~~ a summons to appear before the
23 department or ~~shall refuse~~ refuses to testify or answer any material question or to produce records, books,
24 papers, or documents when required to do so, ~~such failure or refusal shall be reported to the attorney~~
25 ~~general, who~~ the department shall ~~thereupon~~ institute proceedings in the ~~proper~~ district court to compel
26 obedience to ~~any a~~ a summons or order of the board or to punish the witness for ~~such~~ neglect or refusal to
27 obey the summons.

28 (b) As required by 15-30-209, the department, in addition to instituting proceedings to compel
29 obedience to a summons or order shall, as a part of the proceedings, request the court to issue an order
30 requiring the payment of all penalties assessed for the employer's failure to report.

1 (3) ~~Any~~ A person who ~~shall testify~~ testifies falsely in any material matter under consideration by
2 the department ~~shall be~~ is guilty of perjury and shall be punished accordingly.

3 (4) Witnesses attending an investigation by the department ~~shall~~ must receive ~~like~~ the same
4 compensation as witnesses in the district court. ~~Such~~ The compensation ~~shall~~ must be charged to the
5 proper appropriation for the department."
6

7 **Section 9.** Section 15-2-302, MCA, is amended to read:

8 "**15-2-302. Direct appeal from department decision to state tax appeal board -- hearing.** (1) A
9 person may appeal to the state tax appeal board a final decision of the department of revenue involving:

- 10 (a) property centrally assessed under chapter 23 ~~of this title~~;
11 (b) classification of property as new industrial property;
12 (c) any other tax, ~~{other than the property tax}~~, imposed under this title; or
13 (d) any other matter in which the appeal is provided by law.

14 (2) ~~(a)~~ Except as provided in subsection (2)(b), the appeal is made by filing a complaint with
15 the board within 30 days following receipt of notice of the department's final decision. The complaint must
16 set forth the grounds for relief and the nature of relief demanded. The board shall immediately transmit a
17 copy of the complaint to the department.

18 (b) An appeal from the department's determination of whether wages earned by an unemployment
19 insurance benefit claimant were properly reported to the department is initiated by filing a complaint with
20 the board within 10 days following receipt of notice of the department's final determination. The board shall
21 promptly mail a copy of the complaint to each interested party at the last-known address of each party.

22 (3) The department shall file with the board an answer within 30 days following filing of a
23 complaint, or in cases involving a determination of whether wages earned by an unemployment insurance
24 benefit claimant were properly reported to the department, any interested party as defined in [section
25 7(1)(e)] and the department may file an answer with the board within 10 days after receipt of a copy of
26 the complaint filed with the board, and at that time mail a copy to the complainant. The answer must set
27 forth the department's response to each ground for and type of relief demanded in the complaint.

28 (4) ~~(a)~~ Except as provided in subsection (4)(b), the board shall conduct the appeal in
29 accordance with the contested case provisions of the Montana Administrative Procedure Act.

30 (b) (i) An appeal regarding the determination of whether wages earned by an unemployment

1 insurance claimant were properly reported to the department, the appeal must be conducted informally and
 2 may, in the discretion of the board, be conducted by telephone or other electronic means. The appeal is
 3 not a contested case under provisions of the Montana Administrative Procedure Act. The board, in
 4 conducting the hearing or making its decision, is not bound by the Montana Rules of Evidence.

5 (ii) The board shall make its final decision within 45 days of the date the appeal is received by the
 6 board.

7 (5) The decision of the state tax appeal board is final and binding upon all interested parties unless
 8 reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal
 9 board under this section are subject to the provisions of 15-2-303 and the Montana Administrative
 10 Procedure Act to the extent that it does not conflict with 15-2-303."

11
 12 **Section 10.** Section 15-30-201, MCA, is amended to read:

13 "**15-30-201. Definitions.** When used in 15-30-201 through 15-30-209, the following definitions
 14 apply:

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

19 (2) "Domestic or household service" means employment of persons other than members of the
 20 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
 21 family, including but not limited to housecleaning and yard work but does not include employment beyond
 22 the scope of normal household or domestic duties such as home health care or domiciliary care.

23 ~~(2)(3)~~ "Employee" means:

24 (a) an officer, employee, or elected public official of the United States, the state of Montana, or
 25 any political subdivision of the United States or Montana or any agency or instrumentality of the United
 26 States, the state of Montana, or a political subdivision of the United States or Montana. The term also
 27 includes;

28 (b) an officer of a corporation;

29 (c) any individual who performs services for another individual or organization having the right to
 30 control the employee as to the services to be performed and as to the manner of performance;

1 (d) all classes, grades, or types of employees including minors and aliens, superintendents,
2 managers, and other supervisory personnel.

3 ~~(3)~~(4) "Employer" means:

4 (a) the person for whom an individual performs or performed any service, of whatever nature, as
5 an employee of the person. However, if the person for whom the individual performs or performed the
6 service does not have control of the payment of the wages for the service, the term means the person who
7 has control of the payment of wages;

8 (b) a person who pays \$1,000 or more in wages within the current calendar year;

9 (c) a person who pays \$1,000 or more in cash for domestic or household service in any quarter
10 during the current calendar year;

11 (d) any individual or organization, including state government and any of its political subdivisions
12 or instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited
13 liability company or a limited liability partnership that has filed with the secretary of state, or domestic or
14 foreign corporation or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal
15 representative of a deceased person who has or had in its employ one or more individuals performing
16 services for it within this state; or

17 (e) any person found to be an employer under Title 39, chapter 51, for unemployment insurance
18 purposes is considered an employer for state income tax withholding purposes.

19 ~~(4)~~(5) "Independent contractor" means an individual who renders service in the course of an
20 occupation and:

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

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

24 ~~(5)~~(6) "Lookback period" means the 12-month period ending the preceding June 30.

25 ~~(6)~~(7) (a) "Wages", unless specifically exempted under subsection (7)(b) means all remuneration,
26 other than fees paid to a public official, for services performed by an employee for the employer, including
27 the cash value of all remuneration paid in any medium other than cash, except that the term does not
28 include remuneration paid; and includes but is not limited to the following:

29 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations and
30 sickness periods;

1 ~~(ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous~~
 2 ~~service by the employee for the employer, other than retirement or pension benefits from a qualified plan;~~
 3 ~~and~~

4 ~~(iii) except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by~~
 5 ~~the employee, to the extent that the tips or gratuities are:~~

6 ~~(A) documented by the employee to the employer for tax purposes;~~

7 ~~(B) disbursed by the employer from a tip pool; or~~

8 ~~(C) added to the customer's bill by the employer.~~

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

11 ~~(b) for agricultural labor;~~

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

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

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

21 ~~(ii) the individual was regularly employed, as determined under subsection (6)(d)(i), by the employer~~
 22 ~~in the performance of service during the preceding calendar quarter.~~

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

25 ~~(f) for services performed by an ordained, commissioned, or licensed minister of a church in the~~
 26 ~~exercise of the ministry or by a member of a religious order in the exercise of duties required by the order;~~

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

30 ~~(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines~~

1 ~~to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by~~
 2 ~~the individual at a fixed price, with the individual's compensation based on the retention of the excess of~~
 3 ~~the price over the amount at which the newspapers or magazines are charged to the individual, whether~~
 4 ~~or not the individual is guaranteed a minimum amount of compensation for the service or is entitled to be~~
 5 ~~credited with the unsold newspapers or magazines turned back;~~

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

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

12 ~~(j) as tips or gratuities that are in accordance with section 3402(k) or service charges that are~~
 13 ~~covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1,~~
 14 ~~1983, received by persons for services rendered by them to patrons of premises licensed to provide food,~~
 15 ~~beverage, or lodging;~~

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

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

21 (i) the amount of any payment made by the employer FOR EMPLOYEES, if the payment was made
 22 pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code established for
 23 employees for:

24 (A) retirement or pension PURSUANT TO A QUALIFIED PLAN AS DEFINED UNDER THE
 25 PROVISIONS OF THE INTERNAL REVENUE CODE;

26 (B) sickness or accident disability under a workers' compensation policy;

27 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
 28 health insurance for the employee or the employee's immediate family; or

29 (D) death, including life insurance for the employee or the employee's immediate family;

30 (ii) compensation in the form of meals and lodging, provided the compensation is not includable

1 in gross income for state individual income tax purposes;

2 (iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C.
3 1002(40)(A), to a qualified individual employee;

4 (iv) payments made by an employee to any group plan or program to the extent that the payments
5 are not taxable for state income tax purposes;

6 (v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are
7 covered by 26 U.S.C. 3401 of the Internal Revenue Code, as amended and applicable on January 1, 1983,
8 received by persons for services rendered by them to patrons of premises licensed to provide food,
9 beverage, or lodging; or

10 (vi) payments that may not be taxed under federal law."

11
12 **Section 11.** Section 15-30-202, MCA, is amended to read:

13 **"15-30-202. Withholding of tax from wages.** (1) Each employer making payment of wages for
14 employment as defined in [section 5] shall withhold from wages a tax determined in accordance with the
15 withholding tax tables prepared and issued by the department. ~~Persons on active service as members of~~
16 ~~the regular armed forces of the United States, as defined in 10 U.S.C. 101(33), are not subject to the~~
17 ~~provisions of this section.~~

18 (2) An employer who maintains two or more separate establishments within this state is considered
19 to be a single employer for the purposes of this part."

20
21 **Section 12.** Section 15-30-203, MCA, is amended to read:

22 **"15-30-203. Employer liable for ~~withholding~~ employment taxes.** (1) Each employer is liable for the
23 reports and payments required by 15-30-204, the amounts required to be deducted and withheld under this
24 part, and the amounts plus interest due on the amounts are a tax. With respect to the tax, the employer
25 is the taxpayer.

26 (2) The officer or employee of a corporation whose duty it is to collect, truthfully account for, and
27 pay to the state the amounts withheld from the corporation's employees and who fails to pay the
28 withholdings is liable to the state for the amounts withheld and the penalty and interest due on the
29 amounts.

30 (3) (a) Each officer or employee of the corporation is individually liable along with the corporation

1 for filing reports to the extent that the officer or employee has access to the requisite records and for
2 unpaid taxes, penalties, and interest upon a determination that the officer or employee:

3 (i) possessed the authority, duty, and responsibility to file reports and pay taxes on behalf of the
4 corporation;

5 (ii) possessed the authority on behalf of the corporation to direct the filing of reports and payment
6 of taxes by other employees or agents of the corporation; or

7 (iii) possessed the authority on behalf of the corporation for directing the filing of tax reports or
8 the payment of other corporate obligations and exercised that authority resulting in the corporation's failure
9 to file reports required by this part or pay taxes due as required by this part.

10 (b) The department is not limited to considering the elements set forth in subsection (3)(a) to
11 establish individual liability and may consider any other available information.

12 (4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the
13 discharge of penalty and interest against the corporation. The individual remains liable for any reports and
14 the amount of taxes, penalties, and interest unpaid by the corporation.

15 (5) For the purpose of determining liability for the filing of reports and the remittance of taxes,
16 penalties, and interest owed under this part, a member-managed limited liability company must be treated
17 as a partnership with liability for filing reports and remitting taxes, penalties, and interest owed extending
18 to each member who was a member at the time the report or taxes were due.

19 (6) For determining personal liability for the failure to file reports and remit taxes, penalties, and
20 interest owed by a manager-managed limited liability company, the managers of the limited liability
21 company are jointly and severally liable along with the limited liability company for reports and any taxes,
22 penalties, and interest owed.

23 (7) For determining personal liability for the failure to file reports and remit taxes, penalties, and
24 interest owed by a limited liability partnership, the partners of the limited liability partnership are jointly and
25 severally liable, along with the limited liability partnership, for reports and any taxes, penalties, and interest
26 due.

27 ~~(3)~~ (8) If the employer fails to deduct and withhold the amounts specified in 15-30-202 and
28 thereafter the tax against which the deducted and withheld amounts would have been credited is paid, the
29 amounts required to be deducted and withheld may not be collected from the employer."

30

1 **Section 13.** Section 15-30-204, MCA, is amended to read:

2 "**15-30-204. Weekly, monthly, or annual payment Reporting and remittance requirements.** ~~(1) An~~
 3 ~~employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings during~~
 4 ~~the preceding lookback period was \$12,000 or greater shall file a return in the form and containing the~~
 5 ~~information that may be required by the department and shall pay the amount required by 15-30-202 to~~
 6 ~~be deducted and withheld by the employer from wages paid during the preceding payroll period. The~~
 7 ~~payment must be submitted on or before the date on which federal income tax weekly withholding~~
 8 ~~payments are due. On or before the last day of April, July, October, and January, the employer shall file~~
 9 ~~a return in the form and containing the information required by the department. The quarterly returns for~~
 10 ~~employers subject to this subsection must be used to summarize and adjust payments and to request~~
 11 ~~refunds of overpayments. The employer shall also file the annual statement as required by 15-30-207.~~

12 ~~(2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for~~
 13 ~~withholdings during the preceding lookback period was less than \$12,000 but greater than \$1,199 shall~~
 14 ~~remit a monthly payment to the department for the amount required by 15-30-202 to be deducted and~~
 15 ~~withheld by the employer from wages paid during the preceding month. The monthly payment must be~~
 16 ~~submitted on or before the 15th day of the month following the payment of the wages. The employer~~
 17 ~~subject to this subsection shall, on or before February 28 of the year following payment of the wages, file~~
 18 ~~an annual return in the form and containing the information required by the department and the annual~~
 19 ~~statement required by 15-30-207. The annual returns for employers subject to this subsection must be used~~
 20 ~~to summarize and adjust payments and to request refunds of overpayments.~~

21 (1) For the purposes of this section, employers shall remit their taxes in accordance with the
 22 appropriate remittance schedule as follows:

23 (a) Employers whose total liability for state income tax withholding during the preceding lookback
 24 period was \$12,000 or more shall remit on an "accelerated schedule", which is the same as the employer's
 25 federal due dates for federal tax deposits.

26 (b) Employers whose total liability for state income tax withholding during the preceding lookback
 27 period was less than \$12,000 but more than \$1,199 shall remit on a "monthly schedule" for which the
 28 remittance due date is on or before the 15th day of the month following the payment of wages.

29 (c) Employers whose total liability for state income tax withholding during the preceding lookback
 30 period was less than \$1,200 shall remit on a "quarterly schedule" for which the remittance due date is on

1 or before the last day of the month following the close of each calendar quarter.

2 (d) Employers who are not subject under Title 39, chapter 51, for unemployment insurance and
 3 whose total liability for state income tax withholding, or if state income tax withholding is not required,
 4 whose total liability for old fund liability tax during the preceding lookback period was less than \$1,200,
 5 may remit on an "annual schedule" for which the remittance is due on or before February 28 of the year
 6 following payment of wages.

7 (2) (a) Every employer is required to file a report quarterly in the form required by the department.

8 (b) The report is due on or before the last day of the month following the close of the calendar
 9 quarter.

10 (c) An employer who is not subject under Title 39, chapter 51, to unemployment insurance may
 11 elect to file an annual report on or before February 28 for the preceding calendar year.

12 (d) An employer who has no payroll during a quarter may elect to report "no wages paid this
 13 quarter" using alternative reporting methods provided in department rules.

14 (e) An employer, in addition to the scheduled reports and remittances, must file the annual report
 15 and wage statements as required by 15-30-207.

16 ~~(3) (a) If the total amount of the tax withheld by an employer under the provisions of 15-30-202~~
 17 ~~upon the wages of all employees of any employer is less than \$1,200 for the preceding lookback period,~~
 18 ~~the employer shall, on or before February 28 of the year succeeding that in which the wages were paid,~~
 19 ~~file an annual return in the form required by the department, together with the annual statement required~~
 20 ~~by 15-30-207, and shall at the same time pay the amount required to be deducted and withheld by the~~
 21 ~~employer from all wages paid during the preceding calendar year.~~

22 ~~(b) An employer subject to the provisions of this subsection (3) may elect to remit monthly~~
 23 ~~payments. If an employer elects to make monthly payments, the employer shall remit monthly payments~~
 24 ~~during the entire year and is subject to the same interest and penalty provisions as employers subject to~~
 25 ~~the provisions of subsection (2).~~

26 (3) (a) Except as provided in subsection (3)(g), payments are due as required according to the
 27 remittance schedule for each employer.

28 ~~(e)(b) If an employer subject to the provisions of this subsection (3) (1)(d) does not file the annual~~
 29 ~~return required by subsection (3)(a), comply with the requirements of this section, the employer is may be~~
 30 ~~subject to the payment and filing provisions of quarterly reporting schedule provided in subsection (2)(a)~~

1 and to the quarterly remittance schedule provided in subsection (1)(c) until the department determines from
 2 the employer's subsequent filing and payment history that the employer will file and remit in a timely
 3 fashion.

4 ~~(4)(a)(c)~~ On or before November 1 of each year, the department shall notify the employers subject
 5 to the provisions of this section of the employers' remittance schedules for the following calendar year
 6 based upon the department's review of the preceding lookback period.

7 ~~(b)(d)~~ Except as provided in subsection (3)(g), a new employer or an employer with no filing
 8 history is subject to the provisions of subsection (2) the quarterly remittance schedule in subsection (1)(c)
 9 until the department is able to determine the employer's proper remittance schedule by a review of the
 10 employer's first complete lookback period.

11 (e) An employer who is subject to the quarterly schedule in subsection (1)(c) may elect to remit
 12 payments on a more frequent basis. An employer who is on an annual schedule may elect to remit monthly
 13 or quarterly payments.

14 (f) An employer who exceeds either threshold as defined in 15-30-201(4)(b) and (4)(c), must begin
 15 withholding state income tax on or before the last day of the month following the quarter in which the
 16 wages paid exceeded the threshold requirements. The employer is subject to the quarterly remittance
 17 schedule until the department is able to determine the employer's proper remittance schedule by a review
 18 of the employer's first complete lookback period.

19 (g) An employer who is not subject to unemployment insurance under Title 39, chapter 51, and
 20 whose estimated annual state income tax withholding, or if state income tax withholding is not required,
 21 whose estimated old fund liability tax, is not expected to exceed \$1,199 for the calendar year may remit
 22 according to the annual schedule and report annually on or before February 28.

23 (h) An employer may use alternative remittance methods in conjunction with the department's
 24 electronic remittance program in accordance with department rules.

25 ~~(5)(4)~~ If the department has reason to believe that collection of the amount of any tax withheld is
 26 in jeopardy, it may proceed as provided for under ~~15-30-312~~ with respect to jeopardy assessments of
 27 ~~income tax~~ 15-1-703.

28 (5) Each employer shall keep true and accurate payroll records containing the information that the
 29 department may prescribe by rule. Those records must be open to inspection and audit and may be copied
 30 by the department or its authorized representative at any reasonable time and as often as may be

1 necessary. An employer who maintains its records outside Montana shall furnish copies of those records
 2 to the department at the employer's expense."

3

4 **Section 14.** Section 15-30-207, MCA, is amended to read:

5 **"15-30-207. Annual statement by employer.** (1) Every employer shall, on or before February 28
 6 in each year, file with the department a wage and tax statement for each employee in ~~such the~~ form and
 7 summarizing ~~such~~ information as the department requires, including the total wages paid to the employee
 8 during the preceding calendar year or any part ~~thereof~~ of the calendar year and showing the total amount
 9 of the federal income tax deducted and withheld from ~~such the~~ wages and the total amount of the tax
 10 deducted and withheld ~~therefrom~~ from the wages under the provisions of 15-30-201 through 15-30-209
 11 and 39-71-2503.

12 (2) The annual statement filed by an employer with respect to the wage payments reported
 13 constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents,
 14 and ~~no~~ additional information return is not required with respect to ~~such the~~ wage payments.

15 ~~(3) In addition to any other penalty provided by law, the failure of an employer to furnish a~~
 16 ~~statement as required by subsection (1) subjects the employer to a penalty of \$5 for each failure, provided~~
 17 ~~that the minimum penalty for failure to file the statements required on or before February 28 of each year~~
 18 ~~shall be \$50. This penalty may be abated by the department upon a showing of good cause by the~~
 19 ~~employer. The penalty may be collected in the same manner as are other tax debts."~~

20

21 **Section 15.** Section 15-30-208, MCA, is amended to read:

22 **"15-30-208. Withheld taxes held in trust for state —warrants to collect.** (1) Every employer who
 23 deducts and withholds any amounts under the provisions of 15-30-201 through 15-30-209 shall hold the
 24 same amounts in trust for the state of Montana.

25 ~~(2) If any tax imposed by 15-30-201 through 15-30-209 or any portion of such tax is not paid~~
 26 ~~when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The~~
 27 ~~priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as~~
 28 ~~indicated on the warrant for distraint.~~

29 ~~(3) The tax lien provided for in subsection (2) is not valid against any third party owning an interest~~
 30 ~~in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if~~

1 ~~the third party receives from the most recent grantor of the interest an affidavit stating that all taxes,~~
 2 ~~assessments, penalties, and interest due from the grantor have been paid.~~

3 ~~(4) A grantor who signs and delivers to the third party an affidavit as provided in subsection (3)~~
 4 ~~is subject to the penalties imposed by 15-30-321(3) if any part of the affidavit is untrue. Notwithstanding~~
 5 ~~the provisions of 15-30-321(3), the department may bring an action as provided for in that subsection in~~
 6 ~~the name of the state to recover the civil penalty and any delinquent taxes."~~

7
 8 **Section 16.** Section 15-30-209, MCA, is amended to read:

9 **"15-30-209. Violations by employer -- penalties, interest, and remedies.** (1) ~~If any employer shall~~
 10 ~~fail to pay over to the state the tax deducted and withheld under the provisions of 15-30-201 through~~
 11 ~~15-30-208 or shall fail to file or furnish any statement provided for within the time prescribed therefor, the~~
 12 ~~same additions to the amount of such tax shall be imposed and added as those specified in 15-30-321 with~~
 13 ~~respect to failure to make a return of income or to pay any income tax, and any individual, corporation, or~~
 14 ~~partnership or any officer or employee thereof who, with intent to evade any tax or any requirement of~~
 15 ~~15-30-201 through 15-30-208, or who, with like intent, files or supplies any false or fraudulent statement~~
 16 ~~or information shall be liable to the same penalties as those imposed by 15-30-321 with respect to filing~~
 17 ~~or supplying any false or fraudulent statement or information with respect to income taxes. The first time~~
 18 ~~in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the~~
 19 ~~department shall issue a warning notice explaining to the employer that the employer failed to file a report~~
 20 ~~on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due~~
 21 ~~date as required by law and the department shall notify the employer of the consequences of any further~~
 22 ~~subsequent late reporting or late remittance.~~

23 ~~(2) (a) A late report penalty may not be assessed if an employer files the late report prior to the~~
 24 ~~issuance of a notice of delinquent report.~~

25 ~~(b) If the report is not received prior to the issuance of a notice of delinquent report, a \$50 penalty~~
 26 ~~must be assessed at the same time the notice is issued.~~

27 ~~(3) (a) Taxes unpaid on the date on which they are due and payable are subject to a penalty of 2%~~
 28 ~~per month, or any portion of a month, on the late paid tax with a maximum penalty of 24%.~~

29 ~~(b) A late payment penalty may be suspended if an acceptable payment agreement is made between~~
 30 ~~the department and the employer. An employer's failure to meet the terms of the payment agreement voids~~

1 the suspension and the penalty must be recomputed from the due date on the unpaid tax.

2 (4) An employer must be assessed interest at the rate of 18% a year, computed at 1 1/2% a
3 month or fraction of a month, on any remaining unpaid tax required to be paid.

4 (5) (a) A subpoena penalty of \$50 must be assessed whenever, as the result of a refusal of an
5 employer to furnish wage information or pay taxes on time, the department issues a subpoena pursuant
6 to 15-1-302, to obtain wage information or make a summary or jeopardy assessment pursuant to 15-1-703.

7 (b) If an employer fails to honor the subpoena provided in subsection (5)(a), an additional \$100
8 penalty must be added to the liability.

9 (6) In addition to any other penalty provided by law, the failure of an employer to furnish a wage
10 and tax statement as required by 15-30-207(1) subjects the employer to a penalty of \$5 for each failure
11 with a minimum of \$50.

12 (7) Penalties may be waived by the department upon a showing of good cause by the employer.
13 The penalty may be collected in the same manner as are other tax debts including a tax lien.

14 (8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the
15 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date
16 of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the
17 warrant for distraint.

18 (9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest
19 in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if
20 the third party receives from the most recent grantor of the interest an affidavit stating that all taxes,
21 assessments, penalties, and interest due from the grantor have been paid.

22 (10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9)
23 is subject to the penalties imposed by 15-30-321(3) if any part of the affidavit is untrue. Notwithstanding
24 the provisions of 15-30-321(3), the department may bring an action as provided in that subsection in the
25 name of the state to recover the civil penalty and any delinquent taxes.

26 ~~(2)(11)~~ All of the remedies available to the state for the administration, enforcement, and collection
27 of income taxes shall be available and shall apply to the tax required to be deducted and withheld under
28 the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed in this part."

29
30 **Section 17.** Section 37-31-101, MCA, is amended to read:

1 **"37-31-101. Definitions.** Unless the context requires otherwise, in this chapter, the following
2 definitions apply:

3 (1) "Board" means the board of cosmetologists provided for in 2-15-1857.

4 (2) "Booth" means any part of a cosmetology salon or manicuring salon that is rented or leased
5 for the performance of cosmetologist services, as specified in 39-51-204~~(1)(d)~~(1)(e).

6 (3) "Cosmetology salon" means premises, building, or part of a building in which is practiced a
7 branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or
8 cosmetologist and that must have a manager-operator in charge.

9 (4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

10 (5) "Manicuring" includes nail care of the hands and feet and the application and maintenance of
11 artificial nails.

12 (6) "Manicuring salon" means premises, a building, or part of a building in which the art of
13 manicuring is practiced.

14 (7) "Practice and teaching of cosmetology" means work included in the terms "hairdressing",
15 "manicuring", and "beauty culture" and performed in cosmetology salons, in booths, or by itinerant
16 cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp,
17 face, arms, feet, or hands. The practice and teaching of cosmetology may not be construed to include
18 itinerant cosmetologists who perform their services without compensation for demonstration purposes in
19 any regularly established store or place of business holding a license from the state of Montana as a store
20 or place of business."

21

22 **Section 18.** Section 39-51-201, MCA, is amended to read:

23 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires
24 otherwise, the following definitions apply:

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

27 (2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding
28 the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to
29 the arrangement approved by the secretary of labor of the United States, the base period is the period
30 applicable under the unemployment law of the paying state. For an individual who fails to meet the

1 qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability,
 2 as defined in 39-71-116, or a similar statute of another state or the United States, the base period means
 3 the first 4 quarters of the last 5 quarters preceding the disability if a claim for unemployment benefits is
 4 filed within 24 months of the date on which the individual's disability was incurred.

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

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

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

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

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

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

21 (9) "Domestic or household service" means employment of persons other than members of the
 22 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
 23 family, including but not limited to housecleaning and yard work but does not include employment beyond
 24 the scope of normal household or domestic duties such as home health care or domiciliary care.

25 ~~(9)~~(10) "Employing unit" means any individual or organization (including the state government and
 26 any of its political subdivisions or instrumentalities), partnership, association, trust, estate, joint-stock
 27 company, insurance company, limited liability company that has filed with the secretary of state, or
 28 corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's
 29 successor, or legal representative of a deceased person that has or had in its employ one or more
 30 individuals performing services for it within this state, except as provided under 39-51-2041(a) and

1 ~~(1)(b)~~ (1)(A) and (1)(g). All individuals performing services within this state for any employing unit that
 2 maintains two or more separate establishments within this state are considered to be employed by a single
 3 employing unit for all the purposes of this chapter. Each individual employed to perform or assist in
 4 performing the work of any agent or employee of an employing unit is considered to be employed by the
 5 employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the
 6 employing unit or by the agent or employee, provided that the employing unit has actual or constructive
 7 knowledge of the work.

8 ~~(10)~~ (11) "Employment office" means a free public employment office or branch of an office
 9 operated by this state or maintained as a part of a state-controlled system of public employment offices
 10 or ~~such~~ other free public employment offices operated and maintained by the United States government
 11 or its instrumentalities as the department may approve.

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

15 ~~(12)~~ (13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic
 16 law, for which an individual has been convicted in a criminal court or has admitted or conduct that
 17 demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee
 18 or the employer.

19 ~~(13)~~ (14) "Hospital" means an institution that has been licensed, certified, or approved by the state
 20 as a hospital.

21 ~~(14)~~ (15) "Independent contractor" means an individual who renders service in the course of an
 22 occupation and:

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

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

26 ~~(15)~~ (16) (a) "Institution of higher education", for the purposes of this part, means an educational
 27 institution that:

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

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

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

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

6 (b) Notwithstanding subsection ~~(15)(a)~~ (16)(a), all universities in this state are institutions of higher
 7 education for purposes of this part.

8 ~~(16)~~ (17) "State" includes, in addition to the states of the United States of America, the District of
 9 Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

10 ~~(17)~~ (18) "Taxes" means contributions and assessments required under this chapter but does not
 11 include penalties or interest for past-due or unpaid contributions or assessments.

12 ~~(18)~~ (19) "Unemployment insurance administration fund" means the unemployment insurance
 13 administration fund established by this chapter from which administrative expenses under this chapter must
 14 be paid.

15 ~~(19)~~ (20) (a) "Wages", ~~unless specifically exempted under subsection (20)(b)~~, means all remuneration
 16 payable for personal services, including ~~commissions and bonuses~~, the cash value of all remuneration
 17 payable paid in any medium other than cash, ~~and backpay received pursuant to a dispute related to~~
 18 ~~employment~~. The reasonable cash value of remuneration payable in any medium other than cash must be
 19 estimated and determined pursuant to rules prescribed by the department. The term includes but is not
 20 limited to:

21 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations and
 22 sickness periods;

23 (ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous
 24 service by the employee for the employer, other than retirement or pension benefits from a qualified plan;
 25 and

26 (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are:

27 (A) documented by the employee to the employer for tax purposes;

28 (B) disbursed by the employer from a tip pool; or

29 (C) added to the customer's bill by the employer.

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

1 (i) the amount of any payment made by the employer FOR EMPLOYEES, if the payment was made
 2 ~~under a qualified plan as defined under the provisions of the Internal Revenue Code, established for the~~
 3 ~~employees in general or for a specific class or classes of employees, to or on behalf of the employee for:~~

4 (A) retirement or pension PURSUANT TO A QUALIFIED PLAN AS DEFINED UNDER THE
 5 PROVISIONS OF THE INTERNAL REVENUE CODE;

6 (B) sickness or accident disability under a workers' compensation ~~law~~ policy;

7 (C) medical ~~and~~ or hospitalization expenses in connection with sickness or accident disability
 8 including health insurance for the employee or the employee's immediate family; or

9 (D) death~~s~~, including life insurance for the employee or the employee's immediate family; or

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

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

14 ~~(20)(21)~~ "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

15 ~~(21)(22)~~ An individual's "weekly benefit amount" means the amount of benefits that the individual
 16 would be entitled to receive for 1 week of total unemployment."

