

Senate BILL NO. 307

1

2 INTRODUCED BY Crismon

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT SUBSTITUTING THE TERM "INDEPENDENT BUSINESS OWNER"
5 FOR "INDEPENDENT CONTRACTOR" FOR WORKERS' COMPENSATION, UNEMPLOYMENT INSURANCE,
6 AND INCOME TAX WITHHOLDING; DEFINING "INDEPENDENT BUSINESS OWNER"; AMENDING SECTIONS
7 2-9-101, 2-18-111, 2-18-601, 15-1-211, 15-30-201, 15-30-303, 19-3-403, 19-50-101, 23-2-705,
8 33-11-102, 33-17-102, 33-22-1803, 33-35-203, 35-1-1026, 35-2-820, 35-8-1001, 35-10-202,
9 37-47-304, 37-51-102, 37-51-313, 37-51-315, 39-2-903, 39-3-703, 39-8-102, 39-9-204, 39-9-206,
10 39-29-101, 39-30-103, 39-51-201, 39-51-203, 39-51-204, 39-51-310, 39-51-2108, 39-71-117,
11 39-71-118, 39-71-401, 39-71-405, 39-71-415, 39-72-102, 41-2-103, 50-72-102, 81-23-101, 82-1-101,
12 AND 90-15-302, MCA; REPEALING SECTIONS 39-51-604 AND 39-71-120, MCA; AND PROVIDING AN
13 EFFECTIVE DATE AND AN APPLICABILITY DATE."

14

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

16

17 NEW SECTION. **Section 1. Independent business owner defined.** (1) As used in this chapter,
18 "independent business owner" means an individual who renders labor or services to another and who:

19 (a) is free from direction and control as evidenced by a convincing accumulation of factors,
20 including but not limited to:

21 (i) freedom from day-to-day supervision concerning the means and manner of providing the labor
22 or services, subject only to the right of the person for whom the labor or services are provided to specify
23 the desired results;

24 (ii) receiving payment on an accepted bid or contract basis upon the completion of the labor or
25 services or based on the standard business practice for compensation in the industry;

26 (iii) responsibility for furnishing the tools, equipment, materials, and supplies to complete the labor
27 or services;

28 (iv) responsibility for satisfactorily completed work or services and liability for failure to perform;

29 and

30 (v) responsibility for hiring, supervising, and payment of any needed assistants; and

1 (b) maintains a separate, independently established business as evidenced by a convincing
2 accumulation of factors, including but not limited to:

- 3 (i) maintenance of a place of business separate from the client's place of business;
- 4 (ii) potential to realize a business profit or loss;
- 5 (iii) filing of federal and state business tax returns;
- 6 (iv) incurring the regular business expenses arising from the provision of the labor or services; and
- 7 (v) responsibility for obtaining all business or professional licenses and insurance coverages
8 required by law.

9 (2) An individual performing services for remuneration who does not meet the requirements of
10 subsection (1) is an employee under this chapter.

11
12 **NEW SECTION. Section 2. Independent business owner defined.** (1) As used in this chapter,
13 "independent business owner" means an individual who renders labor or services to another and who:

14 (a) is free from direction and control as evidenced by a convincing accumulation of factors,
15 including but not limited to:

16 (i) freedom from day-to-day supervision concerning the means and manner of providing the labor
17 or services, subject only to the right of the person for whom the labor or services are provided to specify
18 the desired results;

19 (ii) receiving payment on an accepted bid or contract basis upon the completion of the labor or
20 services or based on the standard business practice for compensation in the industry;

21 (iii) responsibility for furnishing the tools, equipment, materials, and supplies to complete the labor
22 or services;

23 (iv) responsibility for satisfactorily completed work or services and liability for failure to perform;
24 and

25 (v) responsibility for hiring, supervising, and payment of any needed assistants; and

26 (b) maintains a separate, independently established business as evidenced by a convincing
27 accumulation of factors, including but not limited to:

- 28 (i) maintenance of a place of business separate from the client's place of business;
- 29 (ii) potential to realize a business profit or loss;
- 30 (iii) filing of federal and state business tax returns;

- 1 (iv) incurring the regular business expenses arising from the provision of the labor or services; and
 2 (v) responsibility for obtaining all business or professional licenses and insurance coverages
 3 required by law.

4 (2) An individual performing services for remuneration who does not meet the requirements of
 5 subsection (1) is an employee under this chapter.

6

7 **Section 3.** Section 2-9-101, MCA, is amended to read:

8 **"2-9-101. Definitions.** As used in parts 1 through 3 of this chapter, the following definitions apply:

9 (1) "Claim" means any claim against a governmental entity, for money damages only, ~~which that~~
 10 any person is legally entitled to recover as damages because of personal injury or property damage caused
 11 by a negligent or wrongful act or omission committed by any employee of the governmental entity while
 12 acting within the scope of his employment, under circumstances ~~where~~ in which the governmental entity,
 13 if a private person, would be liable to the claimant for ~~such the~~ damages under the laws of the state. For
 14 purposes of this section and the limit of liability contained in 2-9-108, all claims ~~which that~~ arise or derive
 15 from personal injury to or death of a single person, or damage to property of a person, regardless of the
 16 number of persons or entities claiming damages thereby, are considered one claim.

17 (2) "Employee" means an officer, employee, or servant of a governmental entity, including elected
 18 or appointed officials, and persons acting on behalf of the governmental entity in any official capacity
 19 temporarily or permanently in the service of the governmental entity whether with or without compensation,
 20 but the term employee ~~shall~~ does not mean a person or other legal entity while acting in the capacity of an
 21 independent ~~contractor~~ business owner under contract to the governmental entity to which parts 1 through
 22 3 apply in the event of a claim.

23 (3) "Governmental entity" means and includes the state and political subdivisions ~~as herein defined.~~

24 (4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false
 25 arrest, any bodily injury, sickness, or disease, or death sustained by any person and caused by an
 26 occurrence for which the state may be held liable.

27 (5) "Political subdivision" means any county, city, municipal corporation, school district, special
 28 improvement or taxing district, or ~~any~~ other political subdivision or public corporation.

29 (6) "Property damage" means injury or destruction to tangible property, including loss of use
 30 ~~thereof of the property,~~ caused by an occurrence for which the state may be held liable.

1 (7) "State" means the state of Montana or any office, department, agency, authority, commission,
2 board, institution, hospital, college, university, or other instrumentality ~~thereof~~ of the state."

3
4 **Section 4.** Section 2-18-111, MCA, is amended to read:

5 **"2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation**
6 **-- rules.** (1) A state agency that operates within an Indian reservation shall give a preference in hiring for
7 a position of employment with the state agency to an Indian resident of the reservation who has
8 substantially equal qualifications for the position.

9 (2) The commissioner of labor and industry shall enforce this section, shall investigate complaints
10 of its violation, and may adopt rules to implement this section.