17
 18 **Section 19.** Section 39-51-204, MCA, is amended to read:

19 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not
 20 include:

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

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

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

29 (b) ~~household and domestic~~ domestic or household service in a private home, local college club,
 30 or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is

1 otherwise subject to this chapter and has domestic or household service employment, all employees
 2 engaged in domestic or household service must be excluded from coverage under this chapter if the
 3 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 or household service; and

6 (ii) keeps separate books and records to account for the employment of persons in domestic or
 7 household 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)(b) 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 a~~
 12 ~~dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or~~
 13 ~~service performed by a sole proprietor's spouse for whom an exemption based on marital status may be~~
 14 ~~claimed by the sole proprietor under 26 U.S.C. 7703;~~

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

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

28 ~~(g)(c) services~~ service performed as a freelance correspondent or newspaper carrier or free-lance
 29 correspondent if the person performing the services service, or a parent or guardian of the person
 30 performing the services service in the case of a minor, has acknowledged in writing that the person

1 performing the ~~services~~ service and the ~~services~~ service are not covered. As used in this subsection:

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

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

7 ~~(h)(d) services~~ service performed by as a real estate, securities, and insurance salespeople paid
8 solely by commissions and without guarantee of minimum earnings broker or salesperson who is licensed
9 pursuant to Title 37, chapter 51;

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

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

23 ~~(k) service performed in the employ of a hospital if the service is performed by a patient of the~~
24 ~~hospital;~~

25 ~~(h)(e) services~~ service performed by a cosmetologist who is licensed under Title 37, chapter 31,
26 or a barber who is licensed under Title 37, chapter 30, and:

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

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

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

2 (B) receives payment for ~~services~~ service from individual clientele; and

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

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

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

12 ~~(n)~~(g) employment of service performed by sole proprietors, working members of a partnership,
13 or members of a member-managed limited liability company that has filed with the secretary of state or
14 partners in a limited liability partnership that has filed with the secretary of state;

15 ~~(o)~~(h) services service performed for the installation of floor coverings if the installer:

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

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

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

19 (iv) may accept or reject any job;

20 (v) furnishes substantially all tools and equipment necessary to provide the ~~services~~ service; and

21 (vi) works under a written contract that:

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

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

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

27 ~~(p)~~(i) employment of service performed as a direct seller, as defined in 26 U.S.C. 3508 As used
28 in this section, "direct seller" means a person:

29 (i) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,
30 vacuum cleaners, and cleaning products at the home of the consumer;

1 (ii) whose pay is determined by the quantity of product sold; and

2 (iii) who works under a written contract that states the person will not be treated as an employee;

3 ~~(j) services~~ service performed by a petroleum land professional. As used in this subsection,
4 "petroleum land professional" means a person who:

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

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

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

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

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

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

15 ~~(b) service~~ service performed by an ordained, commissioned, or licensed minister of a church in the
16 exercise of the church's ministry or by a member of a religious order in the exercise of duties required by
17 the order;

18 ~~(c) service~~ service performed by an individual receiving rehabilitation or remunerative work in a facility
19 conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity
20 is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals
21 who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor
22 market ~~by an individual receiving rehabilitation or remunerative work;~~

23 ~~(d) service~~ service performed as part of an unemployment work-relief or work-training program assisted
24 or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the
25 state by an individual receiving work relief or work training; ~~or~~

26 ~~(e) service~~ service performed for a state prison or other state correctional or custodial institution by an
27 inmate of that institution;

28 (o) service performed by an individual who is sentenced to perform court-ordered community
29 service or similar work;

30 (p) service performed by elected public officials;

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

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

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

9 (r) service performed in the employ of any other state or its political subdivisions or of the United
10 States government or of an instrumentality of any other state or states or their political subdivisions or of
11 the United States, except that national banks organized under the national banking law are not entitled to
12 exemption under this subsection and are subject to this chapter the same as state banks, if the service is
13 excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;

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

21 (t) service performed in the employ of a school or university if the service is performed by a student
22 who is enrolled and is regularly attending classes at a school or university or by the spouse of a student
23 if the spouse is advised, at the time that the spouse commences to perform the service, that the
24 employment of the spouse to perform the service is provided under a program to provide financial
25 assistance to the student by the school or university and that the employment is not covered by any
26 program of unemployment insurance;

27 (u) service performed by an individual who is enrolled at a nonprofit or public educational institution
28 that normally maintains a regular faculty and curriculum and normally has a regularly organized body of
29 students in attendance at the place where its educational activities are carried on, as a student in a full-time
30 program taken for credit at an institution that combines academic instruction with work experience if the

1 service is an integral part of the program and the institution has certified that fact to the employer, except
 2 that this subsection (1)(u) does not apply to service performed in a program established for or on behalf
 3 of an employer or group of employers;

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

6 (w) service performed by an alien admitted to the United States to perform agricultural labor
 7 pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act.

8 ~~(4)(2)~~ An individual found to be an independent contractor by the department under the terms of
 9 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
 10 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
 11 39-51-2402.

12 ~~(5)(3)~~ This section does not apply to a state or local governmental entity or a nonprofit organization
 13 defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from
 14 employment as defined in the Federal Unemployment Tax Act."

15
 16 **Section 20.** Section 39-51-301, MCA, is amended to read:

17 "**39-51-301. Administration -- duties and powers of department.** (1) It ~~shall be~~ is the duty of the
 18 department to administer this chapter and it ~~shall have power and authority to~~ may adopt, amend, or
 19 rescind ~~such~~ rules, to employ ~~such~~ persons, make ~~such~~ expenditures, require ~~such~~ reports, make ~~such~~
 20 investigations, and take ~~such other~~ action as it ~~deems~~ considers necessary or suitable ~~to that end in~~ in
 21 administering this chapter.

22 (2) The department shall determine its own organization and methods of procedure in accordance
 23 with the provisions of this chapter and shall have an official seal, which ~~shall be~~ is judicially noticed.

24 (3) Whenever the department believes that a change in contribution or benefit rates will become
 25 necessary to protect the solvency of the fund, it shall promptly ~~so~~ inform the governor and the legislature
 26 and make recommendations with respect ~~thereto~~ to the change.

27 (4) The department and the board may issue subpoenas and compel testimony and the production
 28 of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

29 (5) The department shall delegate to the department of revenue duties associated with the
 30 administration of unemployment insurance contributions and the employment security account so long as

1 the duties are carried out in conformity with the requirements of the program budget plan with the United
2 States department of labor. The delegated duties do not include oversight duties such as revenue quality
3 control, risk management, and trust fund management. The department of revenue must receive funds
4 from the department for the performance of the delegated duties.

5 (6) Employees transferring from the department to the department of revenue as a result of a
6 delegation of duties in subsection (5), are entitled to all rights including those under 2-15-131, possessed
7 as a state officer or employee before transferring, including rights to tenure in office and of rank or grade,
8 rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union
9 contract, rights to compensatory time earned, and any other rights under any law or administrative policy
10 including the State Employee Protection Act. Employees transferring must be considered internal applicants
11 by the department of revenue for recruitment purposes for the period from July 1, 1997, through June 30,
12 1998.

13 (7) The department of revenue shall succeed the department in its rights to property relating to the
14 delegation of duties in subsection (5) to the extent that is consistent with federal property transfer policy.
15 The property includes real property, records, office equipment, forms, supplies, and contracts other than
16 the program budget plan with the United States department of labor.

17 (8) (a) The delegation of duties in subsection (5) does not affect the validity of any pending judicial
18 or administrative proceeding.

19 (b) Appeals that were filed with the board of labor appeals or the department's hearings bureau
20 before July 1, 1997, must follow the procedures and processes in effect when the appeal was first taken.
21 An appeal that is filed on or after July 1, 1997, must be taken in accordance with the procedures and
22 processes in effect on the date the appeal is filed.

23 (c) The department of revenue must be substituted for the department and succeed to all audits,
24 determinations, and other actions that have not been appealed to the board of labor appeals or the
25 department's hearings bureau prior to July 1, 1997.

26 (9) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the
27 parties to contracts, leases, indentures, and other transactions entered into before the delegation of duties
28 in subsection (5) remain in effect, and none of those rights, privileges, duties, covenants, or agreements
29 are impaired or diminished by reason of the delegation of duties. The department of revenue is substituted
30 for the department and subject to the provisions of subsection (5), succeeds to the rights and duties under

1 the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this
 2 subsection (9) do not apply to the program budget plan agreement between the department and the United
 3 States department of labor."

4
 5 **Section 21.** Section 39-51-1109, MCA, is amended to read:

6 **"39-51-1109. Tax appeals -- procedure. (1)** A decision, determination, or redetermination of the
 7 department involving ~~contribution liability, contribution rate, application for refund, employment status, an~~
 8 employer-employee relationship or the charging of benefit payments to employers ~~making payment in lieu~~
 9 ~~of contributions~~ is final unless an interested party entitled to notification submits a written appeal of the
 10 decision, determination, or redetermination. The appeal must be made in the same manner as provided in
 11 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory
 12 rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be conducted
 13 by telephone or by videoconference. The decision of the appeals referee and any subsequent appeal must
 14 be made in the same manner as prescribed in 39-51-2403 through 39-51-2410.

15 (2) A decision, determination, or redetermination involving contribution liability, contribution rate,
 16 application for refund, subject wages, or other tax-related issues must be issued by the department of
 17 revenue as provided in Title 15, chapter 1, part 2 and [section 7], if applicable. The decision is final unless
 18 an interested party entitled to notification follows the uniform tax review procedures as prescribed in
 19 15-1-211 and [section 7], if applicable."

20
 21 **Section 22.** Section 39-51-1110, MCA, is amended to read:

22 **"39-51-1110. Refunds to employers. (1)** ~~If not later than 3 years after the date on which any~~
 23 ~~taxes or interest thereon became due or not later than 1 year from the date on which payment was made,~~
 24 ~~whichever is later, an employer who has paid such taxes or interest thereon shall make application for an~~
 25 ~~adjustment thereof in connection with subsequent tax payments or for a refund thereof because such~~
 26 ~~adjustment cannot be made and the department shall determine that such taxes or interest or any portion~~
 27 ~~thereof was erroneously collected, the department shall allow such employer to make an adjustment~~
 28 ~~thereof, without interest, in connection with subsequent tax payments by him or, if such adjustment cannot~~
 29 ~~be made, the department shall refund said amount, without interest, from the fund. For like cause and~~
 30 ~~within the same period, adjustment or refund may be so made on the department's own initiative. If an~~

1 employer claims an adjustment or the department or its delegate, as provided in 39-51-301, determines
 2 through an examination of the employer's account that the employer has overpaid the amount due, the
 3 amount of the overpayment must be applied to future unemployment insurance obligations or must be
 4 refunded to the employer. The credit or refund may be allowed only if the claim is filed, or the determination
 5 is made, within a 5-year period after the date on which any taxes, penalty, or interest became due or within
 6 one year from the date the payment is made, whichever is later. The department or its delegate pursuant
 7 to 39-51-301(5), shall credit or refund the amount to the employer, without interest.

8 (2) If the department ~~shall determine~~ or its delegate pursuant to 39-51-301(5), determines that an
 9 employer has paid taxes to this state under this chapter ~~when such~~ but the taxes should have been paid
 10 to another state under a similar act of ~~such~~ the other state, a transfer of ~~such~~ the taxes to ~~such~~ the other
 11 state ~~shall~~ must be made upon discovery or, upon proof of payment that ~~such~~ the other state has been fully
 12 paid, then a refund to ~~such~~ the employer ~~shall~~ must be made ~~at any time~~ upon application without limitation
 13 of time.

14 (3) ~~In the event that~~ if this chapter is not certified by the secretary of labor under 26 U.S.C. 3304
 15 ~~section 1603 of the Internal Revenue Code, as amended, 1939,~~ for any year, then ~~and in that event~~ refunds
 16 ~~shall~~ must be made of all taxes required under this chapter from employers for that year."

17
 18 **Section 23.** Section 39-51-1301, MCA, is amended to read:

19 "**39-51-1301. Penalty and interest on past-due reports and taxes.** (1) ~~Taxes unpaid on the date~~
 20 ~~on which they are due and payable, as provided by 39-51-1103(1) and (2) and 39-51-1125, that are paid~~
 21 ~~by the end of the month following the due date are subject to a penalty assessment of \$10 or 10% of the~~
 22 ~~taxes due, whichever is greater. If the taxes are not paid by the end of the month following the due date,~~
 23 ~~the employer is subject to a penalty assessment of \$15 or 15% of the taxes due, whichever is greater. All~~
 24 ~~past due taxes bear interest at the rate of 18% a year, to be prorated on a daily basis.~~

25 (2) ~~A penalty of \$40 must be assessed whenever, as the result of a willful refusal of an employer~~
 26 ~~to furnish wage information or pay taxes on time, the department issues a subpoena to obtain wage~~
 27 ~~information or makes a summary or jeopardy assessment pursuant to 39-51-1302. Failure to file reports~~
 28 and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may
 29 subject an employer to penalty and interest, as provided by 15-30-209.

30 ~~(3)(2)~~ There is an account in the federal special revenue fund. Penalties and interest collected ~~under~~

1 ~~this section~~ for unemployment insurance obligations are distributed as provided in [section 2], and must
 2 be deposited in that account. Money deposited in that account and appropriated to the department or
 3 transferred by the department to its delegate, pursuant to 39-51-301(5), may only be used by the
 4 department or its delegate to administer this chapter, including the detection and collection of unpaid taxes
 5 and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated
 6 for this purpose. Money in the account not appropriated for these purposes must be transferred by the
 7 department to the unemployment insurance trust fund at the end of each fiscal year.

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

10 ~~(5)(3)~~ All money accruing to the unemployment insurance trust fund from interest and penalties
 11 collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment
 12 insurance benefits and may not be used for any other purpose."

13
 14 **Section 24.** Section 39-51-1303, MCA, is amended to read:

15 **"39-51-1303. Collection of unpaid taxes by civil action.** (1) The department, or its delegate
 16 pursuant to 39-51-301(5), has authority to enter into payment agreements with an employer to resolve
 17 unpaid taxes, penalty, and interest. Penalty or interest, or both penalty and interest may be abated if an
 18 acceptable payment agreement is entered into and adhered to. Failure to meet the terms of the payment
 19 agreement voids the penalty and interest abatement and penalty and interest must be recomputed from the
 20 due date of the unpaid tax.

21 (2) If, after due notice, any employer, liable corporate officer or employee, or liable member or
 22 manager of a limited liability company referred to in 39-51-1105 or partner in a limited liability partnership
 23 defaults in any payment of taxes, penalties, or interest on the taxes and penalties, the department, or its
 24 delegate pursuant to 39-51-301(5), may initiate a civil action in the name of the department state to collect
 25 the amount due, and the employer, liable corporate officer or employee, or liable member or manager of
 26 a limited liability company referred to in 39-51-1105, or partner in a limited liability partnership adjudged
 27 in default shall pay the costs of the action.

28 ~~(2)(3)~~ An action for the collection of taxes due must be brought within 5 years after from the due
 29 date of the original or amended report was filed or assessment became due, whichever is later, taxes or
 30 it is barred.

1 ~~(3)~~(4) The department, or its delegate pursuant to 39-51-301(5), may pursue its remedy under
2 either 39-51-1304 or this section, or both."

3

4 **Section 25.** Section 39-51-2108, MCA, is amended to read:

5 **"39-51-2108. Payment of benefits based on service in public, charitable, or educational**
6 **organizations.** (1) Benefits based on service in employment defined in ~~subsections (5) and (6) of~~
7 39-51-203(5) and (6) and subsections (2) and (3) of 39-51-204 are payable in the same amount, on the
8 same terms, and subject to the same conditions as compensation payable on the basis of other service
9 subject to this chapter, except that benefits based on service in an instructional, research, or principal
10 administrative capacity for an educational institution may not be paid to an individual for any week of
11 unemployment which begins during the period between two successive academic years or during a similar
12 period between two regular terms, whether or not successive, or during a period of paid sabbatical leave
13 provided for in the individual's contract if the individual has a contract or reasonable assurance of a
14 contract to perform services in any ~~such~~ INSTRUCTIONAL, RESEARCH, OR PRINCIPAL ADMINISTRATIVE
15 capacity for ~~any such~~ the educational institution for both ~~such~~ academic years or both ~~such~~ terms.

16 (2) Benefits based on services in any other capacity for an educational institution ~~shall~~ must be
17 denied to any individual for any week which commences during a period between 2 successive academic
18 years or terms if the individual performs ~~such~~ the services in the first of ~~such~~ the academic years or terms
19 and there is a reasonable assurance that the individual will perform ~~such~~ the services in the second of ~~such~~
20 the academic years or terms. If any individual is denied benefits and was not offered an opportunity to
21 perform ~~such~~ the service for the educational institution for the second of ~~such~~ the academic years or terms,
22 ~~such~~ the individual ~~shall be~~ is entitled to a retroactive payment of the benefits for each week for which the
23 individual filed a timely claim for benefits and for which benefits were denied solely by reason of the denial
24 provided for in this section.

25 (3) Benefits based on services described in subsections (1) and (2) of this section ~~shall~~ must be
26 denied to any individual for any week ~~which~~ that commences during an established and customary vacation
27 period or holiday recess if ~~such~~ the individual performs ~~such~~ the services in the period immediately before
28 ~~such~~ the vacation period or holiday recess and there is reasonable assurance that ~~such~~ the individual will
29 perform ~~such~~ the service in the period immediately following ~~such~~ the vacation period or holiday recess.

30 (4) Benefits based on services described in subsections (1) and (2) ~~of this section~~ to an individual

1 who performed ~~such the~~ services for an educational institution while in the employ of an educational service
 2 agency ~~shall must~~ be denied as specified in subsections (1), ~~(2), and~~ through (3) ~~of this section~~. The term
 3 "educational service agency" means a governmental agency or governmental entity which is established
 4 and operated exclusively for the purpose of providing ~~such the~~ service to one or more educational
 5 institutions."

6
 7 **Section 26.** Section 39-51-2402, MCA, is amended to read:

8 "**39-51-2402. Initial determination -- redetermination.** (1) A representative designated by the
 9 department and ~~hereinafter~~ referred to as a deputy shall promptly examine the claim and, on the basis of
 10 the facts the deputy has found, ~~by the deputy,~~ shall ~~either~~ determine whether or not ~~such the~~ claim is valid,
 11 ~~and, if~~ If the claim is valid, the deputy will determine the week with respect to which the benefits shall
 12 commence, the weekly benefit amount payable, and the maximum benefit amount. ~~or shall~~ The deputy may
 13 refer such the claim or any question involved therein in the claim to an appeals referee who shall make the
 14 decision with respect thereto on the claim in accordance with the procedure prescribed in 39-51-2403.
 15 With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must
 16 be resolved in accordance with procedures for unemployment insurance benefit claimant appeals as
 17 prescribed in [section 7] and 15-2-302. The deputy shall promptly notify the claimant and any other
 18 interested party of the decision and the reasons ~~therefor~~ for reaching the decision.

19 (2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant
 20 and ~~such~~ other interested parties of the amended decision and the reasons ~~therefor~~ for the decision.

21 (3) ~~No~~ A determination or redetermination of an initial or additional claim may not be made under
 22 this section unless 5 days' notice of the time and place of the claimant's interview for examination of the
 23 claim is mailed to each interested party.

24 (4) A determination or redetermination ~~shall be deemed~~ is final unless an interested party entitled
 25 to notice ~~thereof~~ of the decision applies for reconsideration of the determination or appeals ~~therefrom~~ the
 26 decision within 10 days after ~~such the~~ notification was mailed to the interested party's last-known address,
 27 ~~provided that such~~ The 10-day period may be extended for good cause.

28 (5) Except as provided in subsection (6), ~~no~~ a redetermination of a claim for benefits may not be
 29 made after 2 years from the date of the initial determination.

30 (6) A redetermination may be made within 3 years from the date of the initial determination of a

1 claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a
 2 material fact by the claimant or the employer."

3

4 **Section 27.** Section 39-71-123, MCA, is amended to read:

5 **"39-71-123. Wages defined.** (1) "Wages" means ~~the gross~~ all remuneration paid ~~in money, or in~~
 6 ~~a substitute for money,~~ for services ~~rendered~~ performed by an employee for an employer, or income
 7 provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium
 8 other than cash. The term includes but ~~are~~ is not limited to:

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

11 (b) ~~board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is~~
 12 ~~based on its actual value~~ severance or continuation pay, back pay, and OR any similar pay made for or in
 13 regards to previous service by the employee for the employer, other than retirement or pension benefits
 14 from a qualified plan;

15 (c) ~~payments made to an employee on any basis other than time worked, including but not limited~~
 16 ~~to piecework, an incentive plan, or profit-sharing arrangement~~ tips or other gratuities received by the
 17 employee, to the extent that tips or gratuities are:

18 (i) documented by the employee to the employer for tax purposes;

19 (ii) disbursed by the employer from a tip pool; or

20 (iii) added to the customer's bill by the employer; and

21 (d) income or payment in the form of a draw, wage, net profit, or substitute for money received
 22 or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed
 23 work or provided services for that remuneration;

24 (e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is
 25 based on its actual value; and

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

28 (2) ~~Wages do~~ The term "wages" does not include any of the following:

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

1 (b) ~~special rewards for individual invention or discovery~~ the amount of the payment made by the
 2 employer FOR EMPLOYEES, if the payment was made under a qualified plan, established for the employees
 3 for the purpose of providing for:

4 (i) retirement or pension PURSUANT TO A QUALIFIED PLAN AS DEFINED UNDER THE
 5 PROVISIONS OF THE INTERNAL REVENUE CODE;

6 (ii) sickness or accident disability under a workers' compensation policy;

7 (iii) medical or hospitalization expenses in connection with sickness or accident disability, including
 8 health insurance for the employee or the employee's immediate family; or

9 (iv) death, including life insurance for the employee or the employee's immediate family;

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

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

13 ~~(c)~~ vacation or sick leave benefits accrued but not paid; or

14 (d) special rewards for individual invention or discovery.

15 (3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average
 16 actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except
 17 that if the term of employment for the same employer is less than four pay periods, the employee's wages
 18 are the hourly rate times the number of hours in a week for which the employee was hired to work.

19 (b) For good cause shown, if the use of the last four pay periods does not accurately reflect the
 20 claimant's employment history with the employer, the wage may be calculated by dividing the total earnings
 21 for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks
 22 in that period, including periods of idleness or seasonal fluctuations.

23 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent
 24 employments, the average actual wages must be calculated as provided in subsection (3). As used in this
 25 subsection, "concurrent employment" means employment in which the employee was actually employed
 26 at the time of the injury and would have continued to be employed without a break in the term of
 27 employment if not for the injury.

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

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

5
 6 **Section 28.** Section 39-71-401, MCA, is amended to read:

7 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
 8 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
 9 all employees, as defined in 39-71-118. An employer who has any employee in service under any
 10 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
 11 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
 12 Compensation Act is subject to and bound by the compensation plan that has been elected by the
 13 employer.

14 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
 15 allows an election, the Workers' Compensation Act does not apply to any of the following employments:

16 (a) household and domestic employment;

17 (b) casual employment as defined in 39-71-116;

18 (c) employment of a dependent member of an employer's family for whom an exemption may be
 19 claimed by the employer under the federal Internal Revenue Code;

20 (d) employment of sole proprietors, working members of a partnership, or working members of a
 21 member-managed limited liability company, except as provided in subsection (3);

22 (e) employment of a broker or salesman performing under a license issued by the board of realty
 23 regulation;

24 (f) employment of as a direct seller, as defined in 26 U.S.C. 3508 ~~as defined in 26 U.S.C. 3508~~ As used in this section, "direct
 25 seller" means a person:

26 (i) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,
 27 vacuum cleaners, and cleaning products at the home of the consumer;

28 (ii) whose pay is determined by the quantity of product sold; and

29 (iii) who works under a written contract that states the person will not be treated as an employee;

30 (g) employment for which a rule of liability for injury, occupational disease, or death is provided

1 under the laws of the United States;

2 (h) employment of a person performing services in return for aid or sustenance only, except
3 employment of a volunteer under 67-2-105;

4 (i) employment with a railroad engaged in interstate commerce, except that railroad construction
5 work is included in and subject to the provisions of this chapter;

6 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
7 event, unless the person is otherwise employed by a school district;

8 (k) employment of a person performing services as a newspaper carrier or ~~free-lance~~ freelance
9 correspondent if the person performing the services or a parent or guardian of the person performing the
10 services in the case of a minor has acknowledged in writing that the person performing the services and
11 the services are not covered. As used in this subsection, "~~free-lance~~ freelance correspondent" is a person
12 who submits articles or photographs for publication and is paid by the article or by the photograph. As used
13 in this subsection, "newspaper carrier":

14 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
15 bundles; but

16 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
17 carries or delivers papers.

18 (l) cosmetologist's services and barber's services as defined in 39-51-204~~(1)(d)~~(1)(e);

19 (m) a person who is employed by an enrolled tribal member or an association, business,
20 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
21 business is conducted solely within the exterior boundaries of an Indian reservation;

22 (n) employment of a jockey performing under a license issued by the board of horseracing from the
23 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
24 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
25 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

26 (o) employment of an employer's spouse for whom an exemption based on marital status may be
27 claimed by the employer under 26 U.S.C. 7703;

28 (p) a person who performs services as a petroleum land professional. As used in this subsection,
29 a "petroleum land professional" is a person who:

30 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in

1 negotiating a business agreement for the exploration or development of minerals;

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

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

5 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
6 liability company who qualifies under one or more of the following provisions:

7 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
8 limited liability company and does not receive any pay from the corporation or the limited liability company
9 for performance of the duties;

10 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
11 limited liability company;

12 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
13 or owns 20% or more of the limited liability company; or

14 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
15 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
16 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

17 (r) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
18 of the church's ministry or by a member of a religious order in the exercise of duties required by the order.

19 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
20 member-managed limited liability company who represents to the public that the person is an independent
21 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
22 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

23 (b) The application must be made in accordance with the rules adopted by the department. There
24 is no fee for the initial application. Any subsequent application must be accompanied by a \$25 application
25 fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset
26 the costs of administering the program.

27 (c) When an application is approved by the department, it is conclusive as to the status of an
28 independent contractor and precludes the applicant from obtaining benefits under this chapter.

29 (d) The exemption, if approved, remains in effect for 1 year following the date of the department's
30 approval. To maintain the independent contractor status, an independent contractor shall annually submit

1 a renewal application. A renewal application must be submitted for all independent contractor exemptions
2 approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee
3 must be received by the department at least 30 days prior to the anniversary date of the previously
4 approved exemption.

5 (e) A person who makes a false statement or misrepresentation concerning that person's status
6 as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose
7 the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured
8 employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

9 (f) If the department denies the application for exemption, the applicant may contest the denial by
10 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
11 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with
12 the procedure established in 39-51-2403 and 39-51-2404.

13 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
14 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
15 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
16 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
17 manner:

18 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
19 delivering the notice to the board of directors of the corporation or to the management organization of the
20 manager-managed limited liability company; or

21 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
22 delivering the notice to the board of directors of the corporation or to the management organization of the
23 manager-managed limited liability company and to the insurer.

24 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
25 the employer shall again serve notice to its insurer and to its board of directors or the management
26 organization of the manager-managed limited liability company if the employer elects to be bound.

27 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
28 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
29 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
30 exemption from coverage.

1 (6) Each employer shall post a sign in the workplace at the locations where notices to employees
 2 are normally posted, informing employees about the employer's current provision of workers' compensation
 3 insurance. A workplace is any location where an employee performs any work-related act in the course of
 4 employment, regardless of whether the location is temporary or permanent, and includes the place of
 5 business or property of a third person while the employer has access to or control over the place of
 6 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
 7 The sign must be provided by the department, distributed through insurers or directly by the department,
 8 and posted by employers in accordance with rules adopted by the department. An employer who purposely
 9 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

10
 11 **Section 29.** Section 39-71-2501, MCA, is amended to read:

12 **"39-71-2501. Definitions.** As used in this part, the following definitions apply:

13 (1) "Account" means the workers' compensation bond repayment account established in
 14 39-71-2504.

15 (2) "Department" means the department of revenue provided for in 2-15-1301.

16 (3) "Domestic or household service" means employment of persons other than members of the
 17 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
 18 family, including but not limited to housecleaning and yard work but does not include employment beyond
 19 the scope of normal household or domestic duties, such as home health care or domiciliary care.

20 ~~(3)(4)~~ "Employee" includes:

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

25 (b) an officer of a corporation;

26 (c) any individual who performs services for another individual or organization having the right to
 27 control the employee as to the services to be performed and as to the manner of performance; and

28 (d) all classes, grades or types of employees, including minors and aliens, superintendents,
 29 managers, and other supervisory personnel.

30 ~~(4)(a)~~(5) (a) "Employer" means:

1 ~~(i) except as provided in subsection (4)(b), the person for whom an individual performs or~~
 2 ~~performed any service, of whatever nature, as an employee of the person;~~

3 ~~(b) If the person for whom the individual performs or performed the service does not have control~~
 4 ~~of the payment of the wages for the service, the term "employer" means the person who has control of~~
 5 ~~the payment of wages.~~

6 (i) a person who pays \$1,000 or more in wages within the current calendar year;

7 (iii) a person who pays \$1,000 or more in cash for domestic service in any quarter during the
 8 current calendar year; or

9 (iv) any individual or organization, including state government and any of its political subdivision
 10 or instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited
 11 liability company or a limited liability partnership that has filed or registered with the secretary of state,
 12 corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's
 13 successor, or legal representative of a deceased person that has or had in its employ one or more
 14 individuals performing services for it within this state.

15 (b) Any person found to be an employer under Title 39, chapter 51, for unemployment insurance
 16 purposes is considered an employer for old fund liability tax purposes.

17 ~~(6)~~ (6) "Federal workers' compensation legislation" means federal legislation that provides an
 18 employee with compensation or remuneration for accidental injury or death. This legislation includes but
 19 is not limited to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the
 20 Defense Base Act.

21 ~~(7)~~ (7) "Ongoing activities" means obligations or occurrences that are continuous, rather than
 22 intermittent or occasional, that exist for a definite period of time during the year, or that are intended to
 23 cover or apply to successive and similar obligations or occurrences.

24 ~~(8)~~ (8) "Publicly traded limited partnership" means a business entity that issues shares or similar
 25 ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders
 26 on a public exchange recognized by the securities exchange commission.

27 ~~(9)~~ (9) "State fund" means the state compensation insurance fund.

28 ~~(10)~~ (10) "Tax" or "old fund liability tax" means the workers' compensation old fund liability tax
 29 provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from
 30 accidents that occurred before July 1, 1990.

1 ~~(10)(11)~~ (a) "Wages" means all remuneration for services performed in the state of Montana by
 2 an employee for an employer, including the cash value of all remuneration paid in any medium other than
 3 cash. The term ~~does not include remuneration paid~~ includes but is not limited to the following:

4 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and
 5 sickness periods;

6 (ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous
 7 service by the employee for the employer, other than retirement or pension benefits from a qualified plan;
 8 and

9 (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are:

10 ~~(A) documented by the employee to the employer for tax purposes;~~

11 ~~(B) disbursed by the employer from a tip pool; or~~

12 ~~(C) added to the customer's bill by the employer.~~

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

18 ~~(i) on each of 24 days during the calendar quarter, the individual performs service not in the course~~
 19 ~~of the employer's trade or business for the employer for some portion of the day; and~~

20 ~~(ii) the individual was regularly employed, as determined under subsection (10)(a)(i), by the~~
 21 ~~employer in the performance of service during the preceding calendar quarter.~~

22 ~~(b) for services not in the course of the employer's trade or business, to the extent that~~
 23 ~~remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals~~
 24 ~~and the payments are received by the employee at the request of and for the convenience of the employer;~~

25 ~~(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or~~
 26 ~~program that benefits the employee, including but not limited to life insurance, hospitalization insurance for~~
 27 ~~the employee or the employee's dependents, and employees' club activities;~~

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

29 (i) the amount of any payment made by the employer FOR EMPLOYEEES, if the payment was made
 30 under a qualified plan as defined under the provisions of the Internal Revenue Code established for

1 employees for:

2 (A) retirement or pension PURSUANT TO A QUALIFIED PLAN AS DEFINED UNDER THE
3 PROVISIONS OF THE INTERNAL REVENUE CODE;

4 (B) sickness or accident disability under a workers' compensation policy;

5 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
6 health insurance for the employee or the employee's immediate family; or

7 (D) death, including life insurance for the employee or the employee's immediate family;

8 (ii) compensation in the form of meals and lodging, provided the compensation is not includable
9 in gross income for state individual income tax purposes;

10 ~~(d)(iii) as payments distributions~~ from a multiple employer welfare arrangement, as defined in 29
11 U.S.C. 1002, to a qualified individual employee;

12 ~~(e)(iv) as wages or compensation, the taxation of which is prohibited by payments that may not~~
13 ~~be taxed under~~ federal law; or

14 ~~(f)(v) as wages or compensation for services performed by Montana residents outside the borders~~
15 ~~of the state of Montana."~~

16

17 **Section 30.** Section 39-71-2503, MCA, is amended to read:

18 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
19 employer, except an employer whose employees are covered by federal workers' compensation legislation,
20 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
21 old fund liability tax provided in 39-71-2505, of the wages paid for employment as defined in this part by
22 the employer in the preceding payroll period subject to reporting and remittance requirements contained in
23 15-30-204.

24 ~~(i) for the preceding payroll period for employers subject to the payment schedule contained in~~
25 ~~15-30-204(1);~~

26 ~~(ii) for the preceding month for employers subject to the payment schedule contained in~~
27 ~~15-30-204(2); and~~

28 ~~(iii) for the preceding year for employers subject to the payment schedule contained in~~
29 ~~15-30-204(3)(a).~~

30 (b) There is imposed on each employee, except an employee who is covered by federal workers'

1 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages
2 paid for employment, as defined in this part. An employer paying wages for ~~services performed~~
3 employment, as defined in this part, in Montana shall deduct and withhold the tax from the wages.

4 (c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
5 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
6 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
7 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
8 partner, or member or manager derived from ongoing activities.

9 (ii) The tax imposed in this subsection (1)(c) applies only to the ordinary income of a shareholder,
10 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

11 (iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this
12 subsection (1)(c).

13 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
14 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
15 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
16 officer's wages.

17 (e) A corporate officer of a closely held corporation who owns stock in a closely held corporation
18 that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives
19 wages as an employee of the corporation is required to pay the old fund liability tax only on the wages
20 received. The corporation is not liable for the tax on the corporate officer's wages.

21 (f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred
22 for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or
23 bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans
24 or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month
25 period if the workers' compensation bond repayment account contains on the first day of that period an
26 amount, regardless of the source, that is in excess of the reserve maintained in the account and that is
27 equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest
28 that must be paid during that period on the outstanding loans or bonds.

29 (g) Each employer shall maintain the records that the department requires concerning the old fund
30 liability tax. The records are subject to inspection by the department and its employees and agents during

1 regular business hours.

2 (h) An employee does not have any right of action against an employer for any money deducted
3 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
4 this section.

5 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
6 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
7 old fund liability tax required by this section.

8 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
9 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and
10 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
11 the old fund liability tax required by this section.

12 (2) All collections of the tax must be deposited as received in the account. The tax is in addition
13 to any other tax or fee assessed against persons subject to the tax.

14 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made pursuant
15 to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any
16 remainder to the account provided for in 39-71-2504.

17 (b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of
18 partnerships, and members or managers of limited liability companies must be made with and at the same
19 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment
20 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided
21 for in 39-71-2504.

22 (c) An employer who exceeds either threshold, as defined in 39-71-2501(5)(a)(ii) or (5)(a)(iii), shall
23 begin withholding old fund liability tax on or before the last day of the month following the quarter in which
24 the wages paid exceed the threshold requirement. The employer shall begin reporting and remitting the
25 employer and employee portions of the old fund liability tax. The report and remittance are due the last
26 day of the month of the subsequent quarter following the quarter in which the wages paid exceeded the
27 threshold requirement. The employer is subject to the quarterly remittance schedule until the department
28 is able to determine the employer's proper remittance schedule by a review of the employer's first complete
29 lookback period.

30 (4) An employer's officer or employee with the duty to collect, account for, and pay to the

1 department the amounts due under this section who fails to pay an amount is liable to the state for the
2 unpaid amount and any penalty and interest relating to that amount.

3 (5) Returns and remittances under subsection (3) and any information obtained by the department
4 during an audit are subject to the provisions of ~~15-30-303, [section 1] but the department may disclose~~
5 ~~the information to the department of labor and industry for the purpose of investigation and prevention of~~
6 ~~noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under~~
7 ~~circumstances and conditions that ensure the continued confidentiality of the information.~~

8 (6) The department of labor and industry and the state fund shall give the department a list of all
9 employers having coverage under any plan administered or regulated by the department of labor and
10 industry and the state fund. The department of labor and industry and the state fund shall update the lists
11 weekly. The department of labor and industry and the state fund shall provide the department with access
12 to their computer data bases and paper files and records for the purpose of the department's administration
13 of the tax imposed by this section.

14 (7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part
15 regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments,
16 credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking
17 authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation
18 shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the
19 department."

20

21 **Section 31.** Section 39-71-2503, MCA, is amended to read:

22 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
23 employer, except an employer whose employees are covered by federal workers' compensation legislation,
24 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
25 old fund liability tax provided in 39-71-2505, of the wages paid for employment as defined in this part by
26 the employer in the preceding payroll period, subject to reporting and remittance requirements contained
27 in 15-30-204;

28 ~~(i) for the preceding payroll period for employers subject to the payment schedule contained in~~
29 ~~15-30-204(1);~~

30 ~~(ii) for the preceding month for employers subject to the payment schedule contained in~~

1 ~~15-30-204(2); and~~

2 ~~(iii) for the preceding year for employers subject to the payment schedule contained in~~
3 ~~15-30-204(3)(a).~~

4 (b) There is imposed on each employee, except an employee who is covered by federal workers'
5 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages
6 paid for employment, as defined in this part. An employer paying wages for ~~services performed~~
7 employment, as defined in this part, in Montana shall deduct and withhold the tax from the wages.

8 (c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
9 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
10 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
11 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
12 partner, or member or manager derived from ongoing activities.

13 (ii) The tax imposed in this subsection (1)(c) applies only to the ordinary income of a shareholder,
14 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

15 (iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this
16 subsection (1)(c).

17 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
18 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
19 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
20 officer's wages.

21 (e) A corporate officer of a closely held corporation who owns stock in a closely held corporation
22 that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives
23 wages as an employee of the corporation is required to pay the old fund liability tax only on the wages
24 received. The corporation is not liable for the tax on the corporate officer's wages.

25 (f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred
26 for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or
27 bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans
28 or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month
29 period if the workers' compensation bond repayment account contains on the first day of that period an
30 amount, regardless of the source, that is in excess of the reserve maintained in the account and that is

1 equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest
2 that must be paid during that period on the outstanding loans or bonds.

3 (g) Each employer shall maintain the records that the department requires concerning the old fund
4 liability tax. The records are subject to inspection by the department and its employees and agents during
5 regular business hours.

6 (h) An employee does not have any right of action against an employer for any money deducted
7 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
8 this section.

9 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
10 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
11 old fund liability tax required by this section.

12 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
13 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and
14 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
15 the old fund liability tax required by this section.

16 (2) All collections of the tax must be deposited as received in the account. The tax is in addition
17 to any other tax or fee assessed against persons subject to the tax.

18 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) are due on or before the
19 last day of the month following the close of each calendar quarter and must be made pursuant to
20 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any
21 remainder to the account provided for in 39-71-2504 payments as provided for in [section 2].

22 (b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of
23 partnerships, and members or managers of limited liability companies must be made with and at the same
24 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment
25 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided
26 for in 39-71-2504.

27 (c) An employer who exceeds either threshold, as defined in 39-71-2501(5)(a)(ii) or (5)(a)(iii), shall
28 begin withholding old fund liability tax on or before the last day of the month following the quarter in which
29 the wages paid exceed the threshold requirement. The employer shall begin reporting and remitting the
30 employer and employee portions of the old fund liability tax. The report and remittance are due the last

1 day of the month of the subsequent quarter following the quarter in which the wages paid exceeded the
2 threshold requirement. The employer is subject to the quarterly remittance schedule until the department
3 is able to determine the employer's proper remittance schedule by a review of the employer's first complete
4 lookback period.

5 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
6 department the amounts due under this section who fails to pay an amount is liable to the state for the
7 unpaid amount and any penalty and interest relating to that amount.

8 (5) Returns and remittances under subsection (3) and any information obtained by the department
9 during an audit are subject to the provisions of ~~15-30-303 [section 1]~~, but the department may disclose
10 the information to the department of labor and industry for the purpose of investigation and prevention of
11 noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under
12 circumstances and conditions that ensure the continued confidentiality of the information.

13 (6) The department of labor and industry and the state fund shall give the department a list of all
14 employers having coverage under any plan administered or regulated by the department of labor and
15 industry and the state fund. The department of labor and industry and the state fund shall update the lists
16 weekly. The department of labor and industry and the state fund shall provide the department with access
17 to their computer data bases and paper files and records for the purpose of the department's administration
18 of the tax imposed by this section.

19 (7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part
20 regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments,
21 credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking
22 authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation
23 shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the
24 department."

25
26 **Section 32.** Section 39-71-2505, MCA, is amended to read:

27 **"39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before**
28 **July 1, 1990.** (1) The state fund shall pay for the cost of administering and paying claims for injuries
29 resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by
30 borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable

1 on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the
2 state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to
3 pay for administering and paying the claims for the ensuing year.

4 (2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall
5 forward to the budget director information pertaining to the amount that the state fund will borrow for the
6 ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in
7 subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected
8 liability payments and cash needs on which the amount to be borrowed is based. The schedule must include
9 but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old
10 fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend
11 cash for the year 2007.

12 (b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided
13 in 39-71-2503. The employer old fund liability tax is an amount equal to 0.5% of the employer's payroll
14 for wages paid in the preceding calendar quarter payroll period for wages paid for employment, as defined
15 in this part.

16 (ii) The employee old fund liability tax is an amount equal to 0.2% of the employee's wages in the
17 preceding calendar quarter payroll period for wages paid for employment, as defined in this part.

18 (iii) The old fund liability tax is an amount equal to 0.2% on the profit of each separate business
19 of a sole proprietor and on the distributive share of ordinary income of each subchapter S. corporation
20 shareholder, partner of a partnership, or member or manager of a limited liability company.

21 (iv) The rate of the employer old fund liability tax determined by this section includes the 0.28%
22 employer old fund liability tax provided for in 39-71-2503.

23 (v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in
24 39-71-2503 terminates at the end of fiscal year 2007.

25 (B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are
26 outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.

27 (vi) The old fund liability tax described in this section must be collected and deposited as provided
28 in 39-71-2503 and 39-71-2504.

29 (3) If in any January the cumulative projected amount to be borrowed by the state fund from
30 reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1,

1 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990,
2 not including any outstanding bonds as of May 13, 1993, exceeds \$80 million for the following fiscal year,
3 the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the
4 following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance
5 for the current fiscal year exceeds \$25 million, the tax rate on the persons subject to the old fund liability
6 tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

7 (4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.

8 (5) The budget director shall certify the cash flow projections of the state fund required by this
9 section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected
10 pursuant to this section."
11

12 **NEW SECTION. Section 33. Severability.** If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
14 applications, the part remains in effect in all valid applications that are severable from the invalid
15 applications.
16

17 **NEW SECTION. Section 34. Saving clause.** [This act] does not affect rights and duties that
18 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
19 act].
20

21 **NEW SECTION. Section 35. Codification instruction.** (1) [Sections 1 through 5 and 7] are intended
22 to be codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30,
23 part 2, apply to [sections 1 through 5 and 7].

24 (2) [Section 6] is intended to be codified as an integral part of Title 39, chapter 71, part 25, and
25 the provisions of Title 39, chapter 71, part 25, apply to [section 6].
26

27 **NEW SECTION. Section 36. Coordination instruction.** If Senate Bill No. 119 is passed and
28 approved, then [section 4], amending 15-30-204, [section 5], amending 39-71-2503, and [section 6],
29 amending 39-71-2505 in Senate Bill No. 119, are void.
30

1 HOUSE BILL NO. 561

2 INTRODUCED BY KASTEN, RANEY, DEVLIN, BENEDICT, SIMON, VAN VALKENBURG, STANG,
3 BARTLETT, FOSTER, HALLIGAN, THOMAS, HARP, MERCER, KEATING, FELAND, STORY, JERGESON,
4 CHRISTIAENS, FRANKLIN, HIBBARD

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT FURTHERING THE RENEWAL OF STATE GOVERNMENT BY
7 HARMONIZING THE DEFINITIONS OF "WAGES" AND "EMPLOYMENT"; BY REENGINEERING,
8 RESTRUCTURING, AND COMBINING THE REPORTING AND REMITTANCE OF EMPLOYER TAXES; BY
9 COORDINATING THE ADMINISTRATION OF THE STATE'S INCOME TAX AND OLD FUND LIABILITY TAX
10 WITHHOLDING, UNEMPLOYMENT INSURANCE TAX, AND THE EMPLOYERS' SHARE OF THE OLD FUND
11 LIABILITY TAX SO THAT ALL REPORTS AND REMITTANCES MUST BE MADE TO THE DEPARTMENT OF
12 REVENUE THEREBY PROVIDING AN EMPLOYER THE CONVENIENCE OF DEALING WITH ONLY ONE STATE
13 AGENCY; AND AMENDING SECTIONS 15-1-302, 15-2-302, 15-30-201, 15-30-202, 15-30-203,
14 15-30-204, 15-30-207, 15-30-208, 15-30-209, 37-31-101, 39-51-201, 39-51-204, 39-51-301,
15 39-51-1109, 39-51-1110, 39-51-1301, 39-51-1303, 39-51-2108, 39-51-2402, 39-71-123, 39-71-401,
16 39-71-2501, 39-71-2503, AND 39-71-2505, MCA."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

1 HOUSE BILL NO. 561

2 INTRODUCED BY KASTEN, RANEY, DEVLIN, BENEDICT, SIMON, VAN VALKENBURG, STANG,
3 BARTLETT, FOSTER, HALLIGAN, THOMAS, HARP, MERCER, KEATING, FELAND, STORY, JERGESON,
4 CHRISTIAENS, FRANKLIN, HIBBARD

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT FURTHERING THE RENEWAL OF STATE GOVERNMENT BY
7 HARMONIZING THE DEFINITIONS OF "WAGES" AND "EMPLOYMENT"; BY REENGINEERING,
8 RESTRUCTURING, AND COMBINING THE REPORTING AND REMITTANCE OF EMPLOYER TAXES; BY
9 COORDINATING THE ADMINISTRATION OF THE STATE'S INCOME TAX AND OLD FUND LIABILITY TAX
10 WITHHOLDING, UNEMPLOYMENT INSURANCE TAX, AND THE EMPLOYERS' SHARE OF THE OLD FUND
11 LIABILITY TAX SO THAT ALL REPORTS AND REMITTANCES MUST BE MADE TO THE DEPARTMENT OF
12 REVENUE THEREBY PROVIDING AN EMPLOYER THE CONVENIENCE OF DEALING WITH ONLY ONE STATE
13 AGENCY; BY CLARIFYING INDIVIDUAL LIABILITY FOR THE REPORTING AND PAYMENT OF EMPLOYER
14 TAXES; AND AMENDING SECTIONS 15-1-302, 15-2-302, 15-30-201, 15-30-202, 15-30-203, 15-30-204,
15 15-30-207, 15-30-208, 15-30-209, 37-31-101, 39-51-201, 39-51-204, 39-51-301, 39-51-1105,
16 39-51-1109, 39-51-1110, 39-51-1301, 39-51-1303, 39-51-1304, 39-51-2108, 39-51-2402, 39-71-123,
17 39-71-401, 39-71-2501, 39-71-2503, AND 39-71-2505, MCA; REPEALING ARM 24.11.831; AND
18 PROVIDING EFFECTIVE DATES."

19
20 WHEREAS, HOUSE BILL NO. 98 (CH. 48, L. 1995), ENACTED BY THE 54TH LEGISLATURE,
21 EXCLUDED DIRECT SELLERS FROM MINIMUM WAGE, OVERTIME, UNEMPLOYMENT INSURANCE, AND
22 WORKERS' COMPENSATION REQUIREMENTS; AND

23 WHEREAS, THE LEGISLATURE IN HOUSE BILL NO. 98 ADOPTED THE FEDERAL DEFINITION OF
24 DIRECT SELLER TO APPLY TO RELEVANT MONTANA STATUTES; AND

25 WHEREAS, ARM 24.11.831 NARROWED THE SCOPE OF THE FEDERAL DEFINITION OF DIRECT
26 SELLER; AND

27 WHEREAS, AN ORIGINAL PURPOSE OF THIS HOUSE BILL NO. 561 WAS TO CODIFY THE
28 NARROWER DEFINITION OF DIRECT SELLER; AND

29 WHEREAS, THIS HOUSE BILL NO. 561 IS THE APPROPRIATE PLACE TO REPEAL RULE 24.11.831,
30 ADMINISTRATIVE RULES OF MONTANA.

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

2

3 **NEW SECTION. Section 1. Confidentiality.** Reports and returns required to be filed under this part
4 are confidential, subject to the limitations contained in 39-51-603(3) and (4).

5

6 **NEW SECTION. Section 2. Application and distribution of payments.** (1) Except as provided by
7 rule, tax payments including delinquent tax, penalty, and interest must be applied to the taxpayer's
8 account, prorated on the basis of the amount of each tax due to the amount of the total tax due, and
9 distributed to the appropriate fund accounts as required by law.

10 (2) Payment of a penalty assessed for late filing of a report for which there is no tax due for the
11 period must be applied to the employer's liability for the penalties and equally distributed to the fund
12 accounts specified by law among the tax types the report covers.

13

14 **NEW SECTION. Section 3. Statute of limitations.** (1) In the case of a nonfiled return, the
15 department may, at any time, audit the employer or estimate the tax due from any information in its
16 possession and issue an assessment for the amount of the tax, penalty, and interest the department
17 determines to be due.

18 (2) If the department determines, pursuant to a review conducted pursuant to 15-30-145, that any
19 return is incorrect, it may revise the return within 5 years of the due date of the original return, within 5
20 years of the date the return was filed, or 1 year from the date an amended return was filed, whichever is
21 later.

22 (3) Notwithstanding the provisions of subsection (2), if an employer purposely or knowingly files
23 a false or fraudulent return, with intent to evade the tax, the amount of tax, penalty, and interest due may
24 be determined at any time after the return is filed and collected at any time after it becomes due.

25 (4) For the purposes of this section, a return filed before the due date is considered to be filed on
26 the due date.

27 (5) The statute of limitations is suspended during any time in which an employer-employee
28 relationship determination has been appealed as provided in 15-1-211, and the time for assessment extends
29 for an additional 1 year from the date the decision becomes final.

30

1 **NEW SECTION. Section 4. Credits and refunds -- period of limitations.** (1) If the department
2 determines by examination of an employer's account, or upon claim filed by an employer, that the employer
3 has overpaid the amount of tax, penalty, or interest, the amount of the overpayment may be refunded to
4 the employer or applied to current or future obligations of any tax, penalty, or interest for any tax contained
5 in this title at the discretion of the taxpayer.

6 (2) A credit or refund may be allowed only if the claim is filed or the determination is made within
7 5 years of the due date prescribed for filing a report or 1 year from the date of the notification of the
8 overpayment by the department.

9 (3) The department shall notify the employer of the overpayment and the credit or refund options
10 available to the employer. A credit must be applied to the employer account unless directed otherwise by
11 the employer.

12 (4) If a claim is disallowed, the department shall notify the employer. The decision disallowing the
13 claim is subject to review as provided in 15-1-211.

14 (5) Interest is:

15 (a) allowed on an overpayment at the same rate as charged for late tax payments under this part;

16 (b) payable from the due date of the payment or the date overpayment was verified, whichever
17 is later;

18 (c) not payable if the overpayment is applied to current or future obligations with the department.

19 (6) Interest is not allowed if the overpayment is refunded within 45 days from the date the
20 employer directs the department to refund the overpayment.

21 (7) If additional information is required to verify the amount of the overpayment, the 45-day period
22 in subsection (6) does not begin until the information is provided.

23
24 **NEW SECTION. Section 5. Employment defined and exclusions from definition of employment.**

25 (1) As used in this part "employment", subject to the provisions of subsection (2), means the service by
26 an employee for an employer.

27 (2) The term "employment" does not include:

28 (a) household and domestic service in a private home, local college club, or local chapter of a
29 college fraternity or sorority, except as provided in 15-30-201(4)(c);

30 (b) service performed by a dependent, as defined in 26 U.S.C. 152, of a sole proprietor for whom

1 an exemption may be claimed by the employer under the Internal Revenue Code or service performed by
2 a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole
3 proprietor pursuant to 26 U.S.C. 7703;

4 (c) service performed as a freelance correspondent or newspaper carrier if the person performing
5 the service, or a parent or guardian of the person performing the service in the case of a minor, has
6 previously acknowledged or acknowledges in writing that the person performing the service and the service
7 are not covered for unemployment insurance purposes. As used in this subsection:

8 (i) "freelance correspondent" is a person who submits articles or photographs for publication and
9 is paid by the article or by the photograph; and

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

13 (d) service performed as a licensed real estate broker or salesperson under Title 37, chapter 51;

14 (e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber
15 who is licensed under Title 37, chapter 30, and:

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

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

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

21 (B) receives payment for service from individual clientele; and

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

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

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

1 (g) service performed by sole proprietors, working members of a partnership or a limited liability
2 partnership, or members of a member-managed limited liability company that has filed articles of
3 organization with the secretary of state;

4 (h) service performed for the installation of floor coverings if the installer:

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

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

7 (iii) may perform service for anyone without limitation;

8 (iv) may accept or reject any job;

9 (v) furnishes substantially all tools and equipment necessary to provide the service; and

10 (vi) works under a written contract that:

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

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

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

16 (i) service performed by a direct seller. ~~As used in this subsection, "direct seller" means a person;~~

17 ~~(ii) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,~~
18 ~~vacuum cleaners, and cleaning products at the home of the consumer;~~

19 ~~(iii) whose pay is determined by the quantity of product sold; and~~

20 ~~(iii) who works under a written contract that states the person will not be treated as an employee~~

21 AS DEFINED BY 26 U.S.C. 3508;

22 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land
23 professional" means a person who:

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

26 (ii) is paid for service that is directly related to the completion of a contracted specific task rather
27 than on an hourly wage basis; and

28 (iii) performs all service as an independent contractor pursuant to a written contract;

29 (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
30 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

1 (l) service performed by an individual receiving rehabilitation or remunerative work in a facility
2 conducted for the purpose of carrying out a program of rehabilitation for those individuals whose earning
3 capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for
4 individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the
5 competitive labor market;

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

9 (n) service performed by an inmate of a state prison or other state correctional or custodial
10 institution;

11 (o) service by an individual who is sentenced to perform court-ordered community service or similar
12 work;

13 (p) service performed for aid or sustenance only;

14 (q) active service as members of the regular armed forces of the United States, as defined in 10
15 U.S.C. 101(33);

16 (r) agricultural labor; or

17 (s) service performed by an independent contractor.

18
19 **NEW SECTION. Section 6. Employment defined and exclusions from definition of employment.**

20 (1) As used in this part "employment", subject to the provisions of subsection (2), means the service by
21 an employee for an employer.

22 (2) The term "employment" does not include:

23 (a) household and domestic service in a private home, local college club, or local chapter of a
24 college fraternity or sorority, except as provided in 39-71-2501(4)(c);

25 (b) service performed by a dependent, as defined in 26 U.S.C. 152, of a sole proprietor for whom
26 an exemption may be claimed by the employer under the Internal Revenue Code or service performed by
27 a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole
28 proprietor under 26 U.S.C. 7703;

29 (c) service performed as a freelance correspondent or newspaper carrier if the person performing
30 the service, or a parent or guardian of the person performing the service in the case of a minor, has

1 previously acknowledged or acknowledges in writing that the person performing the service and the service
2 are not covered for unemployment insurance purposes. As used in this subsection:

3 (i) "freelance correspondent" is a person who submits articles or photographs for publication and
4 is paid by the article or by the photograph; and

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

8 (d) service performed as a licensed real estate broker or salesperson under Title 37, chapter 51;

9 (e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber
10 who is licensed under Title 37, chapter 30, and:

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

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

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

16 (B) receives payment for service from individual clientele; and

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

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

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

26 (g) service performed by sole proprietors, working members of a partnership or a limited liability
27 partnership, or members of a member-managed limited liability company that has filed articles of
28 organization with the secretary of state;

29 (h) service performed for the installation of floor coverings if the installer:

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

- 1 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
- 2 (iii) may perform service for anyone without limitation;
- 3 (iv) may accept or reject any job;
- 4 (v) furnishes substantially all tools and equipment necessary to provide the service; and
- 5 (vi) works under a written contract that:
- 6 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
- 7 contract obligations;
- 8 (B) states that the installer is not covered by unemployment insurance; and
- 9 (C) requires the installer to provide a current workers' compensation policy or to obtain an
- 10 exemption from workers' compensation requirements;
- 11 (i) service performed by a direct seller. ~~As used in this subsection, "direct seller" means a person:~~
- 12 ~~(i) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,~~
- 13 ~~vacuum cleaners, and cleaning products at the home of the consumer;~~
- 14 ~~(ii) whose pay is determined by the quantity of product sold; and~~
- 15 ~~(iii) who works under a written contract that states the person will not be treated as an employee~~
- 16 AS DEFINED BY 26 U.S.C. 3508;
- 17 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land
- 18 professional" means a person who:
- 19 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
- 20 negotiating a business agreement for the exploration or development of minerals;
- 21 (ii) is paid for service that is directly related to the completion of a contracted specific task rather
- 22 than on an hourly wage basis; and
- 23 (iii) performs all service as an independent contractor pursuant to a written contract;
- 24 (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
- 25 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 26 (l) service performed by an individual receiving rehabilitation or remunerative work in a facility
- 27 conducted for the purpose of carrying out a program of rehabilitation for those individuals whose earning
- 28 capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for
- 29 individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the
- 30 competitive labor market;

1 (m) service performed as part of an unemployment work-relief or work-training program assisted
2 or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the
3 state by an individual receiving work relief or work training;

4 (n) service performed by an inmate of a state prison or other state correctional or custodial
5 institution;

6 (o) service by an individual who is sentenced to perform court-ordered community service or similar
7 work;

8 (p) service performed for aid or sustenance only; or

9 (q) service performed by an independent contractor.

10
11 **NEW SECTION. Section 7. Special review procedure for certain tax issues that involve**
12 **unemployment insurance benefit claim -- notice -- appeal.** (1) As used in this section, the following
13 definitions apply:

14 (a) "Administrator" means the administrator of the income and miscellaneous tax division,
15 department of revenue.

16 (b) "Board" means the state tax appeal board established by 15-2-101.

17 (c) "Claimant" means an individual who has filed a claim for unemployment insurance benefits
18 under Title 39, chapter 51, and has asserted that the individual's employer inaccurately or incompletely
19 reported the individual's wages.

20 (d) "Employer" means an employer as defined in 39-51-202, that has a potential tax liability arising
21 from the inaccurate or incomplete reporting of a claimant's wages.

22 (e) "Interested party" means the claimant, the employer, or the department of labor and industry.

23 (2) (a) The department shall promptly investigate whether wages earned by the claimant were
24 properly reported by the employer. Upon completion of the investigation, the department shall issue a
25 written determination stating whether the wages were properly reported and, if not, the correct amount
26 of reportable wages earned by the claimant. A copy of the determination must be mailed to each interested
27 party at the last-known address of each party.

28 (b) The determination is final unless an interested party, within 10 calendar days of the mailing of
29 the determination, makes a written application for reconsideration of the determination or makes a written
30 appeal of the determination. A late-filed application for reconsideration may be accepted by the department

1 upon a showing of good cause in writing.

2 (c) The written application or appeal must specify the reasons for the application or appeal and
3 provide any other information relevant to the application or appeal.

4 (d) An interested party may appeal the reconsideration of a determination by making a written
5 appeal within 10 calendar days of the mailing of the notice of the redetermination. A late-filed application
6 for reconsideration may be accepted by the department upon a showing of good cause in writing.

7 (3) (a) Upon appeal of a determination or redetermination, the administrator or a person appointed
8 by the administrator shall hold an informal hearing that may be conducted by telephone or video
9 conference. After the hearing, the administrator or a designee shall promptly make findings of fact and
10 conclusions of law and affirm, modify, reverse, or remand the determination or redetermination. A copy
11 of the decision, with supporting findings of fact and conclusions of law, must be mailed to each interested
12 party at the last-known address of each party.

13 (b) (i) The decision is binding on the interested parties unless a written appeal is made to the board.
14 The appeal must be filed with the board within 10 calendar days after notice of the decision was mailed.
15 A late-filed application for reconsideration may be accepted by the board upon a showing of good cause
16 in writing.

17 (ii) If the decision becomes final, the department shall proceed as provided in subsection (5).

18 (4) (a) An appeal to the board, pursuant to 15-2-302, is initiated by filing a complaint with the
19 board. The board shall promptly mail a copy of the complaint to each interested party at the last-known
20 address of each party.

21 (b) Any interested party who wants to file an answer must do so within 10 calendar days after the
22 board mails a copy of the complaint. An answer up to 10 days late may be accepted by the board upon
23 a showing of good cause in writing.

24 (c) The decision of the board is final and binding upon all interested parties unless reversed or
25 modified by judicial review. Proceedings for judicial review under this section are subject to the provisions
26 of the Montana Administrative Procedure Act.

27 (5) When the department's decision becomes final, whether as the result of appeal, judicial review,
28 or the lapse of time during which to take an appeal, the interested parties are bound by the decision and
29 may not contest any issue that was decided as part of the decision either administratively or judicially. An
30 employer who is determined to have inaccurately or incompletely reported wages may not contest the issue

1 of whether wages should have been reported, or the amount of the wages that should have been reported,
 2 once the department assesses taxes on those wages.

3

4 **Section 8.** Section 15-1-302, MCA, is amended to read:

5 **"15-1-302. Witnesses -- oaths, contempt, and fees.** (1) Oaths to witnesses in any investigation
 6 by the department may be administered by the director of revenue or ~~his~~ the director's agent.

7 (2) ~~(a) In case any~~ If a witness ~~shall fail~~ fails to obey ~~any~~ a summons to appear before the
 8 department or ~~shall refuse~~ refuses to testify or answer any material question or to produce records, books,
 9 papers, or documents when required to do so, ~~such failure or refusal shall be reported to the attorney~~
 10 ~~general, who~~ the department shall ~~thereupon~~ institute proceedings in the ~~proper~~ district court to compel
 11 obedience to ~~any~~ a summons or order of the board or to punish the witness for ~~such~~ neglect or refusal to
 12 obey the summons.

13 (b) As required by 15-30-209, the department, in addition to instituting proceedings to compel
 14 obedience to a summons or order shall, as a part of the proceedings, request the court to issue an order
 15 requiring the payment of all penalties assessed for the employer's failure to report.

16 (3) ~~Any~~ A person who ~~shall testify~~ testifies falsely in any material matter under consideration by
 17 the department ~~shall be~~ is guilty of perjury and shall be punished accordingly.

18 (4) Witnesses attending an investigation by the department ~~shall~~ must receive ~~like~~ the same
 19 compensation as witnesses in the district court. ~~Such~~ The compensation ~~shall~~ must be charged to the
 20 proper appropriation for the department."
 21

21

22 **Section 9.** Section 15-2-302, MCA, is amended to read:

23 **"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing.** (1) A
 24 person may appeal to the state tax appeal board a final decision of the department of revenue involving:

- 25 (a) property centrally assessed under chapter 23 ~~of this title~~;
- 26 (b) classification of property as new industrial property;
- 27 (c) any other tax, ~~{other than the property tax}~~, imposed under this title; or
- 28 (d) any other matter in which the appeal is provided by law.

29 (2) ~~(a) The~~ Except as provided in subsection (2)(b), the appeal is made by filing a complaint with
 30 the board within 30 days following receipt of notice of the department's final decision. The complaint must

1 set forth the grounds for relief and the nature of relief demanded. The board shall immediately transmit a
2 copy of the complaint to the department.

3 (b) An appeal from the department's determination of whether wages earned by an unemployment
4 insurance benefit claimant were properly reported to the department is initiated by filing a complaint with
5 the board within 10 days following receipt of notice of the department's final determination. The board shall
6 promptly mail a copy of the complaint to each interested party at the last-known address of each party.

7 (3) The department shall file with the board an answer within 30 days following filing of a
8 complaint, or in cases involving a determination of whether wages earned by an unemployment insurance
9 benefit claimant were properly reported to the department, any interested party as defined in [section
10 7(1)(e)] and the department may file an answer with the board within 10 days after receipt of a copy of
11 the complaint filed with the board, and at that time mail a copy to the complainant. The answer must set
12 forth the department's response to each ground for and type of relief demanded in the complaint.

13 (4) (a) The Except as provided in subsection (4)(b), the board shall conduct the appeal in
14 accordance with the contested case provisions of the Montana Administrative Procedure Act.

15 (b) (i) An appeal regarding the determination of whether wages earned by an unemployment
16 insurance claimant were properly reported to the department, the appeal must be conducted informally and
17 may, in the discretion of the board, be conducted by telephone or other electronic means. The appeal is
18 not a contested case under provisions of the Montana Administrative Procedure Act. The board, in
19 conducting the hearing or making its decision, is not bound by the Montana Rules of Evidence.

20 (ii) The board shall make its final decision within 45 days of the date the appeal is received by the
21 board.

22 (5) The decision of the state tax appeal board is final and binding upon all interested parties unless
23 reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal
24 board under this section are subject to the provisions of 15-2-303 and the Montana Administrative
25 Procedure Act to the extent that it does not conflict with 15-2-303."

26

27 **Section 10.** Section 15-30-201, MCA, is amended to read:

28 "**15-30-201. Definitions.** When used in 15-30-201 through 15-30-209, the following definitions
29 apply:

30 (1) "Agricultural labor" means all services performed on a farm or ranch in connection with

1 cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity,
 2 including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry,
 3 and fur-bearing animals and wildlife.

4 (2) "Domestic or household service" means employment of persons other than members of the
 5 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
 6 family, including but not limited to housecleaning and yard work but does not include employment beyond
 7 the scope of normal household or domestic duties such as home health care or domiciliary care.

8 ~~(2)(3)~~ "Employee" means:

9 (a) an officer, employee, or elected public official of the United States, the state of Montana, or
 10 any political subdivision of the United States or Montana or any agency or instrumentality of the United
 11 States, the state of Montana, or a political subdivision of the United States or Montana. ~~The term also~~
 12 ~~includes;~~

13 (b) an officer of a corporation;

14 (c) any individual who performs services for another individual or organization having the right to
 15 control the employee as to the services to be performed and as to the manner of performance;

16 (d) all classes, grades, or types of employees including minors and aliens, superintendents,
 17 managers, and other supervisory personnel.

18 ~~(3)(4)~~ "Employer" means:

19 (a) the person for whom an individual performs or performed any service, of whatever nature, as
 20 an employee of the person. ~~However, if the person for whom the individual performs or performed the~~
 21 ~~service does not have control of the payment of the wages for the service, the term means the person who~~
 22 ~~has control of the payment of wages;~~

23 (b) a person who pays \$1,000 or more in wages within the current calendar year;

24 (c) a person who pays \$1,000 or more in cash for domestic or household service in any quarter
 25 during the current calendar year;

26 (d) any individual or organization, including state government and any of its political subdivisions
 27 or instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited
 28 liability company or a limited liability partnership that has filed with the secretary of state, or domestic or
 29 foreign corporation or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal
 30 representative of a deceased person who has or had in its employ one or more individuals performing

1 services for it within this state; or

2 (e) any person found to be an employer under Title 39, chapter 51, for unemployment insurance
3 purposes is considered an employer for state income tax withholding purposes.