11 (3) For the purposes of this section, the following definitions apply:

12 (a) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon
13 an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian
14 tribe, domiciled in the United States.

15 (b) "Position" means a permanent, temporary, or seasonal position, as defined in 2-18-101, for a
16 state position. The term does not include:

17 (i) a state elected office;

18 (ii) appointment by an elected official to a body, such as a board, commission, committee, or
19 council;

20 (iii) appointment by an elected official to a public office if the appointment is provided for by law;

21 or

22 (iv) engagement as an independent ~~contractor~~ business owner or employment by an independent
23 ~~contractor~~ business owner.

24 (c) "State agency" means a department, office, board, bureau, commission, agency, or other
25 instrumentality of the executive or judicial branches of the government of this state."

26
27 **Section 5.** Section 2-18-601, MCA, is amended to read:

28 **"2-18-601. Definitions.** For the purpose of this part, except 2-18-620, the following definitions
29 apply:

30 (1) "Agency" means ~~any~~ a legally constituted department, board, or commission of state, county,

1 or city government or any political subdivision ~~thereof~~ of those entities.

2 (2) "Break in service" means a period of time in excess of 5 working days when the person is not
3 employed and that severs continuous employment.

4 (3) "Continuous employment" means working within the same jurisdiction without a break in
5 service of more than 5 working days or without a continuous absence without pay of more than 15 working
6 days.

7 (4) "Employee" means ~~any~~ a person employed by an agency except elected state, county, and city
8 officials, schoolteachers, and persons contracted as independent ~~contractors~~ business owners or hired
9 under personal services contracts.

10 (5) "Full-time employee" means an employee who normally works 40 hours a week.

11 (6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in
12 1-1-216 or 20-1-305, except Sundays.

13 (7) "Part-time employee" means an employee who normally works less than 40 hours a week.

14 (8) "Permanent employee" means an employee who is assigned to a position designated as
15 permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved ~~as such~~ in
16 the biennium budget.

17 (9) "Seasonal employee" means an employee assigned to a position designated as seasonal on the
18 appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a
19 permanent need but ~~which~~ that is interrupted by the seasonal nature of the assignment.

20 (10) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or ~~his~~
21 the employee's immediate family or for a permanent state employee who is eligible for parental leave under
22 the provisions of 2-18-606.

23 (11) "Sick-pay plan" means a plan that:

24 (a) provides for an agency to make payments in lieu of wages to employees on account of sickness
25 or accident disability; and

26 (b) meets the requirements of 42 U.S.C. 409(b) or (d).

27 (12) "Temporary employee" means an employee assigned to a position designated as temporary
28 on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period
29 of time not to exceed 9 months.

30 (13) "Transfer" means a change of employment from one agency to another agency in the same

1 jurisdiction without a break in service.

2 (14) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or
3 personal business at the request of the employee and with the concurrence of the employer."

4

5 **Section 6.** Section 15-1-211, MCA, is amended to read:

6 **"15-1-211. Uniform tax review procedure -- notice -- appeal.** (1) The department of ~~revenue~~ shall
7 provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

8 (a) The tax review procedure described in this section applies to all taxes administered by the
9 department and to all issues arising from the administration of taxes, except inheritance taxes, estate taxes,
10 property taxes, and the issue of whether an employer-employee relationship existed between the taxpayer
11 and individuals, subjecting the taxpayer to the requirements of chapter 30, part 2, or whether the
12 employment relationship was that of an independent ~~contractor~~ business owner. The procedure applies to
13 any revised assessment of centrally assessed property taxed pursuant to chapter 23.

14 (b) The term "taxpayers", as used in this section, includes all persons determined by the
15 department to have a potential tax liability.

16 (2) (a) If the department determines that a request for a refund should be denied in whole or part,
17 it shall notify the taxpayer of the determination. If the department determines that a person has failed to
18 pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the
19 running of any applicable statute of limitations regarding the assessment of the tax.

20 (b) A notice under this section must clearly state:

21 (i) the reasons for the department's determination that a refund is not due or that tax plus interest
22 and penalty, if any, ~~is~~ are due;

23 (ii) the taxpayer's right to a review by the department, the taxpayer's right to appeal after a final
24 department decision, and the taxpayer's right to a review of determinations by the department of labor and
25 industry and board of labor appeals of whether an employer-employee relationship existed between the
26 taxpayer and certain individuals or whether the employment relationship was that of an independent
27 ~~contractor~~ business owner;

28 (iii) that failure to notify the department within 30 days will result in a forfeiture of the taxpayer's
29 right to contest the department's determination under this section or to file an appeal with the state tax
30 appeal board;

1 (iv) that the taxpayer has 30 days to either notify the department in writing that the taxpayer does
2 not agree with an assessment or pay the amount assessed;

3 (v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless the
4 taxpayer notifies the department that the taxpayer disagrees with an assessment or pays within 30 days;
5 and

6 (vi) that the notice stops the running of the statute of limitations regarding the assessment of the
7 tax.

8 (3) (a) A taxpayer shall notify the department, in writing, that the taxpayer objects to the
9 determination within 30 days from the date that the notice is mailed. The notification by the taxpayer is
10 not required to specify the reasons for the disagreement or be in any particular form unless the taxpayer
11 is objecting to a determination that an employer-employee relationship existed between the taxpayer and
12 individuals, subjecting the taxpayer to the requirements of chapter 30, part 2. If the taxpayer does not
13 notify the department within 30 days:

14 (i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;

15 (ii) the taxpayer waives any further right to review under this section or to appeal to the state tax
16 appeal board; and

17 (iii) a warrant for distraint may be issued without further opportunity to be heard on the assessment.

18 (b) (i) A taxpayer who notifies the department pursuant to subsection (3)(a) that the taxpayer
19 disagrees with a tax assessment shall present the objections, the reasons for the objections, and any other
20 information to the administrator of the division that administers the tax or to the administrator's designee
21 within 60 days after the notice referred to in subsection (3)(a) is mailed. The reasons for objections may
22 be provided in writing, by telephone, or, if requested by the taxpayer, at an informal conference. An
23 informal conference is not subject to the Montana Administrative Procedure Act.

24 (ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer
25 disagrees with the department's determination that an employer-employee relationship existed between the
26 taxpayer and certain individuals, subjecting the taxpayer to the requirements of chapter 30, part 2, must
27 be referred to the department of labor and industry for appeal procedures pursuant to 39-51-2403 and
28 39-51-2410.

29 (c) Within 60 days after the taxpayer has presented his objections, as provided in subsection (3)(b),
30 the administrator or a designee shall issue a written decision addressing the taxpayer's objections and

1 describing the reasons for the determination. The administrator's decision must also clearly set forth the
2 taxpayer's review rights. The administrator's decision must be provided to the taxpayer and the director
3 of revenue.

4 (4) (a) A taxpayer shall notify the department in writing that the taxpayer objects to the
5 administrator's decision within 30 days from the date that the decision is mailed, or the taxpayer may
6 appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30
7 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer
8 waives any further right to review or appeal and a warrant for distraint may be issued without further
9 opportunity to be heard on the assessment.

10 (b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision
11 pursuant to subsection (4)(a) shall present the taxpayer's objections, the reasons for the objections, and
12 any other information to the director of revenue or the director's designee within 60 days after the notice
13 referred to in subsection (4)(a) is mailed. The director or the designee may consider written information,
14 hold a telephone conference, or conduct an informal conference, none of which are subject to the Montana
15 Administrative Procedure Act.

16 (c) Within 60 days after the taxpayer has presented the objections, the director or the designee
17 shall issue a written decision addressing the objections and describing the reasons for the decision. The
18 director's decision is the final decision and assessment of the department.

19 (5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final
20 decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the
21 board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by
22 the board or, if further appeals are filed, by the appropriate court. However, any interest required by law
23 must continue to accrue.

24 (6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal
25 with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the
26 administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the
27 department.

28 (b) If the director notifies the board within 30 days after an appeal is filed that the director has not
29 had an opportunity to review the administrator's decision and the director believes that a review may be
30 helpful in resolving the controversy, the board shall stay the appeal for a time that the board considers

1 reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide
 2 the taxpayer's objections and reasons for the objections to the director so that the director or the director's
 3 designee may review the controversy and issue a decision within the period of the stay granted by the
 4 board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and the appeal
 5 resumed.

6 (7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the
 7 Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by
 8 mutual consent of the department and the taxpayer. The department shall consent to all reasonable
 9 requests for extension of deadlines.

10 (8) (a) The director of revenue or the director's designee is authorized to enter into an agreement
 11 with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the department
 12 for any taxable period.

13 (b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except
 14 upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

15 (i) the agreement may not be reopened as to matters agreed upon or be modified by any officer,
 16 employee, or agent of this state; and

17 (ii) in any suit, action, or proceeding under the agreement or any determination, assessment,
 18 collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement
 19 may not be annulled, modified, set aside, or disregarded."
 20

21 **Section 7.** Section 15-30-201, MCA, is amended to read:

22 "**15-30-201. Definitions.** When used in 15-30-201 through 15-30-209, the following definitions
 23 apply:

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

28 (2) "Employee" means an officer, employee, or elected public official of the United States, the state
 29 of Montana, or any political subdivision of the United States or Montana or any agency or instrumentality
 30 of the United States, the state of Montana, or a political subdivision of the United States or Montana. The

1 term also includes an officer of a corporation.

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

6 (4) "~~Independent contractor~~ business owner" means an individual who renders ~~service in the course~~
7 ~~of an occupation~~ labor or services to another and who:

8 (a) ~~has been and will continue to be free from control or direction over the performance of the~~
9 ~~services, both under contract and in fact; is free from direction and control as evidenced by a convincing~~
10 accumulation of factors, including but not limited to:

11 (i) freedom from day-to-day supervision concerning the means and manner of providing the labor
12 or services, subject only to the right of the person for whom the labor or services are provided to specify
13 the desired results;

14 (ii) receiving payment on an accepted bid or contract basis upon the completion of the labor or
15 services or based on the standard business practice for compensation in the industry;

16 (iii) responsibility for furnishing the tools, equipment, materials, and supplies to complete the labor
17 or services;

18 (iv) responsibility for satisfactorily completed work or services and liability for failure to perform;
19 and

20 (v) responsibility for hiring, supervising, and payment of any needed assistants; and

21 (b) ~~is engaged in an independently established trade, occupation, profession, or business~~ maintains
22 a separate, independently established business as evidenced by a convincing accumulation of factors,
23 including but not limited to:

24 (i) maintenance of a place of business separate, from the client's place of business;

25 (ii) potential to realize a business profit or loss;

26 (iii) filing of federal and state business tax returns;

27 (iv) incurring the regular business expenses arising from the provision of the labor or services; and

28 (v) responsibility for obtaining all business or professional licenses and insurance coverages
29 required by law.

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

1 (6) "Wages" means all remuneration, other than fees paid to a public official, for services
2 performed by an employee for the employer, including the cash value of all remuneration paid in any
3 medium other than cash, except that the term does not include remuneration paid:

4 (a) for active service as a member of the regular armed forces of the United States, as defined in
5 10 U.S.C. 101(33);

6 (b) for agricultural labor;

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

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

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

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

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

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

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

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

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

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

7 (j) as tips or gratuities that are in accordance with section 3402(k) or service charges that are
 8 covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1,
 9 1983, received by persons for services rendered by them to patrons of premises licensed to provide food,
 10 beverage, or lodging;

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

15
 16 **Section 8.** Section 15-30-303, MCA, is amended to read:

17 **"15-30-303. Confidentiality of tax records.** (1) Except as provided in subsections (7) and (8) or
 18 in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make
 19 known in any manner:

20 (a) the amount of income or any particulars set forth or disclosed in any individual report or
 21 individual return required under this chapter or any other information secured in the administration of this
 22 chapter; or

23 (b) any federal return or federal return information disclosed on any return or report required by rule
 24 of the department or under this chapter.

25 (2) (a) The officers charged with the custody of the reports and returns may not be required to
 26 produce them or evidence of anything contained in them in an action or proceeding in a court, except in
 27 an action or proceeding:

28 (i) to which the department is a party under the provisions of this chapter or any other taxing act;

29 or

30 (ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other

1 taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

2 (b) The court may require the production of and may admit in evidence only as much of the reports
3 or of the facts shown by the reports as are pertinent to the action or proceedings.

4 (3) This section does not prohibit:

5 (a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any
6 return or report filed in connection with the taxpayer's tax;

7 (b) the publication of statistics classified to prevent the identification of particular reports or returns
8 and the items of particular reports or returns; or

9 (c) the inspection by the attorney general or other legal representative of the state of the report
10 or return of any taxpayer who brings an action to set aside or review the tax based on the report or return
11 or against whom an action or proceeding has been instituted in accordance with the provisions of
12 15-30-311.

13 (4) Reports and returns must be preserved for at least 3 years and may be preserved until the
14 department orders them to be destroyed.

15 (5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$1,000
16 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer
17 or employee of the state, the offender must be dismissed from office and may not hold any public office
18 in this state for a period of 1 year after dismissal.

19 (6) This section may not be construed to prohibit the department from providing taxpayer return
20 information and information from employers' payroll withholding reports to:

21 (a) the department of labor and industry to be used for the purpose of investigation and prevention
22 of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

23 (b) the state fund to be used for the purpose of investigation and prevention of noncompliance,
24 fraud, and abuse under the workers' compensation program.