4 ~~(4)(5)~~ "Independent contractor" means an individual who renders service in the course of an
5 occupation and:

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

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

9 ~~(5)(6)~~ "Lookback period" means the 12-month period ending the preceding June 30.

10 ~~(6)(7)~~ (a) "Wages", unless specifically exempted under subsection (7)(b) means all remuneration,
11 ~~other than fees paid to a public official,~~ for services performed by an employee for the employer, including
12 the cash value of all remuneration paid in any medium other than cash, ~~except that the term does not~~
13 ~~include remuneration paid;~~ and includes but is not limited to the following:

14 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations and
15 sickness periods;

16 (ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous
17 service by the employee for the employer, other than retirement or pension benefits from a qualified plan;
18 and

19 (iii) except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by
20 the employee, to the extent that the tips or gratuities are:

21 ~~(A) documented by the employee to the employer for tax purposes;~~

22 ~~(B) disbursed by the employer from a tip pool; or~~

23 ~~(C) added to the customer's bill by the employer.~~

24 ~~(a) for active service as a member of the regular armed forces of the United States, as defined in~~
25 ~~10 U.S.C. 101(33);~~

26 ~~(b) for agricultural labor;~~

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

29 ~~(d) for casual labor not in the course of the employer's trade or business performed in any calendar~~
30 ~~quarter by an employee, unless the cash remuneration paid for the service is \$50 or more and the service~~

1 ~~is performed by an individual who is regularly employed by the employer to perform the service. For~~
2 ~~purposes of this subsection (d), an individual is considered to be regularly employed by an employer during~~
3 ~~a calendar quarter only if:~~

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

6 ~~(ii) the individual was regularly employed, as determined under subsection (6)(d)(i), by the employer~~
7 ~~in the performance of service during the preceding calendar quarter.~~

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

10 ~~(f) for services performed by an ordained, commissioned, or licensed minister of a church in the~~
11 ~~exercise of the ministry or by a member of a religious order in the exercise of duties required by the order;~~

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

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

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

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

27 ~~(j) as tips or gratuities that are in accordance with section 3402(k) or service charges that are~~
28 ~~covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1,~~
29 ~~1983, received by persons for services rendered by them to patrons of premises licensed to provide food,~~
30 ~~beverage, or lodging;~~

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

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

6 (i) the amount of any payment made by the employer FOR EMPLOYEES, if the payment was made
 7 pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code established for
 8 employees for:

9 (A) retirement or pension PURSUANT TO A QUALIFIED PLAN AS DEFINED UNDER THE
 10 PROVISIONS OF THE INTERNAL REVENUE CODE;

11 (B) sickness or accident disability under a workers' compensation policy;

12 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
 13 health insurance for the employee or the employee's immediate family; or

14 (D) death, including life insurance for the employee or the employee's immediate family;

15 (ii) compensation in the form of meals and lodging, provided the compensation is not includable
 16 in gross income for state individual income tax purposes;

17 (iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C.
 18 1002(40)(A), to a qualified individual employee;

19 (iv) payments made by an employee to any group plan or program to the extent that the payments
 20 are not taxable for state income tax purposes;

21 (v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are
 22 covered by 26 U.S.C. 3401 of the Internal Revenue Code, as amended and applicable on January 1, 1983,
 23 received by persons for services rendered by them to patrons of premises licensed to provide food,
 24 beverage, or lodging; or

25 (vi) payments that may not be taxed under federal law."

26
 27 **Section 11.** Section 15-30-202, MCA, is amended to read:

28 **"15-30-202. Withholding of tax from wages. (1)** Each employer making payment of wages for
 29 employment as defined in [section 5] shall withhold from wages a tax determined in accordance with the
 30 withholding tax tables prepared and issued by the department. ~~Persons on active service as members of~~

1 ~~the regular armed forces of the United States, as defined in 10 U.S.C. 101(33), are not subject to the~~
 2 ~~provisions of this section.~~

3 (2) An employer who maintains two or more separate establishments within this state is considered
 4 to be a single employer for the purposes of this part."

5
 6 **Section 12.** Section 15-30-203, MCA, is amended to read:

7 **"15-30-203. Employer liable for ~~withholding~~ employment taxes.** (1) Each employer is liable for the
 8 reports and payments required by 15-30-204, the amounts required to be deducted and withheld under this
 9 part, and the amounts plus interest due on the amounts are a tax. With respect to the tax, the employer
 10 is the taxpayer.

11 (2) The officer ~~or employee~~ of a corporation whose ~~duty~~ RESPONSIBILITY it is to collect, truthfully
 12 account for, and pay to the state the amounts withheld from the corporation's employees and who fails
 13 to pay the withholdings is liable to the state for the amounts withheld and the penalty and interest due on
 14 the amounts.

15 (3) (a) Each officer ~~or employee~~ of the corporation is individually liable along with the corporation
 16 for filing reports to the extent that the officer ~~or employee~~ has access to the requisite records and for
 17 unpaid taxes, penalties, and interest upon a determination that the officer ~~or employee~~:

18 (i) possessed the authority, duty, and responsibility to file reports and pay taxes on behalf of the
 19 corporation; AND

20 (ii) possessed the authority on behalf of the corporation to direct the filing of reports and payment
 21 of taxes by other employees or agents of the corporation; or

22 (iii) (II) possessed the authority RESPONSIBILITY on behalf of the corporation for directing the filing
 23 of tax reports or the payment of other corporate obligations and exercised that authority RESPONSIBILITY
 24 resulting in the corporation's failure to file reports required by this part or pay taxes due as required by this
 25 part.

26 (b) The IN DETERMINING WHICH CORPORATE OFFICER IS LIABLE, THE department is not limited
 27 to considering the elements set forth in subsection (3)(a) to establish individual liability and may consider
 28 any other available information.

29 (4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the
 30 discharge of penalty and interest against the corporation. The individual remains liable for any reports and

1 the amount of taxes, penalties, and interest unpaid by the corporation.

2 (5) For the purpose of determining liability for the filing of reports and the remittance of taxes,
 3 penalties, and interest owed under this part, a member-managed limited liability company must be treated
 4 as a partnership with liability for filing reports and remitting taxes, penalties, and interest owed extending
 5 to each member who was a member at the time the report or taxes were due.

6 (6) For determining personal liability for the failure to file reports and remit taxes, penalties, and
 7 interest owed by a manager-managed limited liability company, the managers of the limited liability
 8 company are jointly and severally liable along with the limited liability company for reports and any taxes,
 9 penalties, and interest owed.

10 (7) For determining personal liability for the failure to file reports and remit taxes, penalties, and
 11 interest owed by a limited liability partnership, the partners of the limited liability partnership are jointly and
 12 severally liable, along with the limited liability partnership, for reports and any taxes, penalties, and interest
 13 due.

14 ~~(3)(8)~~ If the employer fails to deduct and withhold the amounts specified in 15-30-202 and
 15 ~~thereafter~~ the tax against which the deducted and withheld amounts would have been credited is paid, the
 16 amounts required to be deducted and withheld may not be collected from the employer."
 17

18 **Section 13.** Section 15-30-204, MCA, is amended to read:

19 **"15-30-204. ~~Weekly, monthly, or annual payment~~ Reporting and remittance requirements.** ~~(1) An~~
 20 ~~employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings during~~
 21 ~~the preceding lookback period was \$12,000 or greater shall file a return in the form and containing the~~
 22 ~~information that may be required by the department and shall pay the amount required by 15-30-202 to~~
 23 ~~be deducted and withheld by the employer from wages paid during the preceding payroll period. The~~
 24 ~~payment must be submitted on or before the date on which federal income tax weekly withholding~~
 25 ~~payments are due. On or before the last day of April, July, October, and January, the employer shall file~~
 26 ~~a return in the form and containing the information required by the department. The quarterly returns for~~
 27 ~~employers subject to this subsection must be used to summarize and adjust payments and to request~~
 28 ~~refunds of overpayments. The employer shall also file the annual statement as required by 15-30-207.~~

29 ~~(2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for~~
 30 ~~withholdings during the preceding lookback period was less than \$12,000 but greater than \$1,199 shall~~

1 ~~remit a monthly payment to the department for the amount required by 15-30-202 to be deducted and~~
2 ~~withheld by the employer from wages paid during the preceding month. The monthly payment must be~~
3 ~~submitted on or before the 15th day of the month following the payment of the wages. The employer~~
4 ~~subject to this subsection shall, on or before February 28 of the year following payment of the wages, file~~
5 ~~an annual return in the form and containing the information required by the department and the annual~~
6 ~~statement required by 15-30-207. The annual returns for employers subject to this subsection must be used~~
7 ~~to summarize and adjust payments and to request refunds of overpayments.~~

8 (1) For the purposes of this section, employers shall remit their taxes in accordance with the
9 appropriate remittance schedule as follows:

10 (a) Employers whose total liability for state income tax withholding during the preceding lookback
11 period was \$12,000 or more shall remit on an "accelerated schedule", which is the same as the employer's
12 federal due dates for federal tax deposits.

13 (b) Employers whose total liability for state income tax withholding during the preceding lookback
14 period was less than \$12,000 but more than \$1,199 shall remit on a "monthly schedule" for which the
15 remittance due date is on or before the 15th day of the month following the payment of wages.

16 (c) Employers whose total liability for state income tax withholding during the preceding lookback
17 period was less than \$1,200 shall remit on a "quarterly schedule" for which the remittance due date is on
18 or before the last day of the month following the close of each calendar quarter.

19 (d) Employers who are not subject under Title 39, chapter 51, for unemployment insurance and
20 whose total liability for state income tax withholding, or if state income tax withholding is not required,
21 whose total liability for old fund liability tax during the preceding lookback period was less than \$1,200,
22 may remit on an "annual schedule" for which the remittance is due on or before February 28 of the year
23 following payment of wages.

24 (2) (a) Every employer is required to file a report quarterly in the form required by the department.

25 (b) The report is due on or before the last day of the month following the close of the calendar
26 quarter.

27 (c) An employer who is not subject under Title 39, chapter 51, to unemployment insurance may
28 elect to file an annual report on or before February 28 for the preceding calendar year.

29 (d) An employer who has no payroll during a quarter may elect to report "no wages paid this
30 quarter" using alternative reporting methods provided in department rules.

1 (e) An employer, in addition to the scheduled reports and remittances, must file the annual report
 2 and wage statements as required by 15-30-207.

3 ~~(3) (a) If the total amount of the tax withheld by an employer under the provisions of 15-30-202~~
 4 ~~upon the wages of all employees of any employer is less than \$1,200 for the preceding lookback period,~~
 5 ~~the employer shall, on or before February 28 of the year succeeding that in which the wages were paid,~~
 6 ~~file an annual return in the form required by the department, together with the annual statement required~~
 7 ~~by 15-30-207, and shall at the same time pay the amount required to be deducted and withheld by the~~
 8 ~~employer from all wages paid during the preceding calendar year.~~

9 ~~(b) An employer subject to the provisions of this subsection (3) may elect to remit monthly~~
 10 ~~payments. If an employer elects to make monthly payments, the employer shall remit monthly payments~~
 11 ~~during the entire year and is subject to the same interest and penalty provisions as employers subject to~~
 12 ~~the provisions of subsection (2).~~

13 (3) (a) Except as provided in subsection (3)(g), payments are due as required according to the
 14 remittance schedule for each employer.

15 ~~(e)(b) If an employer subject to the provisions of this subsection (3) (1)(d) does not file the annual~~
 16 ~~return required by subsection (3)(a), comply with the requirements of this section, the employer is may be~~
 17 ~~subject to the payment and filing provisions of quarterly reporting schedule provided in subsection (2)(a)~~
 18 ~~and to the quarterly remittance schedule provided in subsection (1)(c) until the department determines from~~
 19 ~~the employer's subsequent filing and payment history that the employer will file and remit in a timely~~
 20 ~~fashion.~~

21 ~~(4)(a)(c) On or before November 1 of each year, the department shall notify the employers subject~~
 22 ~~to the provisions of this section of the employers' remittance schedules for the following calendar year~~
 23 ~~based upon the department's review of the preceding lookback period.~~

24 ~~(b)(d) A Except as provided in subsection (3)(g), a new employer or an employer with no filing~~
 25 ~~history is subject to the provisions of subsection (2) the quarterly remittance schedule in subsection (1)(c)~~
 26 ~~until the department is able to determine the employer's proper remittance schedule by a review of the~~
 27 ~~employer's first complete lookback period.~~

28 (e) An employer who is subject to the quarterly schedule in subsection (1)(c) may elect to remit
 29 payments on a more frequent basis. An employer who is on an annual schedule may elect to remit monthly
 30 or quarterly payments.

1 (f) An employer who exceeds either threshold as defined in 15-30-201(4)(b) and (4)(c), must begin
 2 withholding state income tax on or before the last day of the month following the quarter in which the
 3 wages paid exceeded the threshold requirements. The employer is subject to the quarterly remittance
 4 schedule until the department is able to determine the employer's proper remittance schedule by a review
 5 of the employer's first complete lookback period.

6 (g) An employer who is not subject to unemployment insurance under Title 39, chapter 51, and
 7 whose estimated annual state income tax withholding, or if state income tax withholding is not required,
 8 whose estimated old fund liability tax, is not expected to exceed \$1,199 for the calendar year may remit
 9 according to the annual schedule and report annually on or before February 28.

10 (h) An employer may use alternative remittance methods in conjunction with the department's
 11 electronic remittance program in accordance with department rules.

12 ~~(4)~~ (4) If the department has reason to believe that collection of the amount of any tax withheld is
 13 in jeopardy, it may proceed as provided for under ~~15-30-312~~ with respect to jeopardy assessments of
 14 income tax 15-1-703.

15 (5) Each employer shall keep true and accurate payroll records containing the information that the
 16 department may prescribe by rule. Those records must be open to inspection and audit and may be copied
 17 by the department or its authorized representative at any reasonable time and as often as may be
 18 necessary. An employer who maintains its records outside Montana shall furnish copies of those records
 19 to the department at the employer's expense."

20
 21 **Section 14.** Section 15-30-207, MCA, is amended to read:

22 **"15-30-207. Annual statement by employer.** (1) Every employer shall, on or before February 28
 23 in each year, file with the department a wage and tax statement for each employee in ~~such~~ the form and
 24 summarizing ~~each~~ information as the department requires, including the total wages paid to the employee
 25 during the preceding calendar year or any part ~~thereof~~ of the calendar year and showing the total amount
 26 of the federal income tax deducted and withheld from ~~such~~ the wages and the total amount of the tax
 27 deducted and withheld ~~therefrom~~ from the wages under the provisions of 15-30-201 through 15-30-209
 28 and 39-71-2503.

29 (2) The annual statement filed by an employer with respect to the wage payments reported
 30 constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents,

1 and no additional information return is not required with respect to such the wage payments.

2 ~~(3) In addition to any other penalty provided by law, the failure of an employer to furnish a~~
 3 ~~statement as required by subsection (1) subjects the employer to a penalty of \$5 for each failure, provided~~
 4 ~~that the minimum penalty for failure to file the statements required on or before February 28 of each year~~
 5 ~~shall be \$50. This penalty may be abated by the department upon a showing of good cause by the~~
 6 ~~employer. The penalty may be collected in the same manner as are other tax debts."~~

7

8 **Section 15.** Section 15-30-208, MCA, is amended to read:

9 "15-30-208. **Withheld taxes held in trust for state** ~~—warrants to collect.~~ (1) Every employer who
 10 deducts and withholds any amounts under the provisions of 15-30-201 through 15-30-209 shall hold the
 11 same amounts in trust for the state of Montana.

12 ~~(2) If any tax imposed by 15-30-201 through 15-30-209 or any portion of such tax is not paid~~
 13 ~~when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The~~
 14 ~~priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as~~
 15 ~~indicated on the warrant for distraint.~~

16 ~~(3) The tax lien provided for in subsection (2) is not valid against any third party owning an interest~~
 17 ~~in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if~~
 18 ~~the third party receives from the most recent grantor of the interest an affidavit stating that all taxes,~~
 19 ~~assessments, penalties, and interest due from the grantor have been paid.~~

20 ~~(4) A grantor who signs and delivers to the third party an affidavit as provided in subsection (3)~~
 21 ~~is subject to the penalties imposed by 15-30-321(3) if any part of the affidavit is untrue. Notwithstanding~~
 22 ~~the provisions of 15-30-321(3), the department may bring an action as provided for in that subsection in~~
 23 ~~the name of the state to recover the civil penalty and any delinquent taxes."~~

24

25 **Section 16.** Section 15-30-209, MCA, is amended to read:

26 "15-30-209. **Violations by employer -- penalties, interest, and remedies.** (1) If any employer shall
 27 fail to pay over to the state the tax deducted and withheld under the provisions of 15-30-201 through
 28 15-30-208 or shall fail to file or furnish any statement provided for within the time prescribed therefor, the
 29 same additions to the amount of such tax shall be imposed and added as those specified in 15-30-321 with
 30 respect to failure to make a return of income or to pay any income tax, and any individual, corporation, or

~~partnership or any officer or employee thereof who, with intent to evade any tax or any requirement of 15-30-201 through 15-30-208, or who, with like intent, files or supplies any false or fraudulent statement or information shall be liable to the same penalties as those imposed by 15-30-321 with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes~~ The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.

(2) (a) A late report penalty may not be assessed if an employer files the late report prior to the issuance of a notice of delinquent report.

(b) If the report is not received prior to the issuance of a notice of delinquent report, a \$50 penalty must be assessed at the same time the notice is issued.

(3) (a) Taxes unpaid on the date on which they are due and payable are subject to a penalty of 2% per month, or any portion of a month, on the late paid tax with a maximum penalty of 24%.

(b) A late payment penalty may be suspended if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the suspension and the penalty must be recomputed from the due date on the unpaid tax.

(4) An employer must be assessed interest at the rate of 18% a year, computed at 1 1/2% a month or fraction of a month, on any remaining unpaid tax required to be paid.

(5) (a) A subpoena penalty of \$50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a subpoena pursuant to 15-1-302, to obtain wage information or make a summary or jeopardy assessment pursuant to 15-1-703.

(b) If an employer fails to honor the subpoena provided in subsection (5)(a), an additional \$100 penalty must be added to the liability.

(6) In addition to any other penalty provided by law, the failure of an employer to furnish a wage and tax statement as required by 15-30-207(1) subjects the employer to a penalty of \$5 for each failure with a minimum of \$50.

(7) Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.

1 (8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the
 2 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date
 3 of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the
 4 warrant for distraint.

5 (9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest
 6 in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if
 7 the third party receives from the most recent grantor of the interest an affidavit stating that all taxes,
 8 assessments, penalties, and interest due from the grantor have been paid.

9 (10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9)
 10 is subject to the penalties imposed by 15-30-321(3) if any part of the affidavit is untrue. Notwithstanding
 11 the provisions of 15-30-321(3), the department may bring an action as provided in that subsection in the
 12 name of the state to recover the civil penalty and any delinquent taxes.

13 ~~(2)(11)~~ All of the remedies available to the state for the administration, enforcement, and collection
 14 of income taxes shall be are available and shall apply to the tax required to be deducted and withheld under
 15 the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed in this part."
 16

17 **Section 17.** Section 37-31-101, MCA, is amended to read:

18 **"37-31-101. Definitions.** Unless the context requires otherwise, in this chapter, the following
 19 definitions apply:

20 (1) "Board" means the board of cosmetologists provided for in 2-15-1857.

21 (2) "Booth" means any part of a cosmetology salon or manicuring salon that is rented or leased
 22 for the performance of cosmetologist services, as specified in 39-51-204~~(1)(d)~~(1)(e).

23 (3) "Cosmetology salon" means premises, building, or part of a building in which is practiced a
 24 branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or
 25 cosmetologist and that must have a manager-operator in charge.

26 (4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

27 (5) "Manicuring" includes nail care of the hands and feet and the application and maintenance of
 28 artificial nails.

29 (6) "Manicuring salon" means premises, a building, or part of a building in which the art of
 30 manicuring is practiced.

1 (7) "Practice and teaching of cosmetology" means work included in the terms "hairdressing",
2 "manicuring", and "beauty culture" and performed in cosmetology salons, in booths, or by itinerant
3 cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp,
4 face, arms, feet, or hands. The practice and teaching of cosmetology may not be construed to include
5 itinerant cosmetologists who perform their services without compensation for demonstration purposes in
6 any regularly established store or place of business holding a license from the state of Montana as a store
7 or place of business."

8

9 **Section 18.** Section 39-51-201, MCA, is amended to read:

10 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires
11 otherwise, the following definitions apply:

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

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

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

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

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

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

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

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

8 (9) "Domestic or household service" means employment of persons other than members of the
9 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
10 family, including but not limited to housecleaning and yard work but does not include employment beyond
11 the scope of normal household or domestic duties such as home health care or domiciliary care.

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

25 ~~(10)~~(11) "Employment office" means a free public employment office or branch of an office
26 operated by this state or maintained as a part of a state-controlled system of public employment offices
27 or ~~such~~ other free public employment offices operated and maintained by the United States government
28 or its instrumentalities as the department may approve.

29 ~~(11)~~(12) "Fund" means the unemployment insurance fund established by this chapter to which all
30 contributions and payments in lieu of contributions are required to be paid and from which all benefits

1 provided under this chapter must be paid.

2 ~~(12)~~(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic
3 law, for which an individual has been convicted in a criminal court or has admitted or conduct that
4 demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee
5 or the employer.

6 ~~(13)~~(14) "Hospital" means an institution that has been licensed, certified, or approved by the state
7 as a hospital.

8 ~~(14)~~(15) "Independent contractor" means an individual who renders service in the course of an
9 occupation and:

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

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

13 ~~(15)~~(16) (a) "Institution of higher education", for the purposes of this part, means an educational
14 institution that:

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

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

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

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

23 (b) Notwithstanding subsection ~~(15)(a)~~ (16)(a), all universities in this state are institutions of higher
24 education for purposes of this part.

25 ~~(16)~~(17) "State" includes, in addition to the states of the United States of America, the District of
26 Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

27 ~~(17)~~(18) "Taxes" means contributions and assessments required under this chapter but does not
28 include penalties or interest for past-due or unpaid contributions or assessments.

29 ~~(18)~~(19) "Unemployment insurance administration fund" means the unemployment insurance
30 administration fund established by this chapter from which administrative expenses under this chapter must

1 be paid.

2 ~~(19)(20)~~ (a) "Wages", unless specifically exempted under subsection (20)(b), means all remuneration
3 payable for personal services, including ~~commissions and bonuses~~, the cash value of all remuneration
4 payable paid in any medium other than cash, ~~and backpay received pursuant to a dispute related to~~
5 ~~employment~~. The reasonable cash value of remuneration payable in any medium other than cash must be
6 estimated and determined pursuant to rules prescribed by the department. The term includes but is not
7 limited to:

8 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations and
9 sickness periods;

10 (ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous
11 service by the employee for the employer, other than retirement or pension benefits from a qualified plan;
12 and

13 (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are:

14 (A) documented by the employee to the employer for tax purposes;

15 (B) disbursed by the employer from a tip pool; or

16 (C) added to the customer's bill by the employer.

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

18 (i) the amount of any payment made by the employer FOR EMPLOYEES, if the payment was made
19 under a qualified plan as defined under the provisions of the Internal Revenue Code, established for the
20 employees in general or for a specific class or classes of employees, to or on behalf of the employee for:

21 (A) retirement or pension PURSUANT TO A QUALIFIED PLAN AS DEFINED UNDER THE
22 PROVISIONS OF THE INTERNAL REVENUE CODE;

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

24 (C) medical and or hospitalization expenses in connection with sickness or accident disability
25 including health insurance for the employee or the employee's immediate family; or

26 (D) death, including life insurance for the employee or the employee's immediate family; or

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

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

1 ~~(20)~~(21) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.
 2 ~~(21)~~(22) An individual's "weekly benefit amount" means the amount of benefits that the individual
 3 would be entitled to receive for 1 week of total unemployment."

4

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

6 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not
 7 include:

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

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

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

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

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

23 ~~(ii) keeps separate books and records to account for the employment of persons in domestic or~~
 24 ~~household service.~~

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

27 ~~(d)~~(b) service performed by an individual in the employ of that individual's son, daughter, or spouse
 28 and service performed by a child under the age of 21 in the employ of the child's father or mother a
 29 dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or
 30 service performed by a sole proprietor's spouse for whom an exemption based on marital status may be

1 claimed by the sole proprietor under 26 U.S.C. 7703;

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

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

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

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

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

24 ~~(h)(d) services~~ service performed by as a real estate, ~~securities,~~ and insurance salesperson paid
 25 ~~solely by commissions and without guarantee of minimum earnings~~ broker or salesperson who is licensed
 26 pursuant to Title 37, chapter 51;

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

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

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

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

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

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

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

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

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

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

22 (iii) whose contract gives rise to an action for breach of contract in the event of contract
23 termination. ~~(the~~ The existence of a single license for the cosmetology salon or barbershop may not be
24 construed as a lack of freedom from control or direction under this subsection~~);~~_{7.2}

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

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

- 1 partners in a limited liability partnership that has filed with the secretary of state;
- 2 ~~(e)~~(h) services service performed for the installation of floor coverings if the installer:
- 3 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;
- 4 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
- 5 (iii) may perform ~~services~~ service for anyone without limitation;
- 6 (iv) may accept or reject any job;
- 7 (v) furnishes substantially all tools and equipment necessary to provide the ~~services~~ service; and
- 8 (vi) works under a written contract that:
- 9 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
- 10 contract obligations;
- 11 (B) states that the installer is not covered by unemployment insurance; and
- 12 (C) requires the installer to provide a current workers' compensation policy or to obtain an
- 13 exemption from workers' compensation requirements;
- 14 ~~(p)~~(i) employment of service performed as a direct seller, AS DEFINED BY 26 U.S.C. 3508 as
- 15 defined in 26 U.S.C. 3508 As used in this section, "direct seller" means a person:
- 16 (i) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,
- 17 vacuum cleaners, and cleaning products at the home of the consumer;
- 18 (ii) whose pay is determined by the quantity of product sold; and
- 19 (iii) who works under a written contract that states the person will not be treated as an employee;
- 20 ~~(q)~~(i) services service performed by a petroleum land professional. As used in this subsection,
- 21 "petroleum land professional" means a person who:
- 22 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
- 23 negotiating a business agreement for the exploration or development of minerals;
- 24 (ii) is paid for ~~services~~ service that ~~are~~ is directly related to the completion of a contracted specific
- 25 task rather than on an hourly wage basis; and
- 26 (iii) performs all services as an independent contractor pursuant to a written contract.
- 27 ~~(2) Employment does not include elected public officials.~~
- 28 ~~(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:~~
- 29 ~~(a) in the employ of a church or convention or association of churches or an organization that is~~
- 30 ~~operated primarily for religious purposes and that is operated, supervised, controlled, or principally~~

- 1 ~~supported by a church or convention or association of churches;~~
- 2 ~~(b)(k) service performed~~ by an ordained, commissioned, or licensed minister of a church in the
3 exercise of the church's ministry or by a member of a religious order in the exercise of duties required by
4 the order;
- 5 ~~(e)(l) service performed by an individual receiving rehabilitation or remunerative work~~ in a facility
6 conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity
7 is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals
8 who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor
9 market ~~by an individual receiving rehabilitation or remunerative work;~~
- 10 ~~(d)(m) service performed~~ as part of an unemployment work-relief or work-training program assisted
11 or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the
12 state by an individual receiving work relief or work training; ~~or~~
- 13 ~~(e)(n) service performed~~ for a state prison or other state correctional or custodial institution by an
14 inmate of that institution;
- 15 (o) service performed by an individual who is sentenced to perform court-ordered community
16 service or similar work;
- 17 (p) service performed by elected public officials;
- 18 (q) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to
19 this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded
20 from coverage under this chapter if the employer:
- 21 (i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the
22 monetary amount or number of employees and days worked for the subject wages attributable to
23 agricultural labor; and
- 24 (ii) keeps separate books and records to account for the employment of persons in agricultural
25 labor.
- 26 (r) service performed in the employ of any other state or its political subdivisions or of the United
27 States government or of an instrumentality of any other state or states or their political subdivisions or of
28 the United States, except that national banks organized under the national banking law are not entitled to
29 exemption under this subsection and are subject to this chapter the same as state banks, if the service is
30 excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;

1 (s) service in which unemployment insurance is payable under an unemployment insurance system
2 established by an act of congress if the department enters into agreements with the proper agencies under
3 an act of congress and those agreements become effective in the manner prescribed in the Montana
4 Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who
5 have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment
6 insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance
7 under the act of congress, acquired rights to benefits under this chapter;

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

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

21 (v) service performed as an officer or member of the crew of a vessel on the navigable waters of
22 the United States; or

23 (w) service performed by an alien admitted to the United States to perform agricultural labor
24 pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act.

25 ~~(4)~~(2) An individual found to be an independent contractor by the department under the terms of
26 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
27 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
28 39-51-2402.

29 ~~(5)~~(3) This section does not apply to a state or local governmental entity or a nonprofit organization
30 defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from

1 employment as defined in the Federal Unemployment Tax Act."

2

3 **Section 20.** Section 39-51-301, MCA, is amended to read:

4 **"39-51-301. Administration -- duties and powers of department.** (1) It ~~shall be~~ is the duty of the
5 department to administer this chapter and it ~~shall have power and authority to~~ may adopt, amend, or
6 rescind ~~such~~ rules, to employ ~~such~~ persons, make ~~such~~ expenditures, require ~~such~~ reports, make ~~such~~
7 investigations, and take ~~such other~~ action as it ~~deems~~ considers necessary or suitable ~~to that end in~~
8 administering this chapter.

9 (2) The department shall determine its own organization and methods of procedure in accordance
10 with the provisions of this chapter and shall have an official seal, which ~~shall be~~ is judicially noticed.

11 (3) Whenever the department believes that a change in contribution or benefit rates will become
12 necessary to protect the solvency of the fund, it shall promptly ~~se~~ inform the governor and the legislature
13 and make recommendations with respect ~~thereto~~ to the change.

14 (4) The department and the board may issue subpoenas and compel testimony and the production
15 of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

16 (5) The department shall delegate to the department of revenue duties associated with the
17 administration of unemployment insurance contributions and the employment security account so long as
18 the duties are carried out in conformity with the requirements of the program budget plan with the United
19 States department of labor. The delegated duties do not include oversight duties such as revenue quality
20 control, risk management, and trust fund management. The department of revenue must receive funds
21 from the department for the performance of the delegated duties.

22 (6) Employees transferring from the department to the department of revenue as a result of a
23 delegation of duties in subsection (5), are entitled to all rights including those under 2-15-131, possessed
24 as a state officer or employee before transferring, including rights to tenure in office and of rank or grade,
25 rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union
26 contract, rights to compensatory time earned, and any other rights under any law or administrative policy
27 including the State Employee Protection Act. Employees transferring must be considered internal applicants
28 by the department of revenue for recruitment purposes for the period from July 1, 1997, through June 30,
29 1998.

30 (7) The department of revenue shall succeed the department in its rights to property relating to the

1 delegation of duties in subsection (5) to the extent that is consistent with federal property transfer policy.
 2 The property includes real property, records, office equipment, forms, supplies, and contracts other than
 3 the program budget plan with the United States department of labor.

4 (8) (a) The delegation of duties in subsection (5) does not affect the validity of any pending judicial
 5 or administrative proceeding.

6 (b) Appeals that were filed with the board of labor appeals or the department's hearings bureau
 7 before July 1, 1997, must follow the procedures and processes in effect when the appeal was first taken.
 8 An appeal that is filed on or after July 1, 1997, must be taken in accordance with the procedures and
 9 processes in effect on the date the appeal is filed.

10 (c) The department of revenue must be substituted for the department and succeed to all audits,
 11 determinations, and other actions that have not been appealed to the board of labor appeals or the
 12 department's hearings bureau prior to July 1, 1997.

13 (9) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the
 14 parties to contracts, leases, indentures, and other transactions entered into before the delegation of duties
 15 in subsection (5) remain in effect, and none of those rights, privileges, duties, covenants, or agreements
 16 are impaired or diminished by reason of the delegation of duties. The department of revenue is substituted
 17 for the department and subject to the provisions of subsection (5), succeeds to the rights and duties under
 18 the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this
 19 subsection (9) do not apply to the program budget plan agreement between the department and the United
 20 States department of labor."