25 (7) The department may permit the commissioner of internal revenue of the United States or the
26 proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative
27 of either officer to inspect the return of income of any individual or may furnish to the officer or an
28 authorized representative an abstract of the return of income of any individual or supply the officer with
29 information concerning an item of income contained in a return or disclosed by the report of an investigation
30 of the income or return of income of an individual, but the permission may be granted or information

1 furnished only if the statutes of the United States or of the other state grant substantially similar privileges
2 to the proper officer of this state charged with the administration of this chapter.

3 (8) The department shall furnish:

4 (a) to the department of justice all information necessary to identify those persons qualifying for
5 the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the
6 department of justice to administer the provisions of 61-5-105;

7 (b) to the department of public health and human services information acquired under 15-30-301,
8 pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of
9 public assistance fraud and abuse, provided notice to the applicant has been given;

10 (c) to the department of labor and industry for the purpose of prevention and detection of fraud
11 and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation
12 programs information on whether a taxpayer who is the subject of an ongoing investigation by the
13 department of labor and industry is an employee, an independent ~~contractor~~ business owner, or
14 self-employed;

15 (d) to the department of fish, wildlife, and parks specific information that is available from income
16 tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting
17 and fishing licenses;

18 (e) to the board of regents information required under 20-26-1111;

19 (f) to the legislative fiscal analyst and the office of budget and program planning individual income
20 tax information as provided in 5-12-303. The information provided to the office of budget and program
21 planning must be the same as the information provided to the legislative fiscal analyst.

22 (g) to the department of transportation the ratio of gross farm income to total gross income based
23 on the most recent income tax return filed by an applicant applying for a refund under 15-70-223, provided
24 that notice to the applicant has been given as provided in 15-70-223. The information obtained by the
25 department of transportation is subject to the same restrictions on disclosure as are individual income tax
26 returns."

27
28 **Section 9.** Section 19-3-403, MCA, is amended to read:

29 "19-3-403. **Exclusions from membership.** The following persons may not become members of the
30 retirement system:

1 (1) inmates of state institutions;

2 (2) persons in state institutions principally for the purpose of training but who receive
3 compensation;

4 (3) independent ~~contractors~~ business owners;

5 (4) persons who are members of any other retirement or pension system supported wholly or in
6 part by funds of the United States government, any state government, or political subdivision of the state
7 and who are receiving credit in the other system for service. It is the purpose of this subsection to prevent
8 a person from receiving credit for the same service in two retirement systems supported wholly or in part
9 by public funds, except when the service qualifies, is applied for, and is purchased pursuant to 19-3-503.
10 A member of the retirement system who, because of employment by the state, is required to become a
11 member of any other system described in this subsection is considered, solely for the purposes of making
12 regular contributions, as permanently separated from service. Exclusion under this subsection is subject to
13 the following exceptions:

14 (a) When an employer has entered into a collective bargaining agreement that includes provisions
15 for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by
16 the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for
17 membership in the retirement system.

18 (b) For the purpose of this subsection (4), persons receiving pensions, retirement allowances, or
19 other payments from any source on account of employment other than as an employee are not considered,
20 because of receipt, members of any other retirement or pension system.

21 (5) court commissioners, elected officials, or appointive members of any board or commission who
22 serve the state or any contracting employer intermittently and who are paid on a per diem basis;

23 (6) full-time students employed at and attending the same public elementary school, high school,
24 community college, or unit of the state university system, except that a person excluded from membership
25 as a student of a public community college or a unit of the state university system who later becomes a
26 member by otherwise becoming an employee may affirmatively exercise the option of qualifying the service
27 excluded by this subsection by applying to the board in writing after becoming a member and become
28 eligible to receive credited service for the excluded service under the provisions of 19-3-505."

29

30 **Section 10.** Section 19-50-101, MCA, is amended to read:

1 **"19-50-101. Definitions.** For the purposes of this chapter, unless a different meaning is plainly
2 implied by the context, the following definitions apply:

3 (1) "Administrator" means the department of administration created by 2-15-1001 or an
4 appropriate officer of a political subdivision.

5 (2) "Advisory council" means the state employee group benefits advisory council provided for in
6 2-15-1016.

7 (3) "Deferred compensation" means that income ~~which~~ that an employee may legally defer in a
8 deferred compensation plan established under this chapter pursuant to the rulings of the internal revenue
9 service and ~~which~~ that, while invested, is exempt from state and federal income tax on the employee's
10 contribution and on the interest, dividends, and capital gains until ultimately distributed to the employee.

11 (4) "Department" means the department of administration created by 2-15-1001.

12 (5) "Eligible deferred compensation plan" means a plan meeting the requirements of section 457
13 of the Internal Revenue Code.

14 (6) "Employee" means any person, including independent ~~contractors~~ business owners and elected
15 officials, receiving compensation from the state or a political subdivision for performing services.

16 (7) "Fund" means the state deferred compensation investment account.

17 (8) "Participant" means an employee enrolled in the plan.

18 (9) "Political subdivision" means any city, town, county, or other political subdivision of the state
19 of Montana."

20
21 **Section 11.** Section 23-2-705, MCA, is amended to read:

22 **"23-2-705. Liability limits.** The board, individual board members, technical advisers appointed by
23 the board, and any independent ~~contractor~~ business owner with whom the board contracts must be
24 provided all protections of governmental immunity granted to public employees by 2-9-305, including but
25 not limited to the provision of legal defense, the payment of court costs, and the payment of judgments
26 and settlements. These protections are provided only with regard to actions brought because of acts or
27 omissions committed by ~~such~~ the persons in the course of official tramway duties."

28
29 **Section 12.** Section 33-11-102, MCA, is amended to read:

30 **"33-11-102. Definitions.** As used in this part, the following definitions apply:

1 (1) "Completed operations liability" means:

2 (a) liability arising out of the installation, maintenance, or repair of any product at a site that is not
3 owned or controlled by:

4 (i) a person who performs that work; or

5 (ii) a person who hires an independent ~~contractor~~ business owner to perform that work; and

6 (b) liability for activities that are completed or abandoned before the date of the occurrence giving
7 rise to the liability.

8 (2) "Domicile", for purposes of determining the state where a purchasing group is domiciled,
9 means:

10 (a) for a corporation, the state where the purchasing group is incorporated; and

11 (b) for an unincorporated entity, the state of its principal place of business.

12 (3) "Hazardous financial condition" means that, based on its present or reasonably anticipated
13 financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to
14 be able to:

15 (a) meet obligations to policyholders with respect to known claims and reasonably anticipated
16 claims; or

17 (b) pay other obligations in the normal course of business.

18 (4) "Insurance" means primary insurance, excess insurance, reinsurance, surplus line insurance,
19 and any other arrangement for shifting and distributing risk that is determined to be insurance under the
20 laws of this state.

21 (5) (a) "Liability" means legal liability for damages, including costs of defense, legal costs and fees,
22 and other claims expenses, because of injuries to other persons, damage to their property, or other damage
23 or loss to other persons resulting from or arising out of:

24 (i) a business, whether profit or nonprofit, trade, product, service (including professional service),
25 premises, or operation; or

26 (ii) an activity of any state or local government or an agency or political subdivision of state or local
27 government.

28 (b) The term does not include personal risk liability or an employer's liability with respect to its
29 employees other than legal liability under the federal Employers' Liability Act, 45 U.S.C. 51 through 60.

30 As used in this subsection, "personal risk liability" means liability for damages because of injury to any

1 person, damage to property, or other loss or damage resulting from personal, familial, or household
2 responsibilities or activities rather than from responsibilities or activities referred to in subsection (5)(a).

3 (6) "Plan of operation or a feasibility study" means an analysis that presents the expected activities
4 and results of a risk retention group, including at a minimum:

5 (a) the coverages, deductibles, coverage limits, rates, and rating classification systems for each
6 line of insurance that the group intends to offer;

7 (b) historical and expected loss experience of the proposed members and national experience of
8 similar exposures to the extent that this experience is reasonably available;

9 (c) pro forma financial statements and projections;

10 (d) appropriate opinions by a qualified independent casualty actuary, including a determination of
11 minimum premium or participation levels required to commence operations and to prevent a hazardous
12 financial condition;

13 (e) identification of management, underwriting procedures, managerial oversight methods, and
14 investment policies; and

15 (f) other matters as may be prescribed by the commissioner for liability insurance companies
16 authorized by the insurance laws of the state where the risk retention group is chartered.

17 (7) "Purchasing group" means a group that:

18 (a) has as one of its purposes the purchase of liability insurance on a group basis;

19 (b) purchases liability insurance only for its group members and only to cover their similar or related
20 liability exposure, as described in subsection (7)(c);

21 (c) is composed of members whose businesses or activities are similar or related with respect to
22 the liability to which members are exposed by virtue of any related, similar, or common business, trade,
23 product, service, premises, or operation; and

24 (d) is domiciled in any state.

25 (8) "Risk retention group" means a corporation or other limited liability association formed under
26 the laws of any state, Bermuda, or the Cayman Islands:

27 (a) whose primary activity consists of assuming and spreading all or any portion of the liability
28 exposure of its group members;

29 (b) that is organized for the primary purpose of conducting the activity described under subsection
30 (8)(a);

- 1 (c) (i) that is chartered and licensed as a liability insurance company and authorized to engage in
2 the business of insurance under the laws of any state; or
- 3 (ii) that, before January 1, 1985, was chartered or licensed and authorized to engage in the
4 business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified
5 to the insurance regulatory official of at least one state that it satisfied the capitalization requirements of
6 that state. However, the group is considered to be a risk retention group only if it has been engaged in
7 business continuously since January 1, 1985, and only for the purpose of continuing to provide insurance
8 to cover product liability or completed operations liability. For purposes of this subsection (8), "product
9 liability" means liability for damages because of any personal injury, death, emotional harm, consequential
10 economic damage, or property damage, including damages resulting from the loss of use of property,
11 arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a
12 product but does not include the liability of any person for those damages if the product involved was in
13 the possession of that person when the incident giving rise to the claim occurred.
- 14 (d) that does not exclude any person from membership in the group solely to provide to members
15 of the group a competitive advantage over the person;
- 16 (e) (i) that has as its members only persons who have an ownership interest in the group and that
17 has as its owners only persons who are members and who are provided insurance by the risk retention
18 group; or
- 19 (ii) that has as its sole member and sole owner an organization that is owned by persons who are
20 provided insurance by the risk retention group;
- 21 (f) whose members are engaged in businesses or activities that are similar or related with respect
22 to the liability to which the members are exposed by virtue of any related, similar, or common business,
23 trade, product, service, premises, or operation;
- 24 (g) whose activities do not include the provision of insurance other than:
- 25 (i) liability insurance for assuming and spreading all or any portion of the liability of its group
26 members; and
- 27 (ii) reinsurance with respect to the liability of any other risk retention group or member of the other
28 group that is engaged in businesses or activities so that the group or member meets the requirement
29 described in subsection (8)(f) for membership in the risk retention group that provides the reinsurance; and
- 30 (h) whose name includes the phrase "risk retention group".

1 (9) "State" means any state of the United States or the District of Columbia."

2

3 **Section 13.** Section 33-17-102, MCA, is amended to read:

4 **"33-17-102. Definitions.** As used in this title, the following definitions apply:

5 (1) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent
6 ~~contractor~~ business owner or as the employee of an independent ~~contractor~~ business owner or for fee or
7 commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise
8 acts on behalf of the insurer. The term does not include a:

9 (a) licensed attorney who is qualified to practice law in this state;

10 (b) salaried employee of an insurer or of a managing general agent;

11 (c) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies
12 issued by the insurer; or

13 (d) licensed third-party administrator who adjusts or assists in adjustment of losses arising under
14 policies issued by the insurer.

15 (2) "Adjuster license" means a document issued by the commissioner that authorizes a person to
16 act as an adjuster.

17 (3) (a) "Administrator" means a person who collects charges or premiums from residents of this
18 state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles
19 claims on these coverages.

20 (b) The term does not mean:

21 (i) an employer on behalf of its employees or on behalf of the employees of one or more
22 subsidiaries of affiliated corporations of the employer;

23 (ii) a union on behalf of its members;

24 (iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a
25 policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is
26 authorized to transact insurance; or

27 (B) a health service corporation as defined in 33-30-101;

28 (iv) a life, disability, property, or casualty insurance producer who is licensed in this state and
29 whose activities are limited exclusively to the sale of insurance;

30 (v) a creditor on behalf of its debtors with respect to insurance covering a debt between the

1 creditor and its debtors;

2 (vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees
3 of the trust;

4 (vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees
5 and employees of the trust;

6 (viii) a custodian acting pursuant to a custodian account that meets the requirements of section
7 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

8 (ix) a bank, credit union, or other financial institution that is subject to supervision or examination
9 by federal or state banking authorities;

10 (x) a company that issues credit cards and that advances for and collects premiums or charges
11 from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims;
12 or

13 (xi) a person who adjusts or settles claims in the normal course of the person's practice or
14 employment as an attorney and who does not collect charges or premiums in connection with life or
15 disability insurance or annuities.

16 (4) "Administrator license" means a document issued by the commissioner that authorizes a person
17 to act as an administrator.

18 (5) "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an
19 insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives
20 advice on an insurance policy, annuity, or pension contract, plan, or program.

21 (6) "Consultant license" means a document issued by the commissioner that authorizes a person
22 to act as an insurance consultant.

23 (7) "Controlled business" means insurance procured or to be procured by or through a person upon
24 the life, person, property, or risks of the person or the person's spouse, employer, or business.

25 (8) "Individual" means a private or natural person, as distinguished from a partnership, corporation,
26 or association.