21
 22 **SECTION 21. SECTION 39-51-1105, MCA, IS AMENDED TO READ:**

23 **"39-51-1105. Liability of corporate officers ~~or employees~~ for taxes, penalties, and interest owed**
 24 **by corporation. (1) The officer ~~or employee~~ of a corporation whose ~~duty~~ responsibility it is to pay the taxes,**
 25 **penalties, and interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the**
 26 **taxes, penalties, and interest due.**

27 **(2) (a) The department shall consider the officer ~~or employee~~ of the corporation individually liable**
 28 **with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that**
 29 **the individual corporate officer:**

30 **(i) possessed the ~~authority, duty, and~~ responsibility to file reports and pay taxes on behalf of the**

1 corporation; and

2 (ii) ~~possessed the authority on behalf of the corporation to direct the filing of reports and payment~~
3 ~~of taxes; or~~

4 (iii) possessed the ~~fiscal authority~~ responsibility on behalf of the corporation to direct the filing of
5 reports or payment of other corporate obligations and exercised the ~~authority~~ responsibility that resulted
6 in failure to file reports or pay taxes due.

7 (b) The department is not limited to considering the elements set forth in subsection (2)(a) to
8 establish individual liability and may consider any other available information.

9 (3) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the
10 discharge of penalty and interest against the corporation. The individual is liable for any amount of taxes,
11 penalties, and interest unpaid by the corporation.

12 (4) For determining liability for unemployment insurance taxes, penalties, and interest owed, a
13 member-managed limited liability company must be treated as a partnership, with liability for taxes,
14 penalties, and interest owed extending to each member.

15 (5) For determining liability for unemployment insurance taxes, penalties, and interest owed by a
16 manager-managed limited liability company, the managers of the limited liability company are jointly and
17 severally liable for any taxes, penalties, and interest owed."

18

19 **Section 22.** Section 39-51-1109, MCA, is amended to read:

20 "**39-51-1109. Tax appeals -- procedure.** (1) A decision, determination, or redetermination of the
21 department involving ~~contribution liability, contribution rate, application for refund, employment status, an~~
22 employer-employee relationship or the charging of benefit payments to employers ~~making payment in lieu~~
23 ~~of contributions~~ is final unless an interested party entitled to notification submits a written appeal of the
24 decision, determination, or redetermination. The appeal must be made in the same manner as provided in
25 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory
26 rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be conducted
27 by telephone or by videoconference. The decision of the appeals referee and any subsequent appeal must
28 be made in the same manner as prescribed in 39-51-2403 through 39-51-2410.

29 (2) A decision, determination, or redetermination involving contribution liability, contribution rate,
30 application for refund, subject wages, or other tax-related issues must be issued by the department of

1 revenue as provided in Title 15, chapter 1, part 2 and [section 7], if applicable. The decision is final unless
 2 an interested party entitled to notification follows the uniform tax review procedures as prescribed in
 3 15-1-211 and [section 7], if applicable."

4
 5 **Section 23.** Section 39-51-1110, MCA, is amended to read:

6 **"39-51-1110. Refunds to employers.** (1) ~~If not later than 3 years after the date on which any~~
 7 ~~taxes or interest thereon became due or not later than 1 year from the date on which payment was made,~~
 8 ~~whichever is later, an employer who has paid such taxes or interest thereon shall make application for an~~
 9 ~~adjustment thereof in connection with subsequent tax payments or for a refund thereof because such~~
 10 ~~adjustment cannot be made and the department shall determine that such taxes or interest or any portion~~
 11 ~~thereof was erroneously collected, the department shall allow such employer to make an adjustment~~
 12 ~~thereof, without interest, in connection with subsequent tax payments by him or, if such adjustment cannot~~
 13 ~~be made, the department shall refund said amount, without interest, from the fund. For like cause and~~
 14 ~~within the same period, adjustment or refund may be so made on the department's own initiative. If an~~
 15 employer claims an adjustment or the department or its delegate, as provided in 39-51-301, determines
 16 through an examination of the employer's account that the employer has overpaid the amount due, the
 17 amount of the overpayment must be applied to future unemployment insurance obligations or must be
 18 refunded to the employer. The credit or refund may be allowed only if the claim is filed, or the determination
 19 is made, within a 5-year period after the date on which any taxes, penalty, or interest became due or within
 20 one year from the date the payment is made, whichever is later. The department or its delegate pursuant
 21 to 39-51-301(5), shall credit or refund the amount to the employer, without interest.

22 (2) If the department ~~shall determine or its delegate pursuant to 39-51-301(5), determines~~ that an
 23 employer has paid taxes to this state under this chapter ~~when such~~ but the taxes should have been paid
 24 to another state under a similar act of ~~such the~~ other state, a transfer of ~~such the~~ taxes to ~~such the~~ other
 25 state ~~shall~~ must be made upon discovery or, upon proof of payment that ~~such the~~ other state has been fully
 26 paid, then a refund to ~~such the~~ employer ~~shall~~ must be made ~~at any time~~ upon application without limitation
 27 of time.

28 (3) ~~In the event that~~ If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304
 29 section 1603 of the Internal Revenue Code, as amended, 1939, for any year, then ~~and in that event~~ refunds
 30 ~~shall~~ must be made of all taxes required under this chapter from employers for that year."

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

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

8 ~~(2) A penalty of \$40 must be assessed whenever, as the result of a willful refusal of an employer~~
9 ~~to furnish wage information or pay taxes on time, the department issues a subpoena to obtain wage~~
10 ~~information or makes a summary or jeopardy assessment pursuant to 39-51-1302. Failure to file reports~~
11 ~~and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may~~
12 ~~subject an employer to penalty and interest, as provided by 15-30-209.~~

13 ~~(3)(2)~~ There is an account in the federal special revenue fund. Penalties and interest collected ~~under~~
14 ~~this section~~ for unemployment insurance obligations are distributed as provided in [section 2], and must
15 be deposited in that account. Money deposited in that account and appropriated to the department or
16 transferred by the department to its delegate, pursuant to 39-51-301(5), may only be used by the
17 department or its delegate to administer this chapter, including the detection and collection of unpaid taxes
18 and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated
19 for this purpose. Money in the account not appropriated for these purposes must be transferred by the
20 department to the unemployment insurance trust fund at the end of each fiscal year.

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

23 ~~(5)(3)~~ All money accruing to the unemployment insurance trust fund from interest and penalties
24 collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment
25 insurance benefits and may not be used for any other purpose."

26
27 **Section 25.** Section 39-51-1303, MCA, is amended to read:

28 "**39-51-1303. Collection of unpaid taxes by civil action.** (1) The department, or its delegate
29 pursuant to 39-51-301(5), has authority to enter into payment agreements with an employer to resolve
30 unpaid taxes, penalty, and interest. Penalty or interest, or both penalty and interest may be abated if an

1 acceptable payment agreement is entered into and adhered to. Failure to meet the terms of the payment
 2 agreement voids the penalty and interest abatement and penalty and interest must be recomputed from the
 3 due date of the unpaid tax.

4 (2) If, after due notice, any employer, liable corporate officer ~~or employee~~, or liable member or
 5 manager of a limited liability company referred to in 39-51-1105 or partner in a limited liability partnership
 6 defaults in any payment of taxes, penalties, or interest on the taxes and penalties, the department, or its
 7 delegate pursuant to 39-51-301(5), may initiate a civil action in the name of the ~~department~~ state to collect
 8 the amount due, and the employer, liable corporate officer ~~or employee~~, ~~or~~ liable member or manager of
 9 a limited liability company referred to in 39-51-1105, or partner in a limited liability partnership adjudged
 10 in default shall pay the costs of the action.

11 ~~(2)~~(3) An action for the collection of taxes due must be brought within 5 years ~~after~~ from the due
 12 date of the original or amended report was filed or assessment became due, whichever is later, taxes or
 13 it is barred.

14 ~~(3)~~(4) The department, or its delegate pursuant to 39-51-301(5), may pursue its remedy under
 15 either 39-51-1304 or this section, or both."

16
 17 **SECTION 26. SECTION 39-51-1304, MCA, IS AMENDED TO READ:**

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

30 (2) A judgment lien filed pursuant to this section may be renewed for another 10-year period

1 pursuant to the provisions of 25-13-102.

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

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

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

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

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

17

18 **Section 27.** Section 39-51-2108, MCA, is amended to read:

19 **"39-51-2108. Payment of benefits based on service in public, charitable, or educational**
20 **organizations.** (1) Benefits based on service in employment defined in ~~subsections (5) and (6) of~~
21 ~~39-51-203(5) and (6) and subsections (2) and (3) of 39-51-204~~ are payable in the same amount, on the
22 same terms, and subject to the same conditions as compensation payable on the basis of other service
23 subject to this chapter, except that benefits based on service in an instructional, research, or principal
24 administrative capacity for an educational institution may not be paid to an individual for any week of
25 unemployment which begins during the period between two successive academic years or during a similar
26 period between two regular terms, whether or not successive, or during a period of paid sabbatical leave
27 provided for in the individual's contract if the individual has a contract or reasonable assurance of a
28 contract to perform services in any ~~such~~ INSTRUCTIONAL, RESEARCH, OR PRINCIPAL ADMINISTRATIVE
29 capacity for ~~any such~~ the educational institution for both ~~such~~ academic years or both ~~such~~ terms.

30 (2) Benefits based on services in any other capacity for an educational institution ~~shall~~ must be

1 denied to any individual for any week which commences during a period between 2 successive academic
 2 years or terms if the individual performs ~~such the~~ services in the first of ~~such the~~ academic years or terms
 3 and there is a reasonable assurance that the individual will perform ~~such the~~ services in the second of ~~such~~
 4 ~~the~~ academic years or terms. If any individual is denied benefits and was not offered an opportunity to
 5 perform ~~such the~~ service for the educational institution for the second of ~~such the~~ academic years or terms,
 6 ~~such the~~ individual ~~shall be~~ is entitled to a retroactive payment of the benefits for each week for which the
 7 individual filed a timely claim for benefits and for which benefits were denied solely by reason of the denial
 8 provided for in this section.

9 (3) Benefits based on services described in subsections (1) and (2) of this section ~~shall~~ must be
 10 denied to any individual for any week ~~which that~~ commences during an established and customary vacation
 11 period or holiday recess if ~~such the~~ individual performs ~~such the~~ services in the period immediately before
 12 ~~such the~~ vacation period or holiday recess and there is reasonable assurance that ~~such the~~ individual will
 13 perform ~~such the~~ service in the period immediately following ~~such the~~ vacation period or holiday recess.

14 (4) Benefits based on services described in subsections (1) and (2) ~~of this section~~ to an individual
 15 who performed ~~such the~~ services for an educational institution while in the employ of an educational service
 16 agency ~~shall~~ must be denied as specified in subsections (1), ~~(2), and through~~ (3) ~~of this section~~. The term
 17 "educational service agency" means a governmental agency or governmental entity which is established
 18 and operated exclusively for the purpose of providing ~~such the~~ service to one or more educational
 19 institutions."
 20

21 **Section 28.** Section 39-51-2402, MCA, is amended to read:

22 "**39-51-2402. Initial determination -- redetermination.** (1) A representative designated by the
 23 department and ~~hereinafter~~ referred to as a deputy shall promptly examine the claim and, on the basis of
 24 the facts the deputy has found, ~~by the deputy,~~ shall ~~either~~ determine whether or not ~~such the~~ claim is valid,
 25 ~~and, if~~ if the claim is valid, the deputy will determine the week ~~with respect to which the~~ benefits shall
 26 commence, the weekly benefit amount payable, and the maximum benefit amount. ~~or shall~~ The deputy may
 27 refer ~~such the~~ claim or any question involved ~~therein~~ in the claim to an appeals referee who shall make the
 28 decision ~~with respect thereto~~ on the claim in accordance with the procedure prescribed in 39-51-2403.
 29 With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must
 30 be resolved in accordance with procedures for unemployment insurance benefit claimant appeals as

1 prescribed in [section 7] and 15-2-302. The deputy shall promptly notify the claimant and any other
2 interested party of the decision and the reasons ~~therefor~~ for reaching the decision.

3 (2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant
4 and ~~such~~ other interested parties of the amended decision and the reasons ~~therefor~~ for the decision.

5 (3) ~~No~~ A determination or redetermination of an initial or additional claim may not be made under
6 this section unless 5 days' notice of the time and place of the claimant's interview for examination of the
7 claim is mailed to each interested party.

8 (4) A determination or redetermination ~~shall be deemed~~ is final unless an interested party entitled
9 to notice ~~thereof~~ of the decision applies for reconsideration of the determination or appeals ~~therefrom~~ the
10 decision within 10 days after ~~such~~ the notification was mailed to the interested party's last-known address,
11 ~~provided that such~~ The 10-day period may be extended for good cause.

12 (5) Except as provided in subsection (6), ~~no~~ a redetermination of a claim for benefits may not be
13 made after 2 years from the date of the initial determination.

14 (6) A redetermination may be made within 3 years from the date of the initial determination of a
15 claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a
16 material fact by the claimant or the employer."
17

18 **Section 29.** Section 39-71-123, MCA, is amended to read:

19 **"39-71-123. Wages defined.** (1) "Wages" means ~~the gross all~~ remuneration paid in money, or in
20 ~~a substitute for money,~~ for services ~~rendered~~ performed by an employee for an employer, or income
21 provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium
22 other than cash. The term includes but ~~are~~ is not limited to:

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

25 (b) ~~board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is~~
26 ~~based on its actual value~~ severance or continuation pay, back pay, and OR any similar pay made for or in
27 regards to previous service by the employee for the employer, other than retirement or pension benefits
28 from a qualified plan;

29 (c) ~~payments made to an employee on any basis other than time worked, including but not limited~~
30 ~~to piecework, an incentive plan, or profit sharing arrangement~~ tips or other gratuities received by the

1 employee, to the extent that tips or gratuities are:

2 (i) documented by the employee to the employer for tax purposes;

3 (ii) disbursed by the employer from a tip pool; or

4 (iii) added to the customer's bill by the employer; and

5 (d) income or payment in the form of a draw, wage, net profit, or substitute for money received
6 or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed
7 work or provided services for that remuneration;

8 (e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is
9 based on its actual value; and

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

12 (2) ~~Wages~~ The term "wages" does not include any of the following:

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

15 (b) ~~special rewards for individual invention or discovery~~ the amount of the payment made by the
16 employer FOR EMPLOYEES, if the payment was made under a qualified plan, established for the employees
17 for the purpose of providing for:

18 (i) retirement or pension PURSUANT TO A QUALIFIED PLAN AS DEFINED UNDER THE
19 PROVISIONS OF THE INTERNAL REVENUE CODE;

20 (ii) sickness or accident disability under a workers' compensation policy;

21 (iii) medical or hospitalization expenses in connection with sickness or accident disability, including
22 health insurance for the employee or the employee's immediate family; or

23 (iv) death, including life insurance for the employee or the employee's immediate family;

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

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

27 ~~(e)(c) vacation or sick leave benefits accrued but not paid; or~~

28 (d) special rewards for individual invention or discovery.

29 (3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average
30 actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except

1 that if the term of employment for the same employer is less than four pay periods, the employee's wages
2 are the hourly rate times the number of hours in a week for which the employee was hired to work.

3 (b) For good cause shown, if the use of the last four pay periods does not accurately reflect the
4 claimant's employment history with the employer, the wage may be calculated by dividing the total earnings
5 for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks
6 in that period, including periods of idleness or seasonal fluctuations.

7 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent
8 employments, the average actual wages must be calculated as provided in subsection (3). As used in this
9 subsection, "concurrent employment" means employment in which the employee was actually employed
10 at the time of the injury and would have continued to be employed without a break in the term of
11 employment if not for the injury.

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

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

19

20 **Section 30.** Section 39-71-401, MCA, is amended to read:

21 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
22 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
23 all employees, as defined in 39-71-118. An employer who has any employee in service under any
24 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
25 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
26 Compensation Act is subject to and bound by the compensation plan that has been elected by the
27 employer.

28 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
29 allows an election, the Workers' Compensation Act does not apply to any of the following employments:

30 (a) household and domestic employment;

- 1 (b) casual employment as defined in 39-71-116;
- 2 (c) employment of a dependent member of an employer's family for whom an exemption may be
3 claimed by the employer under the federal Internal Revenue Code;
- 4 (d) employment of sole proprietors, working members of a partnership, or working members of a
5 member-managed limited liability company, except as provided in subsection (3);
- 6 (e) employment of a broker or salesman performing under a license issued by the board of realty
7 regulation;
- 8 (f) employment ~~of~~ as a direct seller, AS DEFINED BY 26 U.S.C. 3508 ~~as defined in 26 U.S.C. 3508~~
9 As used in this section, "direct seller" means a person:
- 10 (i) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,
11 vacuum cleaners, and cleaning products at the home of the consumer;
- 12 (ii) whose pay is determined by the quantity of product sold; and
- 13 (iii) who works under a written contract that states the person will not be treated as an employee;
- 14 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
15 under the laws of the United States;
- 16 (h) employment of a person performing services in return for aid or sustenance only, except
17 employment of a volunteer under 67-2-105;
- 18 (i) employment with a railroad engaged in interstate commerce, except that railroad construction
19 work is included in and subject to the provisions of this chapter;
- 20 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
21 event, unless the person is otherwise employed by a school district;
- 22 (k) employment of a person performing services as a newspaper carrier or ~~free-lance~~ freelance
23 correspondent if the person performing the services or a parent or guardian of the person performing the
24 services in the case of a minor has acknowledged in writing that the person performing the services and
25 the services are not covered. As used in this subsection, "~~free-lance~~ freelance correspondent" is a person
26 who submits articles or photographs for publication and is paid by the article or by the photograph. As used
27 in this subsection, "newspaper carrier":
- 28 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
29 bundles; but
- 30 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,

1 carries or delivers papers.

2 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

3 (m) a person who is employed by an enrolled tribal member or an association, business,
4 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
5 business is conducted solely within the exterior boundaries of an Indian reservation;

6 (n) employment of a jockey performing under a license issued by the board of horseracing from the
7 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
8 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
9 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

10 (o) employment of an employer's spouse for whom an exemption based on marital status may be
11 claimed by the employer under 26 U.S.C. 7703;

12 (p) a person who performs services as a petroleum land professional. As used in this subsection,
13 a "petroleum land professional" is a person who:

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

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

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

19 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
20 liability company who qualifies under one or more of the following provisions:

21 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
22 limited liability company and does not receive any pay from the corporation or the limited liability company
23 for performance of the duties;

24 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
25 limited liability company;

26 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
27 or owns 20% or more of the limited liability company; or

28 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
29 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
30 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

1 (r) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
2 of the church's ministry or by a member of a religious order in the exercise of duties required by the order.

3 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
4 member-managed limited liability company who represents to the public that the person is an independent
5 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
6 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

7 (b) The application must be made in accordance with the rules adopted by the department. There
8 is no fee for the initial application. Any subsequent application must be accompanied by a \$25 application
9 fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset
10 the costs of administering the program.

11 (c) When an application is approved by the department, it is conclusive as to the status of an
12 independent contractor and precludes the applicant from obtaining benefits under this chapter.

13 (d) The exemption, if approved, remains in effect for 1 year following the date of the department's
14 approval. To maintain the independent contractor status, an independent contractor shall annually submit
15 a renewal application. A renewal application must be submitted for all independent contractor exemptions
16 approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee
17 must be received by the department at least 30 days prior to the anniversary date of the previously
18 approved exemption.

19 (e) A person who makes a false statement or misrepresentation concerning that person's status
20 as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose
21 the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured
22 employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

23 (f) If the department denies the application for exemption, the applicant may contest the denial by
24 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
25 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with
26 the procedure established in 39-51-2403 and 39-51-2404.

27 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
28 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
29 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
30 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following

1 manner:

2 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
3 delivering the notice to the board of directors of the corporation or to the management organization of the
4 manager-managed limited liability company; or

5 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
6 delivering the notice to the board of directors of the corporation or to the management organization of the
7 manager-managed limited liability company and to the insurer.

8 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
9 the employer shall again serve notice to its insurer and to its board of directors or the management
10 organization of the manager-managed limited liability company if the employer elects to be bound.

11 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
12 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
13 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
14 exemption from coverage.

15 (6) Each employer shall post a sign in the workplace at the locations where notices to employees
16 are normally posted, informing employees about the employer's current provision of workers' compensation
17 insurance. A workplace is any location where an employee performs any work-related act in the course of
18 employment, regardless of whether the location is temporary or permanent, and includes the place of
19 business or property of a third person while the employer has access to or control over the place of
20 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
21 The sign must be provided by the department, distributed through insurers or directly by the department,
22 and posted by employers in accordance with rules adopted by the department. An employer who purposely
23 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
24

25 **Section 31.** Section 39-71-2501, MCA, is amended to read:

26 **"39-71-2501. Definitions.** As used in this part, the following definitions apply:

27 (1) "Account" means the workers' compensation bond repayment account established in
28 39-71-2504.

29 (2) "Department" means the department of revenue provided for in 2-15-1301.

30 (3) "Domestic or household service" means employment of persons other than members of the

1 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
 2 family, including but not limited to housecleaning and yard work but does not include employment beyond
 3 the scope of normal household or domestic duties, such as home health care or domiciliary care.

4 ~~(3)(4)~~ "Employee" includes:

5 (a) an officer, employee, or elected public official of the United States, the state of Montana, or
 6 any political subdivision of the United States or the state of Montana or any agency or instrumentality of
 7 the United States, the state of Montana, or a political subdivision of the United States or the state of
 8 Montana. The term "employee" also includes;

9 (b) an officer of a corporation;

10 (c) any individual who performs services for another individual or organization having the right to
 11 control the employee as to the services to be performed and as to the manner of performance; and

12 (d) all classes, grades or types of employees, including minors and aliens, superintendents,
 13 managers, and other supervisory personnel.

14 ~~(4)(a)(5)~~ (a) "Employer" means:

15 (i) except as provided in subsection (4)(b), the person for whom an individual performs or
 16 performed any service, of whatever nature, as an employee of the person;

17 ~~(b) If the person for whom the individual performs or performed the service does not have control~~
 18 ~~of the payment of the wages for the service, the term "employer" means the person who has control of~~
 19 ~~the payment of wages.~~

20 (ii) a person who pays \$1,000 or more in wages within the current calendar year;

21 (iii) a person who pays \$1,000 or more in cash for domestic service in any quarter during the
 22 current calendar year; or

23 (iv) any individual or organization, including state government and any of its political subdivision
 24 or instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited
 25 liability company or a limited liability partnership that has filed or registered with the secretary of state,
 26 corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's
 27 successor, or legal representative of a deceased person that has or had in its employ one or more
 28 individuals performing services for it within this state.

29 (b) Any person found to be an employer under Title 39, chapter 51, for unemployment insurance
 30 purposes is considered an employer for old fund liability tax purposes.

1 ~~(6)~~(6) "Federal workers' compensation legislation" means federal legislation that provides an
 2 employee with compensation or remuneration for accidental injury or death. This legislation includes but
 3 is not limited to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the
 4 Defense Base Act.

5 ~~(6)~~(7) "Ongoing activities" means obligations or occurrences that are continuous, rather than
 6 intermittent or occasional, that exist for a definite period of time during the year, or that are intended to
 7 cover or apply to successive and similar obligations or occurrences.

8 ~~(7)~~(8) "Publicly traded limited partnership" means a business entity that issues shares or similar
 9 ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders
 10 on a public exchange recognized by the securities exchange commission.

11 ~~(8)~~(9) "State fund" means the state compensation insurance fund.

12 ~~(9)~~(10) "Tax" or "old fund liability tax" means the workers' compensation old fund liability tax
 13 provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from
 14 accidents that occurred before July 1, 1990.

15 ~~(10)~~(11) (a) "Wages" means all remuneration for services performed in the state of Montana by
 16 an employee for an employer, including the cash value of all remuneration paid in any medium other than
 17 cash. The term ~~does not include remuneration paid~~ includes but is not limited to the following:

18 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and
 19 sickness periods;

20 (ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous
 21 service by the employee for the employer, other than retirement or pension benefits from a qualified plan;
 22 and

23 (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are:

24 ~~(A) documented by the employee to the employer for tax purposes;~~

25 ~~(B) disbursed by the employer from a tip pool; or~~

26 ~~(C) added to the customer's bill by the employer.~~

27 ~~(a) for casual labor not in the course of the employer's trade or business performed in any calendar~~
 28 ~~quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service~~
 29 ~~is performed by an individual who is regularly employed by the employer to perform the service. For~~
 30 ~~purposes of this subsection (10)(a), an individual is considered to be regularly employed by an employer~~

1 ~~during a calendar quarter only if:~~

2 ~~(i) on each of 24 days during the calendar quarter, the individual performs service not in the course~~
 3 ~~of the employer's trade or business for the employer for some portion of the day; and~~

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

6 ~~(b) for services not in the course of the employer's trade or business, to the extent that~~
 7 ~~remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals~~
 8 ~~and the payments are received by the employee at the request of and for the convenience of the employer;~~

9 ~~(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or~~
 10 ~~program that benefits the employee, including but not limited to life insurance, hospitalization insurance for~~
 11 ~~the employee or the employee's dependents, and employees' club activities;~~

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

13 (i) the amount of any payment made by the employer FOR EMPLOYEES, if the payment was made
 14 under a qualified plan as defined under the provisions of the Internal Revenue Code established for
 15 employees for:

16 (A) retirement or pension PURSUANT TO A QUALIFIED PLAN AS DEFINED UNDER THE
 17 PROVISIONS OF THE INTERNAL REVENUE CODE;

18 (B) sickness or accident disability under a workers' compensation policy;

19 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
 20 health insurance for the employee or the employee's immediate family; or

21 (D) death, including life insurance for the employee or the employee's immediate family;

22 (ii) compensation in the form of meals and lodging, provided the compensation is not includable
 23 in gross income for state individual income tax purposes;

24 ~~(d)(iii) as payments distributions from a multiple employer welfare arrangement, as defined in 29~~
 25 ~~U.S.C. 1002, to a qualified individual employee;~~

26 ~~(e)(iv) as wages or compensation, the taxation of which is prohibited by payments that may not~~
 27 ~~be taxed under federal law; or~~

28 ~~(f)(v) as wages or compensation for services performed by Montana residents outside the borders~~
 29 ~~of the state of Montana."~~

30

1 **Section 32.** Section 39-71-2503, MCA, is amended to read:

2 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
3 employer, except an employer whose employees are covered by federal workers' compensation legislation,
4 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
5 old fund liability tax provided in 39-71-2505, of the wages paid for employment as defined in this part by
6 the employer in the preceding payroll period subject to reporting and remittance requirements contained in
7 15-30-204.;

8 ~~(i) for the preceding payroll period for employers subject to the payment schedule contained in~~
9 ~~15-30-204(1);~~

10 ~~(ii) for the preceding month for employers subject to the payment schedule contained in~~
11 ~~15-30-204(2); and~~

12 ~~(iii) for the preceding year for employers subject to the payment schedule contained in~~
13 ~~15-30-204(3)(a).~~

14 (b) There is imposed on each employee, except an employee who is covered by federal workers'
15 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages
16 paid for employment, as defined in this part. An employer paying wages for ~~services performed~~
17 employment, as defined in this part, in Montana shall deduct and withhold the tax from the wages.

18 (c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
19 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
20 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
21 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
22 partner, or member or manager derived from ongoing activities.

23 (ii) The tax imposed in this subsection (1)(c) applies only to the ordinary income of a shareholder,
24 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

25 (iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this
26 subsection (1)(c).

27 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
28 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
29 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
30 officer's wages.

1 (e) A corporate officer of a closely held corporation who owns stock in a closely held corporation
2 that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives
3 wages as an employee of the corporation is required to pay the old fund liability tax only on the wages
4 received. The corporation is not liable for the tax on the corporate officer's wages.

5 (f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred
6 for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or
7 bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans
8 or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month
9 period if the workers' compensation bond repayment account contains on the first day of that period an
10 amount, regardless of the source, that is in excess of the reserve maintained in the account and that is
11 equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest
12 that must be paid during that period on the outstanding loans or bonds.

13 (g) Each employer shall maintain the records that the department requires concerning the old fund
14 liability tax. The records are subject to inspection by the department and its employees and agents during
15 regular business hours.

16 (h) An employee does not have any right of action against an employer for any money deducted
17 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
18 this section.

19 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
20 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
21 old fund liability tax required by this section.

22 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
23 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and
24 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
25 the old fund liability tax required by this section.

26 (2) All collections of the tax must be deposited as received in the account. The tax is in addition
27 to any other tax or fee assessed against persons subject to the tax.

28 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made pursuant
29 to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any
30 remainder to the account provided for in 39-71-2504.

1 (b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of
2 partnerships, and members or managers of limited liability companies must be made with and at the same
3 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment
4 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided
5 for in 39-71-2504.

6 (c) An employer who exceeds either threshold, as defined in 39-71-2501(5)(a)(ii) or (5)(a)(iii), shall
7 begin withholding old fund liability tax on or before the last day of the month following the quarter in which
8 the wages paid exceed the threshold requirement. The employer shall begin reporting and remitting the
9 employer and employee portions of the old fund liability tax. The report and remittance are due the last
10 day of the month of the subsequent quarter following the quarter in which the wages paid exceeded the
11 threshold requirement. The employer is subject to the quarterly remittance schedule until the department
12 is able to determine the employer's proper remittance schedule by a review of the employer's first complete
13 lookback period.

14 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
15 department the amounts due under this section who fails to pay an amount is liable to the state for the
16 unpaid amount and any penalty and interest relating to that amount.

17 (5) Returns and remittances under subsection (3) and any information obtained by the department
18 during an audit are subject to the provisions of ~~15-30-303, [section 1]~~ but the department may disclose
19 ~~the information to the department of labor and industry for the purpose of investigation and prevention of~~
20 ~~noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under~~
21 ~~circumstances and conditions that ensure the continued confidentiality of the information.~~

22 (6) The department of labor and industry and the state fund shall give the department a list of all
23 employers having coverage under any plan administered or regulated by the department of labor and
24 industry and the state fund. The department of labor and industry and the state fund shall update the lists
25 weekly. The department of labor and industry and the state fund shall provide the department with access
26 to their computer data bases and paper files and records for the purpose of the department's administration
27 of the tax imposed by this section.

28 (7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part
29 regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments,
30 credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking

1 authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation
 2 shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the
 3 department."

4

5 **Section 33.** Section 39-71-2503, MCA, is amended to read:

6 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
 7 employer, except an employer whose employees are covered by federal workers' compensation legislation,
 8 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
 9 old fund liability tax provided in 39-71-2505, of the wages paid for employment as defined in this part by
 10 the employer in the preceding payroll period, subject to reporting and remittance requirements contained
 11 in 15-30-204.

12 ~~(i) for the preceding payroll period for employers subject to the payment schedule contained in~~
 13 ~~15-30-204(1);~~

14 ~~(ii) for the preceding month for employers subject to the payment schedule contained in~~
 15 ~~15-30-204(2); and~~

16 ~~(iii) for the preceding year for employers subject to the payment schedule contained in~~
 17 ~~15-30-204(3)(a).~~

18 (b) There is imposed on each employee, except an employee who is covered by federal workers'
 19 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages
 20 paid for employment, as defined in this part. An employer paying wages for ~~services performed~~
 21 employment, as defined in this part, in Montana shall deduct and withhold the tax from the wages.

22 (c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
 23 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
 24 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
 25 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
 26 partner, or member or manager derived from ongoing activities.

27 (ii) The tax imposed in this subsection (1)(c) applies only to the ordinary income of a shareholder,
 28 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

29 (iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this
 30 subsection (1)(c).

1 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
2 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
3 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
4 officer's wages.

5 (e) A corporate officer of a closely held corporation who owns stock in a closely held corporation
6 that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives
7 wages as an employee of the corporation is required to pay the old fund liability tax only on the wages
8 received. The corporation is not liable for the tax on the corporate officer's wages.

9 (f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred
10 for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or
11 bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans
12 or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month
13 period if the workers' compensation bond repayment account contains on the first day of that period an
14 amount, regardless of the source, that is in excess of the reserve maintained in the account and that is
15 equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest
16 that must be paid during that period on the outstanding loans or bonds.

17 (g) Each employer shall maintain the records that the department requires concerning the old fund
18 liability tax. The records are subject to inspection by the department and its employees and agents during
19 regular business hours.

20 (h) An employee does not have any right of action against an employer for any money deducted
21 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
22 this section.

23 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
24 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
25 old fund liability tax required by this section.

26 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
27 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and
28 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
29 the old fund liability tax required by this section.

30 (2) All collections of the tax must be deposited as received in the account. The tax is in addition

1 to any other tax or fee assessed against persons subject to the tax.

2 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) are due on or before the
3 last day of the month following the close of each calendar quarter and must be made pursuant to
4 15-30-204. The department shall ~~first credit a payment to the liability under 15-30-202 and credit any~~
5 ~~remainder to the account provided for in 39-71-2504~~ payments as provided for in [section 2].

6 (b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of
7 partnerships, and members or managers of limited liability companies must be made with and at the same
8 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment
9 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided
10 for in 39-71-2504.