27 (9) "Insurance producer", except as provided in 33-17-103:

28 (a) means:

29 (i) a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:

30 (A) policies of insurance for risks residing, located, or to be performed in this state; or

1 (B) membership contracts as defined in 33-30-101;

2 (ii) a managing general agent. For purposes of this chapter, the term "managing general agent" has
3 the same meaning as set forth in 33-2-1501.

4 (b) does not mean a customer service representative. For purposes of this definition, a "customer
5 service representative" means a salaried employee of an insurance producer who assists and is responsible
6 to the insurance producer.

7 (10) "License" means a document issued by the commissioner that authorizes a person to act as
8 an insurance producer for the kinds of insurance specified in the document. The license itself does not
9 create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding
10 agreement.

11 (11) "Person" means an individual, partnership, corporation, association, or other legal entity.

12 (12) "Public adjuster" means an adjuster employed by and representing the interests of the insured."
13

14 **Section 14.** Section 33-22-1803, MCA, is amended to read:

15 **"33-22-1803. Definitions.** As used in this part, the following definitions apply:

16 (1) "Actuarial certification" means a written statement by a member of the American academy of
17 actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance
18 with the provisions of 33-22-1809, based upon the person's examination, including a review of the
19 appropriate records and of the actuarial assumptions and methods used by the small employer carrier in
20 establishing premium rates for applicable health benefit plans.

21 (2) "Affiliate" or "affiliated" means ~~any~~ an entity or person who directly or indirectly, through one
22 or more intermediaries, controls, is controlled by, or is under common control with a specified entity or
23 person.

24 (3) "Assessable carrier" means all carriers of disability insurance, including excess of loss and stop
25 loss disability insurance.

26 (4) "Base premium rate" means, for each class of business as to a rating period, the lowest
27 premium rate charged or that could have been charged under the rating system for that class of business
28 by the small employer carrier to small employers with similar case characteristics for health benefit plans
29 with the same or similar coverage.

30 (5) "Basic health benefit plan" means a health benefit plan, except a uniform health benefit plan,

1 developed by a small employer carrier, that has a lower benefit value than the small employer carrier's
2 standard benefit plan and that provides the benefits required by 33-22-1827.

3 (6) "Benefit equivalency" means a method developed by the small employer carrier for comparing
4 the types of health care services and articles covered under a health benefit plan with the types of health
5 care services required to be covered under a uniform, basic, or standard health benefit plan.

6 (7) "Benefit value" means an actuarially based method developed by the small employer carrier for
7 comparing the value of determinable contingencies covered under a health benefit plan with the value of
8 determinable contingencies required under a uniform, basic, or standard health benefit plan.

9 (8) "Board" means the board of directors of the program established pursuant to 33-22-1818.

10 (9) "Carrier" means ~~any~~ a person who provides a health benefit plan in this state subject to state
11 insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit
12 society, a health service corporation, and a health maintenance organization. For purposes of this part,
13 companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated
14 as one carrier, except that the following may be considered as separate carriers:

15 (a) an insurance company or health service corporation that is an affiliate of a health maintenance
16 organization located in this state;

17 (b) a health maintenance organization located in this state that is an affiliate of an insurance
18 company or health service corporation; or

19 (c) a health maintenance organization that operates only one health maintenance organization in
20 an established geographic service area of this state.

21 (10) "Case characteristics" means demographic or other objective characteristics of a small
22 employer that are considered by the small employer carrier in the determination of premium rates for the
23 small employer, provided that gender, claims experience, health status, and duration of coverage are not
24 case characteristics for purposes of this part.

25 (11) "Class of business" means all or a separate grouping of small employers established pursuant
26 to 33-22-1808.

27 (12) "Dependent" means:

28 (a) a spouse or an unmarried child under 19 years of age;

29 (b) an unmarried child, under 23 years of age, who is a full-time student and who is financially
30 dependent on the insured;

1 (c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506
2 and 33-30-1003; or

3 (d) any other individual defined as a dependent in the health benefit plan covering the employee.

4 (13) "Eligible employee" means an employee who works on a full-time basis with a normal
5 workweek of 30 hours or more, except that at the sole discretion of the employer, the term may include
6 an employee who works on a full-time basis with a normal workweek of between 20 and 40 hours as long
7 as this eligibility criteria is applied uniformly among all of the employer's employees. The term includes a
8 sole proprietor, a partner of a partnership, and an independent ~~contractor~~ business owner if the sole
9 proprietor, partner, or independent ~~contractor~~ business owner is included as an employee under a health
10 benefit plan of a small employer. The term does not include an employee who works on a part-time,
11 temporary, or substitute basis.

12 (14) "Established geographic service area" means a geographic area, as approved by the
13 commissioner and based on the carrier's certificate of authority to transact insurance in this state, within
14 which the carrier is authorized to provide coverage.

15 (15) "Health benefit plan" means any hospital or medical policy or certificate providing for physical
16 and mental health care issued by an insurance company, a fraternal benefit society, or a health service
17 corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does
18 not include:

19 (a) accident-only, credit, dental, vision, specified disease, medicare supplement, long-term care,
20 or disability income insurance;

21 (b) coverage issued as a supplement to liability insurance, workers' compensation insurance, or
22 similar insurance; or

23 (c) automobile medical payment insurance.

24 (16) "Index rate" means, for each class of business for a rating period for small employers with
25 similar case characteristics, the average of the applicable base premium rate and the corresponding highest
26 premium rate.

27 (17) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health
28 benefit plan of a small employer following the initial enrollment period during which the individual was
29 entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period was
30 a period of at least 30 days. However, an eligible employee or dependent may not be considered a late

1 enrollee if:

2 (a) the individual requests enrollment within 30 days after termination of the qualifying previous
3 coverage and:

4 (i) the individual was covered under qualifying previous coverage at the time of the initial
5 enrollment; or

6 (ii) the individual lost coverage under qualifying previous coverage as a result of termination of
7 employment or eligibility, the involuntary termination of the qualifying previous coverage, the death of a
8 spouse, or divorce;

9 (b) the individual is employed by an employer that offers multiple health benefit plans and the
10 individual elects a different plan during an open enrollment period; or

11 (c) a court has ordered that coverage be provided for a spouse, minor, or dependent child under
12 a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance
13 of the court order.

14 (18) "New business premium rate" means, for each class of business for a rating period, the lowest
15 premium rate charged or offered or that could have been charged or offered by the small employer carrier
16 to small employers with similar case characteristics for newly issued health benefit plans with the same or
17 similar coverage.

18 (19) "Plan of operation" means the operation of the program established pursuant to 33-22-1818.

19 (20) "Premium" means all money paid by a small employer and eligible employees as a condition
20 of receiving coverage from a small employer carrier, including any fees or other contributions associated
21 with the health benefit plan.

22 (21) "Program" means the Montana small employer health reinsurance program created by
23 33-22-1818.

24 (22) "Qualifying previous coverage" means benefits or coverage provided under:

25 (a) medicare or medicaid;

26 (b) an employer-based health insurance or health benefit arrangement that provides benefits similar
27 to or exceeding benefits provided under the minimum basic health benefit plan; or

28 (c) an individual health insurance policy, including coverage issued by an insurance company, a
29 fraternal benefit society, a health service corporation, or a health maintenance organization that provides
30 benefits similar to or exceeding the benefits provided under the minimum basic health benefit plan, provided

1 that the policy has been in effect for a period of at least 1 year.

2 (23) "Rating period" means the calendar period for which premium rates established by a small
3 employer carrier are assumed to be in effect.

4 (24) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program
5 pursuant to 33-22-1819.

6 (25) "Restricted network provision" means a provision of a health benefit plan that conditions the
7 payment of benefits, in whole or in part, on the use of health care providers that have entered into a
8 contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31,
9 to provide health care services to covered individuals.

10 (26) "Small employer" means a person, firm, corporation, partnership, or association that is actively
11 engaged in business and that, on at least 50% of its working days during the preceding calendar quarter,
12 employed at least 3 but not more than 25 eligible employees, the majority of whom were employed within
13 this state or were residents of this state. In determining the number of eligible employees, companies are
14 considered one employer if they:

15 (a) are affiliated companies;

16 (b) are eligible to file a combined tax return for purposes of state taxation; or

17 (c) are members of an association that:

18 (i) has been in existence for 1 year prior to January 1, 1994;

19 (ii) provides a health benefit plan to employees of its members as a group; and

20 (iii) does not deny coverage to any small employer member of its association or any employee of
21 its small employer members who applies for coverage as part of a group.

22 (27) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible
23 employees of one or more small employers in this state.

24 (28) "Standard health benefit plan" means a health benefit plan that is developed by a small
25 employer carrier and that contains the provisions required pursuant to 33-22-1828."

26

27 **Section 15.** Section 33-35-203, MCA, is amended to read:

28 **"33-35-203. Requirements applicable only to arrangements organized after October 1, 1995. (1)**

29 In addition to the requirements of 33-35-202, self-funded multiple employer welfare arrangements formed
30 after October 1, 1995, are subject to the following requirements:

- 1 (a) arrangements shall maintain a calendar year for operations and reporting purposes unless the
2 commissioner consents to a fiscal year;
- 3 (b) arrangements shall satisfy one of the following requirements:
- 4 (i) (A) the arrangement shall deposit \$200,000 with the commissioner pursuant to Title 33, chapter
5 2, part 6, to be used for the payment of claims in the event that the arrangement becomes insolvent; and
6 (B) the arrangement shall submit to the commissioner a written plan of operation that, in the
7 reasonable discretion of the commissioner, ensures the financial integrity of the arrangement; or
- 8 (ii) the arrangement demonstrates to the reasonable satisfaction of the commissioner the ability of
9 the arrangement to remain financially solvent, for which purpose the commissioner may consider:
- 10 (A) the pro forma financial statements of the self-funded multiple employer welfare arrangement;
11 (B) the types and levels of excess loss insurance coverage, including the attachment points of the
12 coverage and whether the points are reflected as annual or monthly levels;
- 13 (C) whether a deposit is required for each employee covered under the arrangement equal to at
14 least ~~one~~ 1 month's cost of providing benefits under the arrangement;
- 15 (D) the experience of the individuals who will be involved in the management of the arrangement,
16 including employees, independent ~~contractors~~ business owners, and consultants; and
- 17 (E) other factors as reasonably determined by the commissioner to be relevant to a determination
18 of whether the arrangement is able to operate in a financially solvent manner.
- 19 (2) Financial information relating to the employers is subject to the confidentiality provisions of
20 33-1-409(6).
- 21 (3) The commissioner may require that the articles, bylaws, agreements, trusts, or other documents
22 or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the
23 arrangement provide that employers participating in the arrangement are subject to pro rata assessment for
24 all liabilities of the arrangement.
- 25 (4) Arrangements shall maintain excess loss insurance coverage covering 100% of claims in excess
26 of the designated attachment point. The commissioner may waive the requirement of excess loss insurance
27 coverage.
- 28 (5) An arrangement shall submit its base contribution rates for participation under the arrangement
29 for its initial year of operations for review and approval by the commissioner.
- 30 (6) The commissioner may require continued compliance with respect to the conditions set forth

1 in this section as a condition of granting a certificate of authority to an arrangement. The commissioner may
2 waive continued compliance with respect to the conditions in this section at any time after the
3 commissioner has granted a certificate of authority to an arrangement."

4
5 **Section 16.** Section 35-1-1026, MCA, is amended to read:

6 **"35-1-1026. Authority to transact business required.** (1) A foreign corporation may not transact
7 business in this state until it obtains a certificate of authority from the secretary of state.

8 (2) The following activities, among others, do not constitute transacting business within the
9 meaning of subsection (1):

10 (a) maintaining, defending, or settling any proceeding;

11 (b) holding meetings of the board of directors or shareholders or carrying on other activities
12 concerning internal corporate affairs;

13 (c) maintaining bank accounts;

14 (d) maintaining offices or agencies for the transfer, exchange, and registration of the corporation's
15 own securities or maintaining trustees or depositaries with respect to those securities;

16 (e) selling through independent ~~contractors~~ business owners;

17 (f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if
18 the orders require acceptance outside this state before they become contracts;

19 (g) creating or acquiring indebtedness, mortgages, and security interests in real or personal
20 property;

21 (h) securing or collecting debts or enforcing mortgages and security interests in property securing
22 the debts;

23 (i) owning real or personal property that is acquired incident to activities described in subsection
24 (2)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income,
25 or is not used in the performance of a corporate function;

26 (j) conducting an isolated transaction that is completed within 30 days and that is not a transaction
27 in the course of repeated transactions of a similar nature; or

28 (k) transacting business in interstate commerce.

29 (3) The list of activities in subsection (2) is not exhaustive."
30

1 **Section 17.** Section 35-2-820, MCA, is amended to read:

2 **"35-2-820. Authority to transact business required.** (1) A foreign corporation may not transact
3 business in this state until it obtains a certificate of authority from the secretary of state.

4 (2) The following activities, among others, do not constitute transacting business within the
5 meaning of subsection (1):

6 (a) maintaining, defending, or settling any proceeding;

7 (b) holding meetings of the board of directors or members or carrying on other activities concerning
8 internal corporate affairs;

9 (c) maintaining bank accounts;

10 (d) maintaining offices or agencies for the transfer, exchange, and registration of memberships or
11 securities or maintaining trustees or depositories with respect to those securities;

12 (e) selling through independent ~~contractors~~ business owners;

13 (f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if
14 the orders require acceptance outside this state before they become contracts;

15 (g) creating or acquiring indebtedness, mortgages, and security interests in real or personal
16 property;

17 (h) securing or collecting debts or enforcing mortgages and security interests in property securing
18 the debts;

19 (i) owning real or personal property:

20 (i) that is acquired incident to activities described in subsection (2)(h) if the property is disposed
21 of within 5 years after the date of acquisition; or

22 (ii) that does not produce income or is not used in the performance of a corporate function;

23 (j) conducting an isolated transaction that is completed within 30 days and that is not a transaction
24 in the course of repeated transactions of a similar nature; or

25 (k) transacting business in interstate commerce.