11 (c) An employer who exceeds either threshold, as defined in 39-71-2501(5)(a)(ii) or (5)(a)(iii), shall
12 begin withholding old fund liability tax on or before the last day of the month following the quarter in which
13 the wages paid exceed the threshold requirement. The employer shall begin reporting and remitting the
14 employer and employee portions of the old fund liability tax. The report and remittance are due the last
15 day of the month of the subsequent quarter following the quarter in which the wages paid exceeded the
16 threshold requirement. The employer is subject to the quarterly remittance schedule until the department
17 is able to determine the employer's proper remittance schedule by a review of the employer's first complete
18 lookback period.

19 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
20 department the amounts due under this section who fails to pay an amount is liable to the state for the
21 unpaid amount and any penalty and interest relating to that amount.

22 (5) Returns and remittances under subsection (3) and any information obtained by the department
23 during an audit are subject to the provisions of ~~15-30-303 [section 1], but the department may disclose~~
24 ~~the information to the department of labor and industry for the purpose of investigation and prevention of~~
25 ~~noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under~~
26 ~~circumstances and conditions that ensure the continued confidentiality of the information.~~

27 (6) The department of labor and industry and the state fund shall give the department a list of all
28 employers having coverage under any plan administered or regulated by the department of labor and
29 industry and the state fund. The department of labor and industry and the state fund shall update the lists
30 weekly. The department of labor and industry and the state fund shall provide the department with access

1 to their computer data bases and paper files and records for the purpose of the department's administration
2 of the tax imposed by this section.

3 (7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part
4 regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments,
5 credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking
6 authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation
7 shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the
8 department."

9

10 **Section 34.** Section 39-71-2505, MCA, is amended to read:

11 **"39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before**
12 **July 1, 1990.** (1) The state fund shall pay for the cost of administering and paying claims for injuries
13 resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by
14 borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable
15 on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the
16 state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to
17 pay for administering and paying the claims for the ensuing year.

18 (2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall
19 forward to the budget director information pertaining to the amount that the state fund will borrow for the
20 ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in
21 subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected
22 liability payments and cash needs on which the amount to be borrowed is based. The schedule must include
23 but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old
24 fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend
25 cash for the year 2007.

26 (b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided
27 in 39-71-2503. The employer old fund liability tax is an amount equal to 0.5% of the employer's payroll
28 for wages paid in the preceding calendar quarter payroll period for wages paid for employment, as defined
29 in this part.

30 (ii) The employee old fund liability tax is an amount equal to 0.2% of the employee's wages in the

1 preceding ~~calendar quarter~~ payroll period for wages paid for employment, as defined in this part.

2 (iii) The old fund liability tax is an amount equal to 0.2% on the profit of each separate business
3 of a sole proprietor and on the distributive share of ordinary income of each subchapter S. corporation
4 shareholder, partner of a partnership, or member or manager of a limited liability company.

5 (iv) The rate of the employer old fund liability tax determined by this section includes the 0.28%
6 employer old fund liability tax provided for in 39-71-2503.

7 (v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in
8 39-71-2503 terminates at the end of fiscal year 2007.

9 (B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are
10 outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.

11 (vi) The old fund liability tax described in this section must be collected and deposited as provided
12 in 39-71-2503 and 39-71-2504.

13 (3) If in any January the cumulative projected amount to be borrowed by the state fund from
14 reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1,
15 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990,
16 not including any outstanding bonds as of May 13, 1993, exceeds \$80 million for the following fiscal year,
17 the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the
18 following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance
19 for the current fiscal year exceeds \$25 million, the tax rate on the persons subject to the old fund liability
20 tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

21 (4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.

22 (5) The budget director shall certify the cash flow projections of the state fund required by this
23 section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected
24 pursuant to this section."

25

26 NEW SECTION. SECTION 35. REPEALER. ARM 24.11.831 IS REPEALED.

27

28 NEW SECTION. Section 36. Severability. If a part of [this act] is invalid, all valid parts that are
29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
30 applications, the part remains in effect in all valid applications that are severable from the invalid

1 applications.

2

3 **NEW SECTION. Section 37. Saving clause.** [This act] does not affect rights and duties that
4 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
5 act].

6

7 **NEW SECTION. Section 38. Codification instruction.** (1) [Sections 1 through 5 and 7] are intended
8 to be codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30,
9 part 2, apply to [sections 1 through 5 and 7].

10 (2) [Section 6] is intended to be codified as an integral part of Title 39, chapter 71, part 25, and
11 the provisions of Title 39, chapter 71, part 25, apply to [section 6].

12

13 **NEW SECTION. Section 39. Coordination instruction.** (1) If Senate Bill No. 119 is passed and
14 approved, then [section 4], amending 15-30-204, [section 5], amending 39-71-2503, and [section 6],
15 amending 39-71-2505 in Senate Bill No. 119, are void.

16 **(2) IF SENATE BILL NO. 67 IS PASSED AND APPROVED, THEN THE AMENDMENT CONTAINED**
17 **IN 39-71-2503(3)(A) IN [SECTION 27] OF THE REFERENCE COPY OF SENATE BILL NO. 67, RELATING TO**
18 **THE CREDIT OF THE OLD FUND LIABILITY TAX TO THE ACCOUNT PROVIDED FOR IN 39-71-2321, IS**
19 **VOID ON JANUARY 1, 1999.**

20

21 **NEW SECTION. Section 40. Effective dates.** (1) [Sections 1, 20 and ~~33~~ 35 through ~~36~~ 39 and
22 this section] are effective July 1, 1997.

23 (2) [Sections 3 through 7, 9 through 12, 17 through 19, ~~21, 22~~ THROUGH 23, 24 25 through ~~30~~
24 32, and ~~32~~ 34 are effective January 1, 1998.

25 (3) [Sections 2, 8, 13 through 16, ~~23~~ 24, and ~~31~~ 33] are effective January 1, 1999.

26

-END-

1 HOUSE BILL NO. 561

2 INTRODUCED BY KASTEN, RANEY, DEVLIN, BENEDICT, SIMON, VAN VALKENBURG, STANG,
3 BARTLETT, FOSTER, HALLIGAN, THOMAS, HARP, MERCER, KEATING, FELAND, STORY, JERGESON,
4 CHRISTIAENS, FRANKLIN, HIBBARD

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT FURTHERING THE RENEWAL OF STATE GOVERNMENT BY
7 HARMONIZING THE DEFINITIONS OF "WAGES" AND "EMPLOYMENT"; BY REENGINEERING,
8 RESTRUCTURING, AND COMBINING THE REPORTING AND REMITTANCE OF EMPLOYER TAXES; BY
9 COORDINATING THE ADMINISTRATION OF THE STATE'S INCOME TAX AND OLD FUND LIABILITY TAX
10 WITHHOLDING, UNEMPLOYMENT INSURANCE TAX, AND THE EMPLOYERS' SHARE OF THE OLD FUND
11 LIABILITY TAX SO THAT ALL REPORTS AND REMITTANCES MUST BE MADE TO THE DEPARTMENT OF
12 REVENUE THEREBY PROVIDING AN EMPLOYER THE CONVENIENCE OF DEALING WITH ONLY ONE STATE
13 AGENCY; BY CLARIFYING INDIVIDUAL LIABILITY FOR THE REPORTING AND PAYMENT OF EMPLOYER
14 TAXES; AND AMENDING SECTIONS 15-1-302, 15-2-302, 15-30-201, 15-30-202, 15-30-203, 15-30-204,
15 15-30-207, 15-30-208, 15-30-209, 37-31-101, 39-51-201, 39-51-204, 39-51-301, 39-51-1105,
16 39-51-1109, 39-51-1110, 39-51-1301, 39-51-1303, 39-51-1304, 39-51-2108, 39-51-2402, 39-71-123,
17 39-71-401, 39-71-2501, 39-71-2503, AND 39-71-2505, MCA; REPEALING ARM 24.11.831; AND
18 PROVIDING EFFECTIVE DATES."

19
20 WHEREAS, HOUSE BILL NO. 98 (CH. 48, L. 1995), ENACTED BY THE 54TH LEGISLATURE,
21 EXCLUDED DIRECT SELLERS FROM MINIMUM WAGE, OVERTIME, UNEMPLOYMENT INSURANCE, AND
22 WORKERS' COMPENSATION REQUIREMENTS; AND

23 WHEREAS, THE LEGISLATURE IN HOUSE BILL NO. 98 ADOPTED THE FEDERAL DEFINITION OF
24 DIRECT SELLER TO APPLY TO RELEVANT MONTANA STATUTES; AND

25 WHEREAS, ARM 24.11.831 NARROWED THE SCOPE OF THE FEDERAL DEFINITION OF DIRECT
26 SELLER; AND

27 WHEREAS, AN ORIGINAL PURPOSE OF THIS HOUSE BILL NO. 561 WAS TO CODIFY THE
28 NARROWER DEFINITION OF DIRECT SELLER; AND

29 WHEREAS, THIS HOUSE BILL NO. 561 IS THE APPROPRIATE PLACE TO REPEAL RULE 24.11.831,
30 ADMINISTRATIVE RULES OF MONTANA.

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

2

3 NEW SECTION. **Section 1. Confidentiality.** Reports and returns required to be filed under this part
4 are confidential, subject to the limitations contained in 39-51-603(3) and (4).

5

6 NEW SECTION. **Section 2. Application and distribution of payments.** (1) Except as provided by
7 rule, tax payments including delinquent tax, penalty, and interest must be applied to the taxpayer's
8 account, prorated on the basis of the amount of each tax due to the amount of the total tax due, and
9 distributed to the appropriate fund accounts as required by law.

10 (2) Payment of a penalty assessed for late filing of a report for which there is no tax due for the
11 period must be applied to the employer's liability for the penalties and equally distributed to the fund
12 accounts specified by law among the tax types the report covers.

13

14 NEW SECTION. **Section 3. Statute of limitations.** (1) In the case of a nonfiled return, the
15 department may, at any time, audit the employer or estimate the tax due from any information in its
16 possession and issue an assessment for the amount of the tax, penalty, and interest the department
17 determines to be due.

18 (2) If the department determines, pursuant to a review conducted pursuant to 15-30-145, that any
19 return is incorrect, it may revise the return within 5 years of the due date of the original return, within 5
20 years of the date the return was filed, or 1 year from the date an amended return was filed, whichever is
21 later.

22 (3) Notwithstanding the provisions of subsection (2), if an employer purposely or knowingly files
23 a false or fraudulent return, with intent to evade the tax, the amount of tax, penalty, and interest due may
24 be determined at any time after the return is filed and collected at any time after it becomes due.

25 (4) For the purposes of this section, a return filed before the due date is considered to be filed on
26 the due date.

27 (5) The statute of limitations is suspended during any time in which an employer-employee
28 relationship determination has been appealed as provided in 15-1-211, and the time for assessment extends
29 for an additional 1 year from the date the decision becomes final.

30

1 **NEW SECTION. Section 4. Credits and refunds -- period of limitations.** (1) If the department
2 determines by examination of an employer's account, or upon claim filed by an employer, that the employer
3 has overpaid the amount of tax, penalty, or interest, the amount of the overpayment may be refunded to
4 the employer or applied to current or future obligations of any tax, penalty, or interest for any tax contained
5 in this title at the discretion of the taxpayer.

6 (2) A credit or refund may be allowed only if the claim is filed or the determination is made within
7 5 years of the due date prescribed for filing a report or 1 year from the date of the notification of the
8 overpayment by the department.

9 (3) The department shall notify the employer of the overpayment and the credit or refund options
10 available to the employer. A credit must be applied to the employer account unless directed otherwise by
11 the employer.

12 (4) If a claim is disallowed, the department shall notify the employer. The decision disallowing the
13 claim is subject to review as provided in 15-1-211.

14 (5) Interest is:

15 (a) allowed on an overpayment at the same rate as charged for late tax payments under this part;

16 (b) payable from the due date of the payment or the date overpayment was verified, whichever
17 is later;

18 (c) not payable if the overpayment is applied to current or future obligations with the department.

19 (6) Interest is not allowed if the overpayment is refunded within 45 days from the date the
20 employer directs the department to refund the overpayment.

21 (7) If additional information is required to verify the amount of the overpayment, the 45-day period
22 in subsection (6) does not begin until the information is provided.

23
24 **NEW SECTION. Section 5. Employment defined and exclusions from definition of employment.**

25 (1) As used in this part "employment", subject to the provisions of subsection (2), means the service by
26 an employee for an employer.

27 (2) The term "employment" does not include:

28 (a) household and domestic service in a private home, local college club, or local chapter of a
29 college fraternity or sorority, except as provided in 15-30-201(4)(c);

30 (b) service performed by a dependent, as defined in 26 U.S.C. 152, of a sole proprietor for whom

1 an exemption may be claimed by the employer under the Internal Revenue Code or service performed by
2 a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole
3 proprietor pursuant to 26 U.S.C. 7703;

4 (c) service performed as a freelance correspondent or newspaper carrier if the person performing
5 the service, or a parent or guardian of the person performing the service in the case of a minor, has
6 previously acknowledged or acknowledges in writing that the person performing the service and the service
7 are not covered for unemployment insurance purposes. As used in this subsection:

8 (i) "freelance correspondent" is a person who submits articles or photographs for publication and
9 is paid by the article or by the photograph; and

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

13 (d) service performed as a licensed real estate broker or salesperson under Title 37, chapter 51;

14 (e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber
15 who is licensed under Title 37, chapter 30, and:

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

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

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

21 (B) receives payment for service from individual clientele; and

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

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

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

1 (g) service performed by sole proprietors, working members of a partnership or a limited liability
2 partnership, or members of a member-managed limited liability company that has filed articles of
3 organization with the secretary of state;

4 (h) service performed for the installation of floor coverings if the installer:

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

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

7 (iii) may perform service for anyone without limitation;

8 (iv) may accept or reject any job;

9 (v) furnishes substantially all tools and equipment necessary to provide the service; and

10 (vi) works under a written contract that:

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

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

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

16 (i) service performed by a direct seller. ~~As used in this subsection, "direct seller" means a person;~~
17 ~~(ii) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,~~
18 ~~vacuum cleaners, and cleaning products at the home of the consumer;~~

19 ~~(iii) whose pay is determined by the quantity of product sold; and~~

20 ~~(iii) who works under a written contract that states the person will not be treated as an employee~~

21 AS DEFINED BY 26 U.S.C. 3508;

22 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land
23 professional" means a person who:

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

26 (ii) is paid for service that is directly related to the completion of a contracted specific task rather
27 than on an hourly wage basis; and

28 (iii) performs all service as an independent contractor pursuant to a written contract;

29 (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
30 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

1 (l) service performed by an individual receiving rehabilitation or remunerative work in a facility
2 conducted for the purpose of carrying out a program of rehabilitation for those individuals whose earning
3 capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for
4 individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the
5 competitive labor market;

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

9 (n) service performed by an inmate of a state prison or other state correctional or custodial
10 institution;

11 (o) service by an individual who is sentenced to perform court-ordered community service or similar
12 work;

13 (p) service performed for aid or sustenance only;

14 (q) active service as members of the regular armed forces of the United States, as defined in 10
15 U.S.C. 101(33);

16 (r) agricultural labor; or

17 (s) service performed by an independent contractor.

18

19 **NEW SECTION. Section 6. Employment defined and exclusions from definition of employment.**

20 (1) As used in this part "employment", subject to the provisions of subsection (2), means the service by
21 an employee for an employer.

22 (2) The term "employment" does not include:

23 (a) household and domestic service in a private home, local college club, or local chapter of a
24 college fraternity or sorority, except as provided in 39-71-2501(4)(c);

25 (b) service performed by a dependent, as defined in 26 U.S.C. 152, of a sole proprietor for whom
26 an exemption may be claimed by the employer under the Internal Revenue Code or service performed by
27 a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole
28 proprietor under 26 U.S.C. 7703;

29 (c) service performed as a freelance correspondent or newspaper carrier if the person performing
30 the service, or a parent or guardian of the person performing the service in the case of a minor, has

1 previously acknowledged or acknowledges in writing that the person performing the service and the service
2 are not covered for unemployment insurance purposes. As used in this subsection:

3 (i) "freelance correspondent" is a person who submits articles or photographs for publication and
4 is paid by the article or by the photograph; and

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

8 (d) service performed as a licensed real estate broker or salesperson under Title 37, chapter 51;

9 (e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber
10 who is licensed under Title 37, chapter 30, and:

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

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

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

16 (B) receives payment for service from individual clientele; and

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

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

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

26 (g) service performed by sole proprietors, working members of a partnership or a limited liability
27 partnership, or members of a member-managed limited liability company that has filed articles of
28 organization with the secretary of state;

29 (h) service performed for the installation of floor coverings if the installer:

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

- 1 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
- 2 (iii) may perform service for anyone without limitation;
- 3 (iv) may accept or reject any job;
- 4 (v) furnishes substantially all tools and equipment necessary to provide the service; and
- 5 (vi) works under a written contract that:
- 6 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
- 7 contract obligations;
- 8 (B) states that the installer is not covered by unemployment insurance; and
- 9 (C) requires the installer to provide a current workers' compensation policy or to obtain an
- 10 exemption from workers' compensation requirements;
- 11 (i) service performed by a direct seller. ~~As used in this subsection, "direct seller" means a person:~~
- 12 ~~(i) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,~~
- 13 ~~vacuum cleaners, and cleaning products at the home of the consumer;~~
- 14 ~~(ii) whose pay is determined by the quantity of product sold; and~~
- 15 ~~(iii) who works under a written contract that states the person will not be treated as an employee~~
- 16 AS DEFINED BY 26 U.S.C. 3508;
- 17 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land
- 18 professional" means a person who:
- 19 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
- 20 negotiating a business agreement for the exploration or development of minerals;
- 21 (ii) is paid for service that is directly related to the completion of a contracted specific task rather
- 22 than on an hourly wage basis; and
- 23 (iii) performs all service as an independent contractor pursuant to a written contract;
- 24 (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
- 25 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 26 (l) service performed by an individual receiving rehabilitation or remunerative work in a facility
- 27 conducted for the purpose of carrying out a program of rehabilitation for those individuals whose earning
- 28 capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for
- 29 individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the
- 30 competitive labor market;

1 (m) service performed as part of an unemployment work-relief or work-training program assisted
2 or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the
3 state by an individual receiving work relief or work training;

4 (n) service performed by an inmate of a state prison or other state correctional or custodial
5 institution;

6 (o) service by an individual who is sentenced to perform court-ordered community service or similar
7 work;

8 (p) service performed for aid or sustenance only; or

9 (q) service performed by an independent contractor.

10
11 **NEW SECTION. Section 7. Special review procedure for certain tax issues that involve**
12 **unemployment insurance benefit claim -- notice -- appeal.** (1) As used in this section, the following
13 definitions apply:

14 (a) "Administrator" means the administrator of the income and miscellaneous tax division,
15 department of revenue.

16 (b) "Board" means the state tax appeal board established by 15-2-101.

17 (c) "Claimant" means an individual who has filed a claim for unemployment insurance benefits
18 under Title 39, chapter 51, and has asserted that the individual's employer inaccurately or incompletely
19 reported the individual's wages.

20 (d) "Employer" means an employer as defined in 39-51-202, that has a potential tax liability arising
21 from the inaccurate or incomplete reporting of a claimant's wages.

22 (e) "Interested party" means the claimant, the employer, or the department of labor and industry.

23 (2) (a) The department shall promptly investigate whether wages earned by the claimant were
24 properly reported by the employer. Upon completion of the investigation, the department shall issue a
25 written determination stating whether the wages were properly reported and, if not, the correct amount
26 of reportable wages earned by the claimant. A copy of the determination must be mailed to each interested
27 party at the last-known address of each party.

28 (b) The determination is final unless an interested party, within 10 calendar days of the mailing of
29 the determination, makes a written application for reconsideration of the determination or makes a written
30 appeal of the determination. A late-filed application for reconsideration may be accepted by the department

1 upon a showing of good cause in writing.

2 (c) The written application or appeal must specify the reasons for the application or appeal and
3 provide any other information relevant to the application or appeal.

4 (d) An interested party may appeal the reconsideration of a determination by making a written
5 appeal within 10 calendar days of the mailing of the notice of the redetermination. A late-filed application
6 for reconsideration may be accepted by the department upon a showing of good cause in writing.

7 (3) (a) Upon appeal of a determination or redetermination, the administrator or a person appointed
8 by the administrator shall hold an informal hearing that may be conducted by telephone or video
9 conference. After the hearing, the administrator or a designee shall promptly make findings of fact and
10 conclusions of law and affirm, modify, reverse, or remand the determination or redetermination. A copy
11 of the decision, with supporting findings of fact and conclusions of law, must be mailed to each interested
12 party at the last-known address of each party.

13 (b) (i) The decision is binding on the interested parties unless a written appeal is made to the board.
14 The appeal must be filed with the board within 10 calendar days after notice of the decision was mailed.
15 A late-filed application for reconsideration may be accepted by the board upon a showing of good cause
16 in writing.

17 (ii) If the decision becomes final, the department shall proceed as provided in subsection (5).

18 (4) (a) An appeal to the board, pursuant to 15-2-302, is initiated by filing a complaint with the
19 board. The board shall promptly mail a copy of the complaint to each interested party at the last-known
20 address of each party.

21 (b) Any interested party who wants to file an answer must do so within 10 calendar days after the
22 board mails a copy of the complaint. An answer up to 10 days late may be accepted by the board upon
23 a showing of good cause in writing.

24 (c) The decision of the board is final and binding upon all interested parties unless reversed or
25 modified by judicial review. Proceedings for judicial review under this section are subject to the provisions
26 of the Montana Administrative Procedure Act.

27 (5) When the department's decision becomes final, whether as the result of appeal, judicial review,
28 or the lapse of time during which to take an appeal, the interested parties are bound by the decision and
29 may not contest any issue that was decided as part of the decision either administratively or judicially. An
30 employer who is determined to have inaccurately or incompletely reported wages may not contest the issue

1 of whether wages should have been reported, or the amount of the wages that should have been reported,
 2 once the department assesses taxes on those wages.

3

4 **Section 8.** Section 15-1-302, MCA, is amended to read:

5 **"15-1-302. Witnesses -- oaths, contempt, and fees.** (1) Oaths to witnesses in any investigation
 6 by the department may be administered by the director of revenue or ~~his~~ the director's agent.

7 (2) ~~(a) In case any~~ If a witness ~~shall fail~~ fails to obey ~~any~~ a summons to appear before the
 8 department or ~~shall refuse~~ refuses to testify or answer any material question or to produce records, books,
 9 papers, or documents when required to do so, ~~such failure or refusal shall be reported to the attorney~~
 10 ~~general, who~~ the department shall ~~thereupon~~ institute proceedings in the ~~proper~~ district court to compel
 11 obedience to ~~any~~ a summons or order of the board or to punish the witness for ~~such~~ neglect or refusal to
 12 obey the summons.

13 (b) As required by 15-30-209, the department, in addition to instituting proceedings to compel
 14 obedience to a summons or order shall, as a part of the proceedings, request the court to issue an order
 15 requiring the payment of all penalties assessed for the employer's failure to report.

16 (3) ~~Any~~ A person who ~~shall testify~~ testifies falsely in any material matter under consideration by
 17 the department ~~shall be~~ is guilty of perjury and shall be punished accordingly.

18 (4) Witnesses attending an investigation by the department ~~shall~~ must receive ~~like~~ the same
 19 compensation as witnesses in the district court. ~~Such~~ The compensation ~~shall~~ must be charged to the
 20 proper appropriation for the department."

21

22 **Section 9.** Section 15-2-302, MCA, is amended to read:

23 **"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing.** (1) A
 24 person may appeal to the state tax appeal board a final decision of the department of revenue involving:

- 25 (a) property centrally assessed under chapter 23 ~~of this title~~;
- 26 (b) classification of property as new industrial property;
- 27 (c) any other tax, ~~{other than the property tax}~~, imposed under this title; or
- 28 (d) any other matter in which the appeal is provided by law.

29 (2) ~~(a) The~~ Except as provided in subsection (2)(b), the appeal is made by filing a complaint with
 30 the board within 30 days following receipt of notice of the department's final decision. The complaint must

1 set forth the grounds for relief and the nature of relief demanded. The board shall immediately transmit a
2 copy of the complaint to the department.

3 (b) An appeal from the department's determination of whether wages earned by an unemployment
4 insurance benefit claimant were properly reported to the department is initiated by filing a complaint with
5 the board within 10 days following receipt of notice of the department's final determination. The board shall
6 promptly mail a copy of the complaint to each interested party at the last-known address of each party.

7 (3) The department shall file with the board an answer within 30 days following filing of a
8 complaint, or in cases involving a determination of whether wages earned by an unemployment insurance
9 benefit claimant were properly reported to the department, any interested party as defined in [section
10 7(1)(e)] and the department may file an answer with the board within 10 days after receipt of a copy of
11 the complaint filed with the board, and at that time mail a copy to the complainant. The answer must set
12 forth the department's response to each ground for and type of relief demanded in the complaint.

13 (4) (a) The Except as provided in subsection (4)(b), the board shall conduct the appeal in
14 accordance with the contested case provisions of the Montana Administrative Procedure Act.

15 (b) (i) An appeal regarding the determination of whether wages earned by an unemployment
16 insurance claimant were properly reported to the department, the appeal must be conducted informally and
17 may, in the discretion of the board, be conducted by telephone or other electronic means. The appeal is
18 not a contested case under provisions of the Montana Administrative Procedure Act. The board, in
19 conducting the hearing or making its decision, is not bound by the Montana Rules of Evidence.

20 (ii) The board shall make its final decision within 45 days of the date the appeal is received by the
21 board.

22 (5) The decision of the state tax appeal board is final and binding upon all interested parties unless
23 reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal
24 board under this section are subject to the provisions of 15-2-303 and the Montana Administrative
25 Procedure Act to the extent that it does not conflict with 15-2-303."
26

27 **Section 10.** Section 15-30-201, MCA, is amended to read:

28 "**15-30-201. Definitions.** When used in 15-30-201 through 15-30-209, the following definitions
29 apply:

30 (1) "Agricultural labor" means all services performed on a farm or ranch in connection with

1 cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity,
 2 including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry,
 3 and fur-bearing animals and wildlife.

4 (2) "Domestic or household service" means employment of persons other than members of the
 5 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
 6 family, including but not limited to housecleaning and yard work but does not include employment beyond
 7 the scope of normal household or domestic duties such as home health care or domiciliary care.

8 ~~(2)~~(3) "Employee" means:

9 (a) an officer, employee, or elected public official of the United States, the state of Montana, or
 10 any political subdivision of the United States or Montana or any agency or instrumentality of the United
 11 States, the state of Montana, or a political subdivision of the United States or Montana. ~~The term also~~
 12 ~~includes;~~

13 (b) an officer of a corporation;

14 (c) any individual who performs services for another individual or organization having the right to
 15 control the employee as to the services to be performed and as to the manner of performance;

16 (d) all classes, grades, or types of employees including minors and aliens, superintendents,
 17 managers, and other supervisory personnel.

18 ~~(3)~~(4) "Employer" means:

19 (a) the person for whom an individual performs or performed any service, of whatever nature, as
 20 an employee of the person. ~~However, if the person for whom the individual performs or performed the~~
 21 ~~service does not have control of the payment of the wages for the service, the term means the person who~~
 22 ~~has control of the payment of wages;~~

23 (b) a person who pays \$1,000 or more in wages within the current calendar year;

24 (c) a person who pays \$1,000 or more in cash for domestic or household service in any quarter
 25 during the current calendar year;

26 (d) any individual or organization, including state government and any of its political subdivisions
 27 or instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited
 28 liability company or a limited liability partnership that has filed with the secretary of state, or domestic or
 29 foreign corporation or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal
 30 representative of a deceased person who has or had in its employ one or more individuals performing

1 services for it within this state; or

2 (e) any person found to be an employer under Title 39, chapter 51, for unemployment insurance
3 purposes is considered an employer for state income tax withholding purposes.

4 ~~(4)(5)~~ "Independent contractor" means an individual who renders service in the course of an
5 occupation and:

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

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

9 ~~(5)(6)~~ "Lookback period" means the 12-month period ending the preceding June 30.

10 ~~(6)(7)~~ (a) "Wages", unless specifically exempted under subsection (7)(b) means all remuneration,
11 ~~other than fees paid to a public official,~~ for services performed by an employee for the employer, including
12 the cash value of all remuneration paid in any medium other than cash, ~~except that the term does not~~
13 ~~include remuneration paid;~~ and includes but is not limited to the following:

14 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations and
15 sickness periods;

16 (ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous
17 service by the employee for the employer, other than retirement or pension benefits from a qualified plan;
18 and

19 (iii) except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by
20 the employee, to the extent that the tips or gratuities are:

21 (A) documented by the employee to the employer for tax purposes;

22 (B) disbursed by the employer from a tip pool; or

23 (C) added to the customer's bill by the employer.

24 ~~(a) for active service as a member of the regular armed forces of the United States, as defined in~~
25 ~~10 U.S.C. 101(33);~~

26 ~~(b) for agricultural labor;~~

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

29 ~~(d) for casual labor not in the course of the employer's trade or business performed in any calendar~~
30 ~~quarter by an employee, unless the cash remuneration paid for the service is \$50 or more and the service~~

1 ~~is performed by an individual who is regularly employed by the employer to perform the service. For~~
2 ~~purposes of this subsection (d), an individual is considered to be regularly employed by an employer during~~
3 ~~a calendar quarter only if:~~

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

6 ~~(ii) the individual was regularly employed, as determined under subsection (6)(d)(i), by the employer~~
7 ~~in the performance of service during the preceding calendar quarter.~~

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

10 ~~(f) for services performed by an ordained, commissioned, or licensed minister of a church in the~~
11 ~~exercise of the ministry or by a member of a religious order in the exercise of duties required by the order;~~

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

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

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

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

27 ~~(j) as tips or gratuities that are in accordance with section 3402(k) or service charges that are~~
28 ~~covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1,~~
29 ~~1983, received by persons for services rendered by them to patrons of premises licensed to provide food,~~
30 ~~beverage, or lodging;~~

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

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

6 (i) the amount of any payment made by the employer FOR EMPLOYEES, if the payment was made
 7 pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code established for
 8 employees for:

9 (A) retirement or pension PURSUANT TO A QUALIFIED PLAN AS DEFINED UNDER THE
 10 PROVISIONS OF THE INTERNAL REVENUE CODE;

11 (B) sickness or accident disability under a workers' compensation policy;

12 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
 13 health insurance for the employee or the employee's immediate family; or

14 (D) death, including life insurance for the employee or the employee's immediate family;

15 (ii) compensation in the form of meals and lodging, provided the compensation is not includable
 16 in gross income for state individual income tax purposes;

17 (iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C.
 18 1002(40)(A), to a qualified individual employee;

19 (iv) payments made by an employee to any group plan or program to the extent that the payments
 20 are not taxable for state income tax purposes;

21 (v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are
 22 covered by 26 U.S.C. 3401 of the Internal Revenue Code, as amended and applicable on January 1, 1983,
 23 received by persons for services rendered by them to patrons of premises licensed to provide food,
 24 beverage, or lodging; or

25 (vi) payments that may not be taxed under federal law."

26
 27 **Section 11.** Section 15-30-202, MCA, is amended to read:

28 **"15-30-202. Withholding of tax from wages.** (1) Each employer making payment of wages for
 29 employment as defined in [section 5] shall withhold from wages a tax determined in accordance with the
 30 withholding tax tables prepared and issued by the department. ~~Persons on active service as members of~~

1 ~~the regular armed forces of the United States, as defined in 10 U.S.C. 101(33), are not subject to the~~
2 ~~provisions of this section.~~

3 (2) An employer who maintains two or more separate establishments within this state is considered
4 to be a single employer for the purposes of this part."

5
6 **Section 12.** Section 15-30-203, MCA, is amended to read:

7 **"15-30-203. Employer liable for ~~withholding~~ employment taxes.** (1) Each employer is liable for the
8 reports and payments required by 15-30-204, the amounts required to be deducted and withheld under this
9 part, and the amounts plus interest due on the amounts are a tax. With respect to the tax, the employer
10 is the taxpayer.

11 (2) The officer ~~or employee~~ of a corporation whose duty RESPONSIBILITY it is to collect, truthfully
12 account for, and pay to the state the amounts withheld from the corporation's employees and who fails
13 to pay the withholdings is liable to the state for the amounts withheld and the penalty and interest due on
14 the amounts.

15 (3) (a) Each officer ~~or employee~~ of the corporation is individually liable along with the corporation
16 for filing reports to the extent that the officer ~~or employee~~ has access to the requisite records and for
17 unpaid taxes, penalties, and interest upon a determination that the officer ~~or employee~~:

18 (i) possessed the ~~authority, duty, and~~ responsibility to file reports and pay taxes on behalf of the
19 corporation; AND

20 (ii) ~~possessed the authority on behalf of the corporation to direct the filing of reports and payment~~
21 ~~of taxes by other employees or agents of the corporation; or~~

22 (iii)(II) possessed the ~~authority~~ RESPONSIBILITY on behalf of the corporation for directing the filing
23 of tax reports or the payment of other corporate obligations and exercised that ~~authority~~ RESPONSIBILITY
24 resulting in the corporation's failure to file reports required by this part or pay taxes due as required by this
25 part.

26 (b) The IN DETERMINING WHICH CORPORATE OFFICER IS LIABLE, THE department is not limited
27 to considering the elements set forth in subsection (3)(a) to establish individual liability and may consider
28 any other available information.

29 (4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the
30 discharge of penalty and interest against the corporation. The individual remains liable for any reports and

1 the amount of taxes, penalties, and interest unpaid by the corporation.

2 (5) For the purpose of determining liability for the filing of reports and the remittance of taxes,
 3 penalties, and interest owed under this part, a member-managed limited liability company must be treated
 4 as a partnership with liability for filing reports and remitting taxes, penalties, and interest owed extending
 5 to each member who was a member at the time the report or taxes were due.

6 (6) For determining personal liability for the failure to file reports and remit taxes, penalties, and
 7 interest owed by a manager-managed limited liability company, the managers of the limited liability
 8 company are jointly and severally liable along with the limited liability company for reports and any taxes,
 9 penalties, and interest owed.

10 (7) For determining personal liability for the failure to file reports and remit taxes, penalties, and
 11 interest owed by a limited liability partnership, the partners of the limited liability partnership are jointly and
 12 severally liable, along with the limited liability partnership, for reports and any taxes, penalties, and interest
 13 due.

14 ~~(3)(8)~~ If the employer fails to deduct and withhold the amounts specified in 15-30-202 and
 15 ~~thereafter~~ the tax against which the deducted and withheld amounts would have been credited is paid, the
 16 amounts required to be deducted and withheld may not be collected from the employer."
 17

18 **Section 13.** Section 15-30-204, MCA, is amended to read:

19 **"15-30-204. ~~Weekly, monthly, or annual payment~~ Reporting and remittance requirements.** (1) An
 20 ~~employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings during~~
 21 ~~the preceding lookback period was \$12,000 or greater shall file a return in the form and containing the~~
 22 ~~information that may be required by the department and shall pay the amount required by 15-30-202 to~~
 23 ~~be deducted and withheld by the employer from wages paid during the preceding payroll period. The~~
 24 ~~payment must be submitted on or before the date on which federal income tax weekly withholding~~
 25 ~~payments are due. On or before the last day of April, July, October, and January, the employer shall file~~
 26 ~~a return in the form and containing the information required by the department. The quarterly returns for~~
 27 ~~employers subject to this subsection must be used to summarize and adjust payments and to request~~
 28 ~~refunds of overpayments. The employer shall also file the annual statement as required by 15-30-207.~~

29 ~~(2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for~~
 30 ~~withholdings during the preceding lookback period was less than \$12,000 but greater than \$1,199 shall~~

1 ~~remit a monthly payment to the department for the amount required by 15-30-202 to be deducted and~~
2 ~~withheld by the employer from wages paid during the preceding month. The monthly payment must be~~
3 ~~submitted on or before the 15th day of the month following the payment of the wages. The employer~~
4 ~~subject to this subsection shall, on or before February 28 of the year following payment of the wages, file~~
5 ~~an annual return in the form and containing the information required by the department and the annual~~
6 ~~statement required by 15-30-207. The annual returns for employers subject to this subsection must be used~~
7 ~~to summarize and adjust payments and to request refunds of overpayments.~~

8 (1) For the purposes of this section, employers shall remit their taxes in accordance with the
9 appropriate remittance schedule as follows:

10 (a) Employers whose total liability for state income tax withholding during the preceding lookback
11 period was \$12,000 or more shall remit on an "accelerated schedule", which is the same as the employer's
12 federal due dates for federal tax deposits.

13 (b) Employers whose total liability for state income tax withholding during the preceding lookback
14 period was less than \$12,000 but more than \$1,199 shall remit on a "monthly schedule" for which the
15 remittance due date is on or before the 15th day of the month following the payment of wages.

16 (c) Employers whose total liability for state income tax withholding during the preceding lookback
17 period was less than \$1,200 shall remit on a "quarterly schedule" for which the remittance due date is on
18 or before the last day of the month following the close of each calendar quarter.

19 (d) Employers who are not subject under Title 39, chapter 51, for unemployment insurance and
20 whose total liability for state income tax withholding, or if state income tax withholding is not required,
21 whose total liability for old fund liability tax during the preceding lookback period was less than \$1,200,
22 may remit on an "annual schedule" for which the remittance is due on or before February 28 of the year
23 following payment of wages.

24 (2) (a) Every employer is required to file a report quarterly in the form required by the department.

25 (b) The report is due on or before the last day of the month following the close of the calendar
26 quarter.

27 (c) An employer who is not subject under Title 39, chapter 51, to unemployment insurance may
28 elect to file an annual report on or before February 28 for the preceding calendar year.

29 (d) An employer who has no payroll during a quarter may elect to report "no wages paid this
30 quarter" using alternative reporting methods provided in department rules.

1 (e) An employer, in addition to the scheduled reports and remittances, must file the annual report
 2 and wage statements as required by 15-30-207.

3 ~~(3) (a) If the total amount of the tax withheld by an employer under the provisions of 15-30-202~~
 4 ~~upon the wages of all employees of any employer is less than \$1,200 for the preceding lookback period,~~
 5 ~~the employer shall, on or before February 28 of the year succeeding that in which the wages were paid,~~
 6 ~~file an annual return in the form required by the department, together with the annual statement required~~
 7 ~~by 15-30-207, and shall at the same time pay the amount required to be deducted and withheld by the~~
 8 ~~employer from all wages paid during the preceding calendar year.~~

9 ~~(b) An employer subject to the provisions of this subsection (3) may elect to remit monthly~~
 10 ~~payments. If an employer elects to make monthly payments, the employer shall remit monthly payments~~
 11 ~~during the entire year and is subject to the same interest and penalty provisions as employers subject to~~
 12 ~~the provisions of subsection (2).~~

13 (3) (a) Except as provided in subsection (3)(g), payments are due as required according to the
 14 remittance schedule for each employer.

15 ~~(e)(b) If an employer subject to the provisions of this subsection (3) (1)(d) does not file the annual~~
 16 ~~return required by subsection (3)(a), comply with the requirements of this section, the employer is may be~~
 17 ~~subject to the payment and filing provisions of quarterly reporting schedule provided in subsection (2)(a)~~
 18 ~~and to the quarterly remittance schedule provided in subsection (1)(c) until the department determines from~~
 19 ~~the employer's subsequent filing and payment history that the employer will file and remit in a timely~~
 20 ~~fashion.~~

21 ~~(4)(a)(c) On or before November 1 of each year, the department shall notify the employers subject~~
 22 ~~to the provisions of this section of the employers' remittance schedules for the following calendar year~~
 23 ~~based upon the department's review of the preceding lookback period.~~

24 ~~(b)(d) A Except as provided in subsection (3)(g), a new employer or an employer with no filing~~
 25 ~~history is subject to the provisions of subsection (2) the quarterly remittance schedule in subsection (1)(c)~~
 26 ~~until the department is able to determine the employer's proper remittance schedule by a review of the~~
 27 ~~employer's first complete lookback period.~~

28 (e) An employer who is subject to the quarterly schedule in subsection (1)(c) may elect to remit
 29 payments on a more frequent basis. An employer who is on an annual schedule may elect to remit monthly
 30 or quarterly payments.

1 (f) An employer who exceeds either threshold as defined in 15-30-201(4)(b) and (4)(c), must begin
 2 withholding state income tax on or before the last day of the month following the quarter in which the
 3 wages paid exceeded the threshold requirements. The employer is subject to the quarterly remittance
 4 schedule until the department is able to determine the employer's proper remittance schedule by a review
 5 of the employer's first complete lookback period.

6 (g) An employer who is not subject to unemployment insurance under Title 39, chapter 51, and
 7 whose estimated annual state income tax withholding, or if state income tax withholding is not required,
 8 whose estimated old fund liability tax, is not expected to exceed \$1,199 for the calendar year may remit
 9 according to the annual schedule and report annually on or before February 28.

10 (h) An employer may use alternative remittance methods in conjunction with the department's
 11 electronic remittance program in accordance with department rules.

12 ~~(6)(4)~~ If the department has reason to believe that collection of the amount of any tax withheld is
 13 in jeopardy, it may proceed as provided for under ~~15-30-312~~ with respect to jeopardy assessments of
 14 income tax ~~15-1-703~~.

15 (5) Each employer shall keep true and accurate payroll records containing the information that the
 16 department may prescribe by rule. Those records must be open to inspection and audit and may be copied
 17 by the department or its authorized representative at any reasonable time and as often as may be
 18 necessary. An employer who maintains its records outside Montana shall furnish copies of those records
 19 to the department at the employer's expense."

20
 21 **Section 14.** Section 15-30-207, MCA, is amended to read:

22 **"15-30-207. Annual statement by employer.** (1) Every employer shall, on or before February 28
 23 in each year, file with the department a wage and tax statement for each employee in ~~such~~ the form and
 24 summarizing ~~such~~ information as the department requires, including the total wages paid to the employee
 25 during the preceding calendar year or any part ~~thereof~~ of the calendar year and showing the total amount
 26 of the federal income tax deducted and withheld from ~~such~~ the wages and the total amount of the tax
 27 deducted and withheld ~~therefrom~~ from the wages under the provisions of 15-30-201 through 15-30-209
 28 and 39-71-2503.

29 (2) The annual statement filed by an employer with respect to the wage payments reported
 30 constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents,

1 and no additional information return is not required with respect to ~~each~~ the wage payments.

2 ~~(3) In addition to any other penalty provided by law, the failure of an employer to furnish a~~
 3 ~~statement as required by subsection (1) subjects the employer to a penalty of \$5 for each failure, provided~~
 4 ~~that the minimum penalty for failure to file the statements required on or before February 28 of each year~~
 5 ~~shall be \$50. This penalty may be abated by the department upon a showing of good cause by the~~
 6 ~~employer. The penalty may be collected in the same manner as are other tax debts."~~

7

8 **Section 15.** Section 15-30-208, MCA, is amended to read:

9 **"15-30-208. Withheld taxes held in trust for state —warrants to collect.** (1) Every employer who
 10 deducts and withholds any amounts under the provisions of 15-30-201 through 15-30-209 shall hold the
 11 same amounts in trust for the state of Montana.

12 ~~(2) If any tax imposed by 15-30-201 through 15-30-209 or any portion of such tax is not paid~~
 13 ~~when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The~~
 14 ~~priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as~~
 15 ~~indicated on the warrant for distraint.~~

16 ~~(3) The tax lien provided for in subsection (2) is not valid against any third party owning an interest~~
 17 ~~in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if~~
 18 ~~the third party receives from the most recent grantor of the interest an affidavit stating that all taxes,~~
 19 ~~assessments, penalties, and interest due from the grantor have been paid.~~

20 ~~(4) A grantor who signs and delivers to the third party an affidavit as provided in subsection (3)~~
 21 ~~is subject to the penalties imposed by 15-30-321(3) if any part of the affidavit is untrue. Notwithstanding~~
 22 ~~the provisions of 15-30-321(3), the department may bring an action as provided for in that subsection in~~
 23 ~~the name of the state to recover the civil penalty and any delinquent taxes."~~

24

25 **Section 16.** Section 15-30-209, MCA, is amended to read:

26 **"15-30-209. Violations by employer -- penalties, interest, and remedies.** (1) ~~If any employer shall~~
 27 ~~fail to pay over to the state the tax deducted and withheld under the provisions of 15-30-201 through~~
 28 ~~15-30-208 or shall fail to file or furnish any statement provided for within the time prescribed therefor, the~~
 29 ~~same additions to the amount of such tax shall be imposed and added as those specified in 15-30-321 with~~
 30 ~~respect to failure to make a return of income or to pay any income tax, and any individual, corporation, or~~

1 ~~partnership or any officer or employee thereof who, with intent to evade any tax or any requirement of~~
2 ~~15-30-201 through 15-30-208, or who, with like intent, files or supplies any false or fraudulent statement~~
3 ~~or information shall be liable to the same penalties as those imposed by 15-30-321 with respect to filing~~
4 ~~or supplying any false or fraudulent statement or information with respect to income taxes~~ The first time
5 in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the
6 department shall issue a warning notice explaining to the employer that the employer failed to file a report
7 on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due
8 date as required by law and the department shall notify the employer of the consequences of any further
9 subsequent late reporting or late remittance.

10 (2) (a) A late report penalty may not be assessed if an employer files the late report prior to the
11 issuance of a notice of delinquent report.

12 (b) If the report is not received prior to the issuance of a notice of delinquent report, a \$50 penalty
13 must be assessed at the same time the notice is issued.

14 (3) (a) Taxes unpaid on the date on which they are due and payable are subject to a penalty of 2%
15 per month, or any portion of a month, on the late paid tax with a maximum penalty of 24%.

16 (b) A late payment penalty may be suspended if an acceptable payment agreement is made between
17 the department and the employer. An employer's failure to meet the terms of the payment agreement voids
18 the suspension and the penalty must be recomputed from the due date on the unpaid tax.

19 (4) An employer must be assessed interest at the rate of 18% a year, computed at 1 1/2% a
20 month or fraction of a month, on any remaining unpaid tax required to be paid.

21 (5) (a) A subpoena penalty of \$50 must be assessed whenever, as the result of a refusal of an
22 employer to furnish wage information or pay taxes on time, the department issues a subpoena pursuant
23 to 15-1-302, to obtain wage information or make a summary or jeopardy assessment pursuant to 15-1-703.

24 (b) If an employer fails to honor the subpoena provided in subsection (5)(a), an additional \$100
25 penalty must be added to the liability.

26 (6) In addition to any other penalty provided by law, the failure of an employer to furnish a wage
27 and tax statement as required by 15-30-207(1) subjects the employer to a penalty of \$5 for each failure
28 with a minimum of \$50.

29 (7) Penalties may be waived by the department upon a showing of good cause by the employer.
30 The penalty may be collected in the same manner as are other tax debts including a tax lien.

1 (8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the
 2 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date
 3 of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the
 4 warrant for distraint.

5 (9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest
 6 in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if
 7 the third party receives from the most recent grantor of the interest an affidavit stating that all taxes,
 8 assessments, penalties, and interest due from the grantor have been paid.

9 (10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9)
 10 is subject to the penalties imposed by 15-30-321(3) if any part of the affidavit is untrue. Notwithstanding
 11 the provisions of 15-30-321(3), the department may bring an action as provided in that subsection in the
 12 name of the state to recover the civil penalty and any delinquent taxes.

13 ~~(2)(11)~~ All of the remedies available to the state for the administration, enforcement, and collection
 14 of income taxes shall be are available and shall apply to the tax required to be deducted and withheld under
 15 the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed in this part."
 16

17 **Section 17.** Section 37-31-101, MCA, is amended to read:

18 **"37-31-101. Definitions.** Unless the context requires otherwise, in this chapter, the following
 19 definitions apply:

20 (1) "Board" means the board of cosmetologists provided for in 2-15-1857.

21 (2) "Booth" means any part of a cosmetology salon or manicuring salon that is rented or leased
 22 for the performance of cosmetologist services, as specified in 39-51-204~~(1)(d)~~(1)(e).

23 (3) "Cosmetology salon" means premises, building, or part of a building in which is practiced a
 24 branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or
 25 cosmetologist and that must have a manager-operator in charge.

26 (4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

27 (5) "Manicuring" includes nail care of the hands and feet and the application and maintenance of
 28 artificial nails.

29 (6) "Manicuring salon" means premises, a building, or part of a building in which the art of
 30 manicuring is practiced.

1 (7) "Practice and teaching of cosmetology" means work included in the terms "hairdressing",
2 "manicuring", and "beauty culture" and performed in cosmetology salons, in booths, or by itinerant
3 cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp,
4 face, arms, feet, or hands. The practice and teaching of cosmetology may not be construed to include
5 itinerant cosmetologists who perform their services without compensation for demonstration purposes in
6 any regularly established store or place of business holding a license from the state of Montana as a store
7 or place of business."

8
9 **Section 18.** Section 39-51-201, MCA, is amended to read:

10 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires
11 otherwise, the following definitions apply:

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

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

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

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

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

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

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

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

8 (9) "Domestic or household service" means employment of persons other than members of the
9 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
10 family, including but not limited to housecleaning and yard work but does not include employment beyond
11 the scope of normal household or domestic duties such as home health care or domiciliary care.

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

25 ~~(10)(11)~~ "Employment office" means a free public employment office or branch of an office
26 operated by this state or maintained as a part of a state-controlled system of public employment offices
27 or ~~such~~ other free public employment offices operated and maintained by the United States government
28 or its instrumentalities as the department may approve.

29 ~~(11)(12)~~ "Fund" means the unemployment insurance fund established by this chapter to which all
30 contributions and payments in lieu of contributions are required to be paid and from which all benefits

1 provided under this chapter must be paid.

2 ~~(12)~~(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic
3 law, for which an individual has been convicted in a criminal court or has admitted or conduct that
4 demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee
5 or the employer.

6 ~~(13)~~(14) "Hospital" means an institution that has been licensed, certified, or approved by the state
7 as a hospital.

8 ~~(14)~~(15) "Independent contractor" means an individual who renders service in the course of an
9 occupation and:

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

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

13 ~~(15)~~(16) (a) "Institution of higher education", for the purposes of this part, means an educational
14 institution that:

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

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

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

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

23 (b) Notwithstanding subsection ~~(15)(a)~~ (16)(a), all universities in this state are institutions of higher
24 education for purposes of this part.

25 ~~(16)~~(17) "State" includes, in addition to the states of the United States of America, the District of
26 Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

27 ~~(17)~~(18) "Taxes" means contributions and assessments required under this chapter but does not
28 include penalties or interest for past-due or unpaid contributions or assessments.

29 ~~(18)~~(19) "Unemployment insurance administration fund" means the unemployment insurance
30 administration fund established by this chapter from which administrative expenses under this chapter must

1 be paid.

2 ~~(19)(20)~~ (a) "Wages", unless specifically exempted under subsection (20)(b), means all remuneration
3 payable for personal services, including ~~commissions and bonuses~~, the cash value of all remuneration
4 ~~payable paid~~ paid in any medium other than cash, ~~and backpay received pursuant to a dispute related to~~
5 ~~employment~~. The reasonable cash value of remuneration payable in any medium other than cash must be
6 estimated and determined pursuant to rules prescribed by the department. The term includes but is not
7 limited to:

8 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations and
9 sickness periods;

10 (ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous
11 service by the employee for the employer, other than retirement or pension benefits from a qualified plan;
12 and

13 (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are:

14 (A) documented by the employee to the employer for tax purposes;

15 (B) disbursed by the employer from a tip pool; or

16 (C) added to the customer's bill by the employer.

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

18 (i) the amount of any payment made by the employer FOR EMPLOYEES, if the payment was made
19 ~~under a qualified plan as defined under the provisions of the Internal Revenue Code, established for the~~
20 ~~employees in general or for a specific class or classes of employees, to or on behalf of the employee for:~~

21 (A) retirement or pension PURSUANT TO A QUALIFIED PLAN AS DEFINED UNDER THE
22 PROVISIONS OF THE INTERNAL REVENUE CODE;

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

24 (C) medical and or hospitalization expenses in connection with sickness or accident disability
25 including health insurance for the employee or the employee's immediate family; or

26 (D) death, including life insurance for the employee or the employee's immediate family; or

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

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

1 ~~(20)(21)~~ "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

2 ~~(21)(22)~~ An individual's "weekly benefit amount" means the amount of benefits that the individual
3 would be entitled to receive for 1 week of total unemployment."

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

6 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not
7 include:

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

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

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

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

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

23 ~~(ii) keeps separate books and records to account for the employment of persons in domestic or~~
24 ~~household service.~~

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

27 ~~(d)(b) service performed by an individual in the employ of that individual's son, daughter, or spouse~~
28 ~~and service performed by a child under the age of 21 in the employ of the child's father or mother a~~
29 ~~dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or~~
30 ~~service performed by a sole proprietor's spouse for whom an exemption based on marital status may be~~

1 claimed by the sole proprietor under 26 U.S.C. 7703;

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

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

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

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

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

24 ~~(h)(d) services service performed by as a real estate, securities, and insurance salespeople paid~~
 25 ~~solely by commissions and without guarantee of minimum earnings broker or salesperson who is licensed~~
 26 ~~pursuant to Title 37, chapter 51;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 partners in a limited liability partnership that has filed with the secretary of state;
- 2 ~~(e)(h) services service~~ performed for the installation of floor coverings if the installer:
- 3 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;
- 4 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
- 5 (iii) may perform ~~services~~ service for anyone without limitation;
- 6 (iv) may accept or reject any job;
- 7 (v) furnishes substantially all tools and equipment necessary to provide the ~~services~~ service; and
- 8 (vi) works under a written contract that:
- 9 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
- 10 contract obligations;
- 11 (B) states that the installer is not covered by unemployment insurance; and
- 12 (C) requires the installer to provide a current workers' compensation policy or to obtain an
- 13 exemption from workers' compensation requirements;
- 14 ~~(p)(i) employment of service performed as a direct seller; AS DEFINED BY 26 U.S.C. 3508 as~~
- 15 ~~defined in 26 U.S.C. 3508 As used in this section, "direct seller" means a person:~~
- 16 ~~(i) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,~~
- 17 ~~vacuum cleaners, and cleaning products at the home of the consumer;~~
- 18 ~~(ii) whose pay is determined by the quantity of product sold; and~~
- 19 ~~(iii) who works under a written contract that states the person will not be treated as an employee;~~
- 20 ~~(q)(i) services service~~ performed by a petroleum land professional. As used in this subsection,
- 21 "petroleum land professional" means a person who:
- 22 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
- 23 negotiating a business agreement for the exploration or development of minerals;
- 24 (ii) is paid for ~~services~~ service that ~~are~~ is directly related to the completion of a contracted specific
- 25 task rather than on an hourly wage basis; and
- 26 (iii) performs all services as an independent contractor pursuant to a written contract.
- 27 ~~(2) Employment does not include elected public officials.~~
- 28 ~~(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:~~
- 29 ~~(a) in the employ of a church or convention or association of churches or an organization that is~~
- 30 ~~operated primarily for religious purposes and that is operated, supervised, controlled, or principally~~

1 ~~supported by a church or convention or association of churches;~~

2 ~~(b)(k) service performed~~ by an ordained, commissioned, or licensed minister of a church in the
3 exercise of the church's ministry or by a member of a religious order in the exercise of duties required by
4 the order;

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

10 ~~(d)(m) service performed~~ as part of an unemployment work-relief or work-training program assisted
11 or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the
12 state by an individual receiving work relief or work training; ~~or~~

13 ~~(e)(n) service performed~~ for a state prison or other state correctional or custodial institution by an
14 inmate of that institution;

15 (o) service performed by an individual who is sentenced to perform court-ordered community
16 service or similar work;

17 (p) service performed by elected public officials;

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

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

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

26 (r) service performed in the employ of any other state or its political subdivisions or of the United
27 States government or of an instrumentality of any other state or states or their political subdivisions or of
28 the United States, except that national banks organized under the national banking law are not entitled to
29 exemption under this subsection and are subject to this chapter the same as state banks, if the service is
30 excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;

1 (s) service in which unemployment insurance is payable under an unemployment insurance system
2 established by an act of congress if the department enters into agreements with the proper agencies under
3 an act of congress and those agreements become effective in the manner prescribed in the Montana
4 Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who
5 have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment
6 insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance
7 under the act of congress, acquired rights to benefits under this chapter;

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

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

21 (v) service performed as an officer or member of the crew of a vessel on the navigable waters of
22 the United States; or

23 (w) service performed by an alien admitted to the United States to perform agricultural labor
24 pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act.

25 ~~4~~(2) An individual found to be an independent contractor by the department under the terms of
26 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
27 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
28 39-51-2402.

29 ~~6~~(3) This section does not apply to a state or local governmental entity or a nonprofit organization
30 defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from

1 employment as defined in the Federal Unemployment Tax Act."

2
3 **Section 20.** Section 39-51-301, MCA, is amended to read:

4 **"39-51-301. Administration -- duties and powers of department.** (1) It ~~shall be~~ is the duty of the
5 department to administer this chapter and it ~~shall have power and authority to~~ may adopt, amend, or
6 rescind ~~such~~ rules, to employ ~~such~~ persons, make ~~such~~ expenditures, require ~~such~~ reports, make ~~such~~
7 investigations, and take ~~such other~~ action as it ~~deems~~ considers necessary or suitable ~~to that end~~ in
8 administering this chapter.

9 (2) The department shall determine its own organization and methods of procedure in accordance
10 with the provisions of this chapter and shall have an official seal, which ~~shall be~~ is judicially noticed.

11 (3) Whenever the department believes that a change in contribution or benefit rates will become
12 necessary to protect the solvency of the fund, it shall promptly ~~so~~ inform the governor and the legislature
13 and make recommendations with respect ~~thereto~~ to the change.

14 (4) The department and the board may issue subpoenas and compel testimony and the production
15 of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

16 (5) The department shall delegate to the department of revenue duties associated with the
17 administration of unemployment insurance contributions and the employment security account so long as
18 the duties are carried out in conformity with the requirements of the program budget plan with the United
19 States department of labor. The delegated duties do not include oversight duties such as revenue quality
20 control, risk management, and trust fund management. The department of revenue must receive funds
21 from the department for the performance of the delegated duties.

22 (6) Employees transferring from the department to the department of revenue as a result of a
23 delegation of duties in subsection (5), are entitled to all rights including those under 2-15-131, possessed
24 as a state officer or employee before transferring, including rights to tenure in office and of rank or grade,
25 rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union
26 contract, rights to compensatory time earned, and any other rights under any law or administrative policy
27 including the State Employee Protection Act. Employees transferring must be considered internal applicants
28 by the department of revenue for recruitment purposes for the period from July 1, 1997, through June 30,
29 1998.

30 (7) The department of revenue shall succeed the department in its rights to property relating to the

1 delegation of duties in subsection (5) to the extent that is consistent with federal property transfer policy.
 2 The property includes real property, records, office equipment, forms, supplies, and contracts other than
 3 the program budget plan with the United States department of labor.

4 (8) (a) The delegation of duties in subsection (5) does not affect the validity of any pending judicial
 5 or administrative proceeding.

6 (b) Appeals that were filed with the board of labor appeals or the department's hearings bureau
 7 before July 1, 1997, must follow the procedures and processes in effect when the appeal was first taken.
 8 An appeal that is filed on or after July 1, 1997, must be taken in accordance with the procedures and
 9 processes in effect on the date the appeal is filed.

10 (c) The department of revenue must be substituted for the department and succeed to all audits,
 11 determinations, and other actions that have not been appealed to the board of labor appeals or the
 12 department's hearings bureau prior to July 1, 1997.

13 (9) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the
 14 parties to contracts, leases, indentures, and other transactions entered into before the delegation of duties
 15 in subsection (5) remain in effect, and none of those rights, privileges, duties, covenants, or agreements
 16 are impaired or diminished by reason of the delegation of duties. The department of revenue is substituted
 17 for the department and subject to the provisions of subsection (5), succeeds to the rights and duties under
 18 the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this
 19 subsection (9) do not apply to the program budget plan agreement between the department and the United
 20 States department of labor."

21
 22 **SECTION 21. SECTION 39-51-1105, MCA, IS AMENDED TO READ:**

23 **"39-51-1105. Liability of corporate officers ~~or employees~~ for taxes, penalties, and interest owed**
 24 **by corporation.** (1) The officer ~~or employee~~ of a corporation whose duty responsibility it is to pay the taxes,
 25 penalties, and interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the
 26 taxes, penalties, and interest due.

27 (2) (a) The department shall consider the officer ~~or employee~~ of the corporation individually liable
 28 with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that
 29 the ~~individual~~ corporate officer:

30 (i) possessed the ~~authority, duty, and~~ responsibility to file reports and pay taxes on behalf of the

1 corporation; and

2 (ii) ~~possessed the authority on behalf of the corporation to direct the filing of reports and payment~~
3 ~~of taxes; or~~

4 (iii) possessed the ~~fiscal authority~~ responsibility on behalf of the corporation to direct the filing of
5 reports or payment of other corporate obligations and exercised the ~~authority~~ responsibility that resulted
6 in failure to file reports or pay taxes due.

7 (b) The department is not limited to considering the elements set forth in subsection (2)(a) to
8 establish individual liability and may consider any other available information.

9 (3) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the
10 discharge of penalty and interest against the corporation. The individual is liable for any amount of taxes,
11 penalties, and interest unpaid by the corporation.

12 (4) For determining liability for unemployment insurance taxes, penalties, and interest owed, a
13 member-managed limited liability company must be treated as a partnership, with liability for taxes,
14 penalties, and interest owed extending to each member.

15 (5) For determining liability for unemployment insurance taxes, penalties, and interest owed by a
16 manager-managed limited liability company, the managers of the limited liability company are jointly and
17 severally liable for any taxes, penalties, and interest owed."

18

19 **Section 22.** Section 39-51-1109, MCA, is amended to read:

20 "**39-51-1109. Tax appeals -- procedure.** (1) A decision, determination, or redetermination of the
21 department involving ~~contribution liability, contribution rate, application for refund, employment status, an~~
22 employer-employee relationship or the charging of benefit payments to employers ~~making payment in lieu~~
23 ~~of contributions~~ is final unless an interested party entitled to notification submits a written appeal of the
24 decision, determination, or redetermination. The appeal must be made in the same manner as provided in
25 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory
26 rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be conducted
27 by telephone or by videoconference. The decision of the appeals referee and any subsequent appeal must
28 be made in the same manner as prescribed in 39-51-2403 through 39-51-2410.

29 (2) A decision, determination, or redetermination involving contribution liability, contribution rate,
30 application for refund, subject wages, or other tax-related issues must be issued by the department of

1 revenue as provided in Title 15, chapter 1, part 2 and [section 7], if applicable. The decision is final unless
 2 an interested party entitled to notification follows the uniform tax review procedures as prescribed in
 3 15-1-211 and [section 7], if applicable."

4
 5 **Section 23.** Section 39-51-1110, MCA, is amended to read:

6 **"39-51-1110. Refunds to employers.** (1) ~~If not later than 3 years after the date on which any~~
 7 ~~taxes or interest thereon became due or not later than 1 year from the date on which payment was made,~~
 8 ~~whichever is later, an employer who has paid such taxes or interest thereon shall make application for an~~
 9 ~~adjustment thereof in connection with subsequent tax payments or for a refund thereof because such~~
 10 ~~adjustment cannot be made and the department shall determine that such taxes or interest or any portion~~
 11 ~~thereof was erroneously collected, the department shall allow such employer to make an adjustment~~
 12 ~~thereof, without interest, in connection with subsequent tax payments by him or, if such adjustment cannot~~
 13 ~~be made, the department shall refund said amount, without interest, from the fund. For like cause and~~
 14 ~~within the same period, adjustment or refund may be so made on the department's own initiative. If an~~
 15 employer claims an adjustment or the department or its delegate, as provided in 39-51-301, determines
 16 through an examination of the employer's account that the employer has overpaid the amount due, the
 17 amount of the overpayment must be applied to future unemployment insurance obligations or must be
 18 refunded to the employer. The credit or refund may be allowed only if the claim is filed, or the determination
 19 is made, within a 5-year period after the date on which any taxes, penalty, or interest became due or within
 20 one year from the date the payment is made, whichever is later: The department or its delegate pursuant
 21 to 39-51-301(5), shall credit or refund the amount to the employer, without interest.

22 (2) If the department ~~shall determine~~ or its delegate pursuant to 39-51-301(5), determines that an
 23 employer has paid taxes to this state under this chapter ~~when such~~ but the taxes should have been paid
 24 to another state under a similar act of ~~such~~ the other state, a transfer of ~~such~~ the taxes to ~~such~~ the other
 25 state ~~shall~~ must be made upon discovery or, upon proof of payment that ~~such~~ the other state has been fully
 26 paid, then a refund to ~~such~~ the employer ~~shall~~ must be made ~~at any time~~ upon application without limitation
 27 of time.

28 (3) ~~In the event that~~ If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304
 29 section 1603 of the Internal Revenue Code, as amended, 1939, for any year, then and in that event refunds
 30 shall must be made of all taxes required under this chapter from employers for that year."

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

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

8 ~~(2) A penalty of \$40 must be assessed whenever, as the result of a willful refusal of an employer~~
9 ~~to furnish wage information or pay taxes on time, the department issues a subpoena to obtain wage~~
10 ~~information or makes a summary or jeopardy assessment pursuant to 39-51-1302. Failure to file reports~~
11 ~~and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may~~
12 ~~subject an employer to penalty and interest, as provided by 15-30-209.~~

13 ~~(3)(2)~~ There is an account in the federal special revenue fund. Penalties and interest collected ~~under~~
14 ~~this section~~ for unemployment insurance obligations are distributed as provided in [section 2], and must
15 be deposited in that account. Money deposited in that account and appropriated to the department or
16 transferred by the department to its delegate, pursuant to 39-51-301(5), may only be used by the
17 department or its delegate to administer this chapter, including the detection and collection of unpaid taxes
18 and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated
19 for this purpose. Money in the account not appropriated for these purposes must be transferred by the
20 department to the unemployment insurance trust fund at the end of each fiscal year.

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

23 ~~(5)(3)~~ All money accruing to the unemployment insurance trust fund from interest and penalties
24 collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment
25 insurance benefits and may not be used for any other purpose."

26

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

28 "**39-51-1303. Collection of unpaid taxes by civil action.** (1) The department, or its delegate
29 pursuant to 39-51-301(5), has authority to enter into payment agreements with an employer to resolve
30 unpaid taxes, penalty, and interest. Penalty or interest, or both penalty and interest may be abated if an

1 acceptable payment agreement is entered into and adhered to. Failure to meet the terms of the payment
 2 agreement voids the penalty and interest abatement and penalty and interest must be recomputed from the
 3 due date of the unpaid tax.

4 (2) If, after due notice, any employer, liable corporate officer ~~or employee~~, or liable member or
 5 manager of a limited liability company referred to in 39-51-1105 or partner in a limited liability partnership
 6 defaults in any payment of taxes, penalties, or interest on the taxes and penalties, the department, or its
 7 delegate pursuant to 39-51-301(5), may initiate a civil action in the name of the ~~department~~ state to collect
 8 the amount due, and the employer, liable corporate officer ~~or employee~~, ~~or~~ liable member or manager of
 9 a limited liability company referred to in 39-51-1105, or partner in a limited liability partnership adjudged
 10 in default shall pay the costs of the action.

11 ~~(2)(3)~~ (3) An action for the collection of taxes due must be brought within 5 years ~~after~~ from the due
 12 date ~~of the~~ original or amended report was filed or assessment became due, whichever is later, ~~taxes or~~
 13 it is barred.

14 ~~(3)(4)~~ (4) The department, or its delegate pursuant to 39-51-301(5), may pursue its remedy under
 15 either 39-51-1304 or this section, or both."

16

17 **SECTION 26. SECTION 39-51-1304, MCA, IS AMENDED TO READ:**

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

30 (2) A judgment lien filed pursuant to this section may be renewed for another 10-year period

1 pursuant to the provisions of 25-13-102.

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

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

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

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

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

17

18 **Section 27.** Section 39-51-2108, MCA, is amended to read:

19 **"39-51-2108. Payment of benefits based on service in public, charitable, or educational**
20 **organizations.** (1) Benefits based on service in employment defined in ~~subsections (5) and (6) of~~
21 ~~39-51-203(5) and (6) and subsections (2) and (3) of 39-51-204~~ are payable in the same amount, on the
22 same terms, and subject to the same conditions as compensation payable on the basis of other service
23 subject to this chapter, except that benefits based on service in an instructional, research, or principal
24 administrative capacity for an educational institution may not be paid to an individual for any week of
25 unemployment which begins during the period between two successive academic years or during a similar
26 period between two regular terms, whether or not successive, or during a period of paid sabbatical leave
27 provided for in the individual's contract if the individual has a contract or reasonable assurance of a
28 contract to perform services in any ~~such~~ **INSTRUCTIONAL, RESEARCH, OR PRINCIPAL ADMINISTRATIVE**
29 capacity for ~~any such~~ the educational institution for both ~~such~~ academic years or both ~~such~~ terms.

30 (2) Benefits based on services in any other capacity for an educational institution ~~shall~~ **must** be

1 denied to any individual for any week which commences during a period between 2 successive academic
 2 years or terms if the individual performs ~~such the~~ services in the first of ~~such the~~ academic years or terms
 3 and there is a reasonable assurance that the individual will perform ~~such the~~ services in the second of ~~such~~
 4 ~~the~~ academic years or terms. If any individual is denied benefits and was not offered an opportunity to
 5 perform ~~such the~~ service for the educational institution for the second of ~~such the~~ academic years or terms,
 6 ~~such the~~ individual ~~shall be~~ is entitled to a retroactive payment of the benefits for each week for which the
 7 individual filed a timely claim for benefits and for which benefits were denied solely by reason of the denial
 8 provided for in this section.

9 (3) Benefits based on services described in subsections (1) and (2) of this section ~~shall~~ must be
 10 denied to any individual for any week ~~which that~~ commences during an established and customary vacation
 11 period or holiday recess if ~~such the~~ individual performs ~~such the~~ services in the period immediately before
 12 ~~such the~~ vacation period or holiday recess and there is reasonable assurance that ~~such the~~ individual will
 13 perform ~~such the~~ service in the period immediately following ~~such the~~ vacation period or holiday recess.

14 (4) Benefits based on services described in subsections (1) and (2) ~~of this section~~ to an individual
 15 who performed ~~such the~~ services for an educational institution while in the employ of an educational service
 16 agency ~~shall~~ must be denied as specified in subsections (1), ~~(2), and through~~ (3) ~~of this section~~. The term
 17 "educational service agency" means a governmental agency or governmental entity which is established
 18 and operated exclusively for the purpose of providing ~~such the~~ service to one or more educational
 19 institutions."
 20

21 **Section 28.** Section 39-51-2402, MCA, is amended to read:

22 **"39-51-2402. Initial determination -- redetermination.** (1) A representative designated by the
 23 department and ~~hereinafter~~ referred to as a deputy shall promptly examine the claim and, on the basis of
 24 the facts the deputy has found, ~~by the deputy,~~ shall ~~either~~ determine whether or not ~~such the~~ claim is valid,
 25 ~~and, if~~ If the claim is valid, the deputy will determine the week ~~with respect to which~~ the benefits ~~shall~~
 26 commence, the weekly benefit amount payable, and the maximum benefit amount, ~~or shall~~ The deputy may
 27 refer ~~such the~~ claim or any question involved ~~therein in the claim~~ to an appeals referee who shall make the
 28 decision ~~with respect thereto~~ on the claim in accordance with the procedure prescribed in 39-51-2403.
 29 With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must
 30 be resolved in accordance with procedures for unemployment insurance benefit claimant appeals as

1 prescribed in [section 7] and 15-2-302. The deputy shall promptly notify the claimant and any other
2 interested party of the decision and the reasons ~~therefor~~ for reaching the decision.

3 (2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant
4 and ~~such~~ other interested parties of the amended decision and the reasons ~~therefor~~ for the decision.

5 (3) ~~No~~ A determination or redetermination of an initial or additional claim may not be made under
6 this section unless 5 days' notice of the time and place of the claimant's interview for examination of the
7 claim is mailed to each interested party.

8 (4) A determination or redetermination ~~shall be deemed~~ is final unless an interested party entitled
9 to notice ~~thereof~~ of the decision applies for reconsideration of the determination or appeals ~~therefrom~~ the
10 decision within 10 days after ~~such~~ the notification was mailed to the interested party's last-known address,
11 ~~provided that such~~ The 10-day period may be extended for good cause.

12 (5) Except as provided in subsection (6), ~~no~~ a redetermination of a claim for benefits may not be
13 made after 2 years from the date of the initial determination.

14 (6) A redetermination may be made within 3 years from the date of the initial determination of a
15 claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a
16 material fact by the claimant or the employer."

17

18 **Section 29.** Section 39-71-123, MCA, is amended to read:

19 "**39-71-123. Wages defined.** (1) "Wages" means ~~the gross all~~ remuneration paid in money, or in
20 ~~a substitute for money,~~ for services ~~rendered~~ performed by an employee for an employer, or income
21 provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium
22 other than cash. The term includes but ~~are~~ is not limited to:

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

25 (b) ~~board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is~~
26 ~~based on its actual value~~ severance or continuation pay, back pay, and OR any similar pay made for or in
27 regards to previous service by the employee for the employer, other than retirement or pension benefits
28 from a qualified plan;

29 (c) ~~payments made to an employee on any basis other than time worked, including but not limited~~
30 ~~to piecework, an incentive plan, or profit-sharing arrangement~~ tips or other gratuities received by the

1 employee, to the extent that tips or gratuities are:

2 (i) documented by the employee to the employer for tax purposes;

3 (ii) disbursed by the employer from a tip pool; or

4 (iii) added to the customer's bill by the employer; and

5 (d) income or payment in the form of a draw, wage, net profit, or substitute for money received
6 or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed
7 work or provided services for that remuneration;

8 (e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is
9 based on its actual value; and

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

12 (2) ~~Wages do~~ The term "wages" does not include any of the following:

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

15 (b) ~~special rewards for individual invention or discovery~~ the amount of the payment made by the
16 employer FOR EMPLOYEES, if the payment was made under a qualified plan, established for the employees
17 for the purpose of providing for:

18 (i) retirement or pension PURSUANT TO A QUALIFIED PLAN AS DEFINED UNDER THE
19 PROVISIONS OF THE INTERNAL REVENUE CODE;

20 (ii) sickness or accident disability under a workers' compensation policy;

21 (iii) medical or hospitalization expenses in connection with sickness or accident disability, including
22 health insurance for the employee or the employee's immediate family; or

23 (iv) death, including life insurance for the employee or the employee's immediate family;

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

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

27 ~~(c) vacation or sick leave benefits accrued but not paid; or~~

28 (d) special rewards for individual invention or discovery.

29 (3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average
30 actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except

1 that if the term of employment for the same employer is less than four pay periods, the employee's wages
2 are the hourly rate times the number of hours in a week for which the employee was hired to work.

3 (b) For good cause shown, if the use of the last four pay periods does not accurately reflect the
4 claimant's employment history with the employer, the wage may be calculated by dividing the total earnings
5 for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks
6 in that period, including periods of idleness or seasonal fluctuations.

7 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent
8 employments, the average actual wages must be calculated as provided in subsection (3). As used in this
9 subsection, "concurrent employment" means employment in which the employee was actually employed
10 at the time of the injury and would have continued to be employed without a break in the term of
11 employment if not for the injury.

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

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

19

20 **Section 30.** Section 39-71-401, MCA, is amended to read:

21 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
22 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
23 all employees, as defined in 39-71-118. An employer who has any employee in service under any
24 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
25 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
26 Compensation Act is subject to and bound by the compensation plan that has been elected by the
27 employer.

28 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
29 allows an election, the Workers' Compensation Act does not apply to any of the following employments:

30 (a) household and domestic employment;

- 1 (b) casual employment as defined in 39-71-116;
- 2 (c) employment of a dependent member of an employer's family for whom an exemption may be
3 claimed by the employer under the federal Internal Revenue Code;
- 4 (d) employment of sole proprietors, working members of a partnership, or working members of a
5 member-managed limited liability company, except as provided in subsection (3);
- 6 (e) employment of a broker or salesman performing under a license issued by the board of realty
7 regulation;
- 8 (f) employment ~~of~~ as a direct seller, AS DEFINED BY 26 U.S.C. 3508 ~~as defined in 26 U.S.C. 3508~~
9 As used in this section, "direct seller" means a person:
- 10 (i) who sells, or offers for sale, a tangible consumer product, including but not limited to cosmetics,
11 vacuum cleaners, and cleaning products at the home of the consumer;
- 12 (ii) whose pay is determined by the quantity of product sold; and
- 13 (iii) who works under a written contract that states the person will not be treated as an employee;
- 14 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
15 under the laws of the United States;
- 16 (h) employment of a person performing services in return for aid or sustenance only, except
17 employment of a volunteer under 67-2-105;
- 18 (i) employment with a railroad engaged in interstate commerce, except that railroad construction
19 work is included in and subject to the provisions of this chapter;
- 20 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
21 event, unless the person is otherwise employed by a school district;
- 22 (k) employment of a person performing services as a newspaper carrier or ~~free-lance~~ freelance
23 correspondent if the person performing the services or a parent or guardian of the person performing the
24 services in the case of a minor has acknowledged in writing that the person performing the services and
25 the services are not covered. As used in this subsection, "~~free-lance~~ freelance correspondent" is a person
26 who submits articles or photographs for publication and is paid by the article or by the photograph. As used
27 in this subsection, "newspaper carrier":
- 28 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
29 bundles; but
- 30 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,

1 carries or delivers papers.

2 (l) cosmetologist's services and barber's services as defined in 39-51-204~~(1)(d)~~(1)(e);

3 (m) a person who is employed by an enrolled tribal member or an association, business,
4 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
5 business is conducted solely within the exterior boundaries of an Indian reservation;

6 (n) employment of a jockey performing under a license issued by the board of horseracing from the
7 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
8 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
9 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

10 (o) employment of an employer's spouse for whom an exemption based on marital status may be
11 claimed by the employer under 26 U.S.C. 7703;

12 (p) a person who performs services as a petroleum land professional. As used in this subsection,
13 a "petroleum land professional" is a person who:

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

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

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

19 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
20 liability company who qualifies under one or more of the following provisions:

21 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
22 limited liability company and does not receive any pay from the corporation or the limited liability company
23 for performance of the duties;

24 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
25 limited liability company;

26 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
27 or owns 20% or more of the limited liability company; or

28 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
29 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
30 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

1 (r) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
2 of the church's ministry or by a member of a religious order in the exercise of duties required by the order.

3 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
4 member-managed limited liability company who represents to the public that the person is an independent
5 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
6 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

7 (b) The application must be made in accordance with the rules adopted by the department. There
8 is no fee for the initial application. Any subsequent application must be accompanied by a \$25 application
9 fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset
10 the costs of administering the program.

11 (c) When an application is approved by the department, it is conclusive as to the status of an
12 independent contractor and precludes the applicant from obtaining benefits under this chapter.

13 (d) The exemption, if approved, remains in effect for 1 year following the date of the department's
14 approval. To maintain the independent contractor status, an independent contractor shall annually submit
15 a renewal application. A renewal application must be submitted for all independent contractor exemptions
16 approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee
17 must be received by the department at least 30 days prior to the anniversary date of the previously
18 approved exemption.

19 (e) A person who makes a false statement or misrepresentation concerning that person's status
20 as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose
21 the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured
22 employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

23 (f) If the department denies the application for exemption, the applicant may contest the denial by
24 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
25 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with
26 the procedure established in 39-51-2403 and 39-51-2404.

27 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
28 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
29 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
30 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following

1 manner:

2 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
3 delivering the notice to the board of directors of the corporation or to the management organization of the
4 manager-managed limited liability company; or

5 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
6 delivering the notice to the board of directors of the corporation or to the management organization of the
7 manager-managed limited liability company and to the insurer.

8 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
9 the employer shall again serve notice to its insurer and to its board of directors or the management
10 organization of the manager-managed limited liability company if the employer elects to be bound.

11 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
12 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
13 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
14 exemption from coverage.

15 (6) Each employer shall post a sign in the workplace at the locations where notices to employees
16 are normally posted, informing employees about the employer's current provision of workers' compensation
17 insurance. A workplace is any location where an employee performs any work-related act in the course of
18 employment, regardless of whether the location is temporary or permanent, and includes the place of
19 business or property of a third person while the employer has access to or control over the place of
20 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
21 The sign must be provided by the department, distributed through insurers or directly by the department,
22 and posted by employers in accordance with rules adopted by the department. An employer who purposely
23 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
24

25 **Section 31.** Section 39-71-2501, MCA, is amended to read:

26 **"39-71-2501. Definitions.** As used in this part, the following definitions apply:

27 (1) "Account" means the workers' compensation bond repayment account established in
28 39-71-2504.

29 (2) "Department" means the department of revenue provided for in 2-15-1301.

30 (3) "Domestic or household service" means employment of persons other than members of the

1 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
 2 family, including but not limited to housecleaning and yard work but does not include employment beyond
 3 the scope of normal household or domestic duties, such as home health care or domiciliary care.

4 ~~(3)~~(4) "Employee" includes:

5 (a) an officer, employee, or elected public official of the United States, the state of Montana, or
 6 any political subdivision of the United States or the state of Montana or any agency or instrumentality of
 7 the United States, the state of Montana, or a political subdivision of the United States or the state of
 8 Montana. ~~The term "employee" also includes;~~

9 (b) an officer of a corporation;

10 (c) any individual who performs services for another individual or organization having the right to
 11 control the employee as to the services to be performed and as to the manner of performance; and

12 (d) all classes, grades or types of employees, including minors and aliens, superintendents,
 13 managers, and other supervisory personnel.

14 ~~(4)~~(5) (a) "Employer" means:

15 (i) ~~except as provided in subsection (4)(b),~~ the person for whom an individual performs or
 16 performed any service, of whatever nature, as an employee of the person;

17 (b) ~~If the person for whom the individual performs or performed the service does not have control~~
 18 ~~of the payment of the wages for the service, the term "employer" means the person who has control of~~
 19 ~~the payment of wages.~~

20 (ii) a person who pays \$1,000 or more in wages within the current calendar year;

21 (iii) a person who pays \$1,000 or more in cash for domestic service in any quarter during the
 22 current calendar year; or

23 (iv) any individual or organization, including state government and any of its political subdivision
 24 or instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited
 25 liability company or a limited liability partnership that has filed or registered with the secretary of state,
 26 corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's
 27 successor, or legal representative of a deceased person that has or had in its employ one or more
 28 individuals performing services for it within this state.

29 (b) Any person found to be an employer under Title 39, chapter 51, for unemployment insurance
 30 purposes is considered an employer for old fund liability tax purposes.

1 ~~(5)(6)~~ "Federal workers' compensation legislation" means federal legislation that provides an
 2 employee with compensation or remuneration for accidental injury or death. This legislation includes but
 3 is not limited to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the
 4 Defense Base Act.

5 ~~(6)(7)~~ "Ongoing activities" means obligations or occurrences that are continuous, rather than
 6 intermittent or occasional, that exist for a definite period of time during the year, or that are intended to
 7 cover or apply to successive and similar obligations or occurrences.

8 ~~(7)(8)~~ "Publicly traded limited partnership" means a business entity that issues shares or similar
 9 ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders
 10 on a public exchange recognized by the securities exchange commission.

11 ~~(8)(9)~~ "State fund" means the state compensation insurance fund.

12 ~~(9)(10)~~ "Tax" or "old fund liability tax" means the workers' compensation old fund liability tax
 13 provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from
 14 accidents that occurred before July 1, 1990.

15 ~~(10)(11)~~ (a) "Wages" means all remuneration for services performed in the state of Montana by
 16 an employee for an employer, including the cash value of all remuneration paid in any medium other than
 17 cash. The term ~~does not include remuneration paid~~ includes but is not limited to the following:

18 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and
 19 sickness periods;

20 (ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous
 21 service by the employee for the employer, other than retirement or pension benefits from a qualified plan;
 22 and

23 (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are:

24 ~~(A)~~ documented by the employee to the employer for tax purposes;

25 ~~(B)~~ disbursed by the employer from a tip pool; or

26 ~~(C)~~ added to the customer's bill by the employer.

27 ~~(a) for casual labor not in the course of the employer's trade or business performed in any calendar~~
 28 ~~quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service~~
 29 ~~is performed by an individual who is regularly employed by the employer to perform the service. For~~
 30 ~~purposes of this subsection (10)(a), an individual is considered to be regularly employed by an employer~~

1 during a calendar quarter only if:

2 ~~(i) on each of 24 days during the calendar quarter, the individual performs service not in the course~~
 3 ~~of the employer's trade or business for the employer for some portion of the day; and~~

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

6 ~~(b) for services not in the course of the employer's trade or business, to the extent that~~
 7 ~~remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals~~
 8 ~~and the payments are received by the employee at the request of and for the convenience of the employer;~~

9 ~~(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or~~
 10 ~~program that benefits the employee, including but not limited to life insurance, hospitalization insurance for~~
 11 ~~the employee or the employee's dependents, and employees' club activities;~~

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

13 (i) the amount of any payment made by the employer FOR EMPLOYEES, if the payment was made
 14 under a qualified plan as defined under the provisions of the Internal Revenue Code established for
 15 employees for:

16 (A) retirement or pension PURSUANT TO A QUALIFIED PLAN AS DEFINED UNDER THE
 17 PROVISIONS OF THE INTERNAL REVENUE CODE;

18 (B) sickness or accident disability under a workers' compensation policy;

19 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
 20 health insurance for the employee or the employee's immediate family; or

21 (D) death, including life insurance for the employee or the employee's immediate family;

22 (ii) compensation in the form of meals and lodging, provided the compensation is not includable
 23 in gross income for state individual income tax purposes;

24 ~~(d)(iii) as payments distributions from a multiple employer welfare arrangement, as defined in 29~~
 25 ~~U.S.C. 1002, to a qualified individual employee;~~

26 ~~(e)(iv) as wages or compensation, the taxation of which is prohibited by payments that may not~~
 27 ~~be taxed under federal law; or~~

28 ~~(f)(v) as wages or compensation for services performed by Montana residents outside the borders~~
 29 ~~of the state of Montana."~~

30

1 **Section 32.** Section 39-71-2503, MCA, is amended to read:

2 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
3 employer, except an employer whose employees are covered by federal workers' compensation legislation,
4 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
5 old fund liability tax provided in 39-71-2505, of the wages paid for employment as defined in this part by
6 the employer in the preceding payroll period subject to reporting and remittance requirements contained in
7 15-30-204.÷

8 ~~(i) for the preceding payroll period for employers subject to the payment schedule contained in~~
9 ~~15-30-204(1);~~

10 ~~(ii) for the preceding month for employers subject to the payment schedule contained in~~
11 ~~15-30-204(2); and~~

12 ~~(iii) for the preceding year for employers subject to the payment schedule contained in~~
13 ~~15-30-204(3)(a).~~

14 (b) There is imposed on each employee, except an employee who is covered by federal workers'
15 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages
16 paid for employment, as defined in this part. An employer paying wages for ~~services performed~~
17 employment, as defined in this part, in Montana shall deduct and withhold the tax from the wages.

18 (c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
19 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
20 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
21 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
22 partner, or member or manager derived from ongoing activities.

23 (ii) The tax imposed in this subsection ~~(1)~~(c) applies only to the ordinary income of a shareholder,
24 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

25 (iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this
26 subsection ~~(1)~~(c).

27 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
28 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
29 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
30 officer's wages.

1 (e) A corporate officer of a closely held corporation who owns stock in a closely held corporation
2 that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives
3 wages as an employee of the corporation is required to pay the old fund liability tax only on the wages
4 received. The corporation is not liable for the tax on the corporate officer's wages.

5 (f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred
6 for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or
7 bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans
8 or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month
9 period if the workers' compensation bond repayment account contains on the first day of that period an
10 amount, regardless of the source, that is in excess of the reserve maintained in the account and that is
11 equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest
12 that must be paid during that period on the outstanding loans or bonds.

13 (g) Each employer shall maintain the records that the department requires concerning the old fund
14 liability tax. The records are subject to inspection by the department and its employees and agents during
15 regular business hours.

16 (h) An employee does not have any right of action against an employer for any money deducted
17 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
18 this section.

19 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
20 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
21 old fund liability tax required by this section.

22 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
23 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and
24 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
25 the old fund liability tax required by this section.

26 (2) All collections of the tax must be deposited as received in the account. The tax is in addition
27 to any other tax or fee assessed against persons subject to the tax.

28 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made pursuant
29 to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any
30 remainder to the account provided for in 39-71-2504.

1 (b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of
2 partnerships, and members or managers of limited liability companies must be made with and at the same
3 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment
4 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided
5 for in 39-71-2504.

6 (c) An employer who exceeds either threshold, as defined in 39-71-2501(5)(a)(ii) or (5)(a)(iii), shall
7 begin withholding old fund liability tax on or before the last day of the month following the quarter in which
8 the wages paid exceed the threshold requirement. The employer shall begin reporting and remitting the
9 employer and employee portions of the old fund liability tax. The report and remittance are due the last
10 day of the month of the subsequent quarter following the quarter in which the wages paid exceeded the
11 threshold requirement. The employer is subject to the quarterly remittance schedule until the department
12 is able to determine the employer's proper remittance schedule by a review of the employer's first complete
13 lookback period.

14 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
15 department the amounts due under this section who fails to pay an amount is liable to the state for the
16 unpaid amount and any penalty and interest relating to that amount.

17 (5) Returns and remittances under subsection (3) and any information obtained by the department
18 during an audit are subject to the provisions of ~~15-30-303, [section 1] but the department may disclose~~
19 ~~the information to the department of labor and industry for the purpose of investigation and prevention of~~
20 ~~noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under~~
21 ~~circumstances and conditions that ensure the continued confidentiality of the information.~~

22 (6) The department of labor and industry and the state fund shall give the department a list of all
23 employers having coverage under any plan administered or regulated by the department of labor and
24 industry and the state fund. The department of labor and industry and the state fund shall update the lists
25 weekly. The department of labor and industry and the state fund shall provide the department with access
26 to their computer data bases and paper files and records for the purpose of the department's administration
27 of the tax imposed by this section.

28 (7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part
29 regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments,
30 credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking

1 authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation
2 shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the
3 department."

4
5 **Section 33.** Section 39-71-2503, MCA, is amended to read:

6 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
7 employer, except an employer whose employees are covered by federal workers' compensation legislation,
8 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
9 old fund liability tax provided in 39-71-2505, of the wages paid for employment as defined in this part by
10 the employer in the preceding payroll period, subject to reporting and remittance requirements contained
11 in 15-30-204;

12 ~~(i) for the preceding payroll period for employers subject to the payment schedule contained in~~
13 ~~15-30-204(1);~~

14 ~~(ii) for the preceding month for employers subject to the payment schedule contained in~~
15 ~~15-30-204(2); and~~

16 ~~(iii) for the preceding year for employers subject to the payment schedule contained in~~
17 ~~15-30-204(3)(a).~~

18 (b) There is imposed on each employee, except an employee who is covered by federal workers'
19 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages
20 paid for employment, as defined in this part. An employer paying wages for ~~services performed~~
21 employment, as defined in this part, in Montana shall deduct and withhold the tax from the wages.

22 (c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
23 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
24 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
25 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
26 partner, or member or manager derived from ongoing activities.

27 (ii) The tax imposed in this subsection (1)(c) applies only to the ordinary income of a shareholder,
28 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

29 (iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this
30 subsection (1)(c).

1 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
2 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
3 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
4 officer's wages.

5 (e) A corporate officer of a closely held corporation who owns stock in a closely held corporation
6 that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives
7 wages as an employee of the corporation is required to pay the old fund liability tax only on the wages
8 received. The corporation is not liable for the tax on the corporate officer's wages.

9 (f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred
10 for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or
11 bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans
12 or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month
13 period if the workers' compensation bond repayment account contains on the first day of that period an
14 amount, regardless of the source, that is in excess of the reserve maintained in the account and that is
15 equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest
16 that must be paid during that period on the outstanding loans or bonds.

17 (g) Each employer shall maintain the records that the department requires concerning the old fund
18 liability tax. The records are subject to inspection by the department and its employees and agents during
19 regular business hours.

20 (h) An employee does not have any right of action against an employer for any money deducted
21 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
22 this section.

23 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
24 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
25 old fund liability tax required by this section.

26 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
27 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and
28 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
29 the old fund liability tax required by this section.

30 (2) All collections of the tax must be deposited as received in the account. The tax is in addition

1 to any other tax or fee assessed against persons subject to the tax.

2 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) are due on or before the
3 last day of the month following the close of each calendar quarter and must be made pursuant to
4 15-30-204. The department shall first credit ~~a payment to the liability under 15-30-202 and credit any~~
5 ~~remainder to the account provided for in 39-71-2504~~ payments as provided for in [section 2].

6 (b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of
7 partnerships, and members or managers of limited liability companies must be made with and at the same
8 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment
9 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided
10 for in 39-71-2504.

11 (c) An employer who exceeds either threshold, as defined in 39-71-2501(5)(a)(ii) or (5)(a)(iii), shall
12 begin withholding old fund liability tax on or before the last day of the month following the quarter in which
13 the wages paid exceed the threshold requirement. The employer shall begin reporting and remitting the
14 employer and employee portions of the old fund liability tax. The report and remittance are due the last
15 day of the month of the subsequent quarter following the quarter in which the wages paid exceeded the
16 threshold requirement. The employer is subject to the quarterly remittance schedule until the department
17 is able to determine the employer's proper remittance schedule by a review of the employer's first complete
18 lookback period.

19 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
20 department the amounts due under this section who fails to pay an amount is liable to the state for the
21 unpaid amount and any penalty and interest relating to that amount.

22 (5) Returns and remittances under subsection (3) and any information obtained by the department
23 during an audit are subject to the provisions of ~~15-30-303 [section 1], but the department may disclose~~
24 ~~the information to the department of labor and industry for the purpose of investigation and prevention of~~
25 ~~noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under~~
26 ~~circumstances and conditions that ensure the continued confidentiality of the information.~~

27 (6) The department of labor and industry and the state fund shall give the department a list of all
28 employers having coverage under any plan administered or regulated by the department of labor and
29 industry and the state fund. The department of labor and industry and the state fund shall update the lists
30 weekly. The department of labor and industry and the state fund shall provide the department with access

1 to their computer data bases and paper files and records for the purpose of the department's administration
2 of the tax imposed by this section.

3 (7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part
4 regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments,
5 credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking
6 authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation
7 shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the
8 department."

9
10 **Section 34.** Section 39-71-2505, MCA, is amended to read:

11 **"39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before**
12 **July 1, 1990.** (1) The state fund shall pay for the cost of administering and paying claims for injuries
13 resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by
14 borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable
15 on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the
16 state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to
17 pay for administering and paying the claims for the ensuing year.

18 (2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall
19 forward to the budget director information pertaining to the amount that the state fund will borrow for the
20 ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in
21 subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected
22 liability payments and cash needs on which the amount to be borrowed is based. The schedule must include
23 but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old
24 fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend
25 cash for the year 2007.

26 (b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided
27 in 39-71-2503. The employer old fund liability tax is an amount equal to 0.5% of the employer's payroll
28 for wages paid in the preceding calendar quarter payroll period for wages paid for employment, as defined
29 in this part.

30 (ii) The employee old fund liability tax is an amount equal to 0.2% of the employee's wages in the

1 preceding ~~calendar quarter~~ payroll period for wages paid for employment, as defined in this part.

2 (iii) The old fund liability tax is an amount equal to 0.2% on the profit of each separate business
3 of a sole proprietor and on the distributive share of ordinary income of each subchapter S. corporation
4 shareholder, partner of a partnership, or member or manager of a limited liability company.

5 (iv) The rate of the employer old fund liability tax determined by this section includes the 0.28%
6 employer old fund liability tax provided for in 39-71-2503.

7 (v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in
8 39-71-2503 terminates at the end of fiscal year 2007.

9 (B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are
10 outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.

11 (vi) The old fund liability tax described in this section must be collected and deposited as provided
12 in 39-71-2503 and 39-71-2504.

13 (3) If in any January the cumulative projected amount to be borrowed by the state fund from
14 reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1,
15 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990,
16 not including any outstanding bonds as of May 13, 1993, exceeds \$80 million for the following fiscal year,
17 the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the
18 following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance
19 for the current fiscal year exceeds \$25 million, the tax rate on the persons subject to the old fund liability
20 tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

21 (4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.

22 (5) The budget director shall certify the cash flow projections of the state fund required by this
23 section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected
24 pursuant to this section."

25
26 **NEW SECTION. SECTION 35. REPEALER. ARM 24.11.831 IS REPEALED.**

27
28 **NEW SECTION. Section 36. Severability.** If a part of [this act] is invalid, all valid parts that are
29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
30 applications, the part remains in effect in all valid applications that are severable from the invalid

1 applications.

2

3 NEW SECTION. Section 37. Saving clause. [This act] does not affect rights and duties that
4 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
5 act].

6

7 NEW SECTION. Section 38. Codification instruction. (1) [Sections 1 through 5 and 7] are intended
8 to be codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30,
9 part 2, apply to [sections 1 through 5 and 7].

10 (2) [Section 6] is intended to be codified as an integral part of Title 39, chapter 71, part 25, and
11 the provisions of Title 39, chapter 71, part 25, apply to [section 6].

12

13 NEW SECTION. Section 39. Coordination instruction. (1) If Senate Bill No. 119 is passed and
14 approved, then [section 4], amending 15-30-204, [section 5], amending 39-71-2503, and [section 6],
15 amending 39-71-2505 in Senate Bill No. 119, are void.

16 (2) IF SENATE BILL NO. 67 IS PASSED AND APPROVED, THEN THE AMENDMENT CONTAINED
17 IN 39-71-2503(3)(A) IN [SECTION 27] OF THE REFERENCE COPY OF SENATE BILL NO. 67, RELATING TO
18 THE CREDIT OF THE OLD FUND LIABILITY TAX TO THE ACCOUNT PROVIDED FOR IN 39-71-2321, IS
19 VOID ON JANUARY 1, 1999.

20

21 NEW SECTION. Section 40. Effective dates. (1) [Sections 1, 20 and ~~33~~ 35 through ~~36~~ 39 and
22 this section] are effective July 1, 1997.

23 (2) [Sections 3 through 7, 9 through 12, 17 through 19, 21, ~~22~~ THROUGH 23, 24 25 through ~~30~~
24 32, and ~~32~~ 34 are effective January 1, 1998.

25 (3) [Sections 2, 8, 13 through 16, ~~23~~ 24, and ~~31~~ 33] are effective January 1, 1999.

26

-END-