26 (3) The list of activities in subsection (2) is not exhaustive."
27

28 **Section 18.** Section 35-8-1001, MCA, is amended to read:

29 **"35-8-1001. Authority to transact business required.** (1) A foreign limited liability company may
30 not transact business in this state until it obtains a certificate of authority from the secretary of state.

1 (2) The following activities, among others, do not constitute transacting business within the
2 meaning of subsection (1):

3 (a) maintaining, defending, or settling any proceeding;

4 (b) holding meetings of the members or managers or carrying on other activities concerning internal
5 affairs of the limited liability company;

6 (c) maintaining bank accounts;

7 (d) maintaining offices or agencies for the transfer, exchange, and registration of the limited liability
8 company's own securities or maintaining trustees or depositaries with respect to those securities;

9 (e) selling through independent ~~contractors~~ business owners;

10 (f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if
11 the orders require acceptance outside this state before they become contracts;

12 (g) creating or acquiring indebtedness, mortgages, and security interests in real or personal
13 property;

14 (h) securing or collecting debts or enforcing mortgages and security interests in property securing
15 the debts;

16 (i) owning real or personal property that is acquired incident to activities described in subsection
17 (2)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income,
18 or is not used in the performance of a function of the limited liability company;

19 (j) conducting an isolated transaction that is completed within 30 days and that is not a transaction
20 in the course of repeated transactions of a similar nature; or

21 (k) transacting business in interstate commerce.

22 (3) The list of activities in subsection (2) is not exhaustive."
23

24 **Section 19.** Section 35-10-202, MCA, is amended to read:

25 **"35-10-202. Creation of partnership.** (1) Except as provided in subsection (2), the association of
26 two or more persons to carry on as co-owners a business for profit creates a partnership, whether or not
27 the persons intend to create a partnership.

28 (2) An association created under a statute other than this chapter, a predecessor law, or a
29 comparable law of another jurisdiction is not a partnership.

30 (3) In determining whether a partnership is created, the following rules apply:

1 (a) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property,
2 or part ownership does not by itself establish a partnership even if the co-owners share profits made by
3 the use of the property.

4 (b) The sharing of gross returns does not by itself establish a partnership even if the persons
5 sharing them have a joint or common right or interest in property from which the returns are derived.

6 (c) A person who receives a share of the profits of a business is presumed to be a partner in the
7 business, unless the profits were received in payment:

8 (i) of a debt by installments or otherwise;

9 (ii) for services as an independent ~~contractor~~ business owner or of wages or other compensation
10 to an employee;

11 (iii) of rent;

12 (iv) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee
13 of a deceased or retired partner;

14 (v) of interest or of another charge on a loan, even if the amount of payment varies with the profits
15 of the business, including a direct or indirect present or future ownership of the collateral or rights to
16 income, proceeds, or increase in value derived from the collateral; or

17 (vi) for the sale of the goodwill of a business or other property by installments or otherwise.

18 (4) Except as provided by 35-10-308, persons who are not partners as to each other are not
19 partners as to other persons.

20 (5) A partnership created under this chapter is a general partnership, and the partners are general
21 partners of the partnership."

22

23 **Section 20.** Section 37-47-304, MCA, is amended to read:

24 **"37-47-304. Application.** (1) Each applicant for an outfitter's, guide's, or professional guide's
25 license shall make application for license on a form prescribed and furnished by the board.

26 (2) The application for an outfitter's license forms the basis for the outfitter's operations plan and
27 must include:

28 (a) the applicant's full name, residence, address, conservation license number, driver's license
29 number, birth date, physical description, and telephone number;

30 (b) the address of the applicant's principal place of business in the state of Montana;

1 (c) the amount and kind of property and equipment owned and used in the outfitting business of
2 the applicant;

3 (d) the experience of the applicant, including years of experience as an outfitter, guide, or
4 professional guide; the applicant's knowledge of areas in which the applicant has operated and intends to
5 operate; and the applicant's ability to cope with weather conditions and terrain;

6 (e) a signed statement of the licensed outfitter for each guide and professional guide to be
7 employed or retained as an independent ~~contractor~~ business owner, stating that the guide or professional
8 guide is to be employed by the outfitter and stating that the outfitter recommends the guide or professional
9 guide for licensure;

10 (f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact
11 owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the
12 services advertised or contemplated to be performed by the applicant;

13 (g) a statement of the maximum number of participants to be accompanied at any one time;

14 (h) the written approval of the appropriate agency or landowner on whose lands the applicant will
15 provide services or establish hunting camps; and

16 (i) the boundaries of the proposed operation, stating when applicable:

17 (i) the name and portion of river;

18 (ii) the county of location;

19 (iii) the legal owner of the property;

20 (iv) the name of the ranch;

21 (v) the proposed service, including the type of game sought;

22 (vi) the name of the agency granting use authority; and

23 (vii) other means of identifying boundaries as established by board rule.

24 (3) Applications for an outfitter's license must be in the name of an individual person only.
25 Applications involving corporations, proprietorships, or partnerships must be made by one individual person
26 who qualifies under the provisions of this part. A license issued pursuant to this part must be in the name
27 of that person. The license must specifically state that the license is issued for the use and benefit of the
28 named corporation, proprietorship, or partnership involved. Any revocation or suspension of a license is
29 binding upon the individual person and the corporation, proprietorship, or partnership for the use and benefit
30 of which the license was originally issued.

1 (4) Application must be made to and filed with the board.

2 (5) Only one application for an outfitter's license may be made in any license year. If an application
3 is denied, subsequent applications by the same applicant for the license year involved are void, except as
4 provided in 37-47-308."

5
6 **Section 21.** Section 37-51-102, MCA, is amended to read:

7 **"37-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following
8 definitions apply:

9 (1) "Account" means the real estate recovery account established in 37-51-501.

10 (2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson
11 as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real
12 property and may be a fact that:

13 (i) materially affects the value, affects structural integrity, or presents a documented health risk
14 to occupants of the property; or

15 (ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a
16 proposed or existing contract.

17 (b) The term does not include the fact that an occupant of the property has or has had a
18 communicable disease or that the property was the site of a suicide or felony.

19 (3) "Board" means the board of realty regulation provided for in 2-15-1867.

20 (4) "Broker" includes an individual who:

21 (a) for another or for valuable consideration or who with the intent or expectation of receiving
22 valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or
23 lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

24 (b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing,
25 subleasing, or other disposition of real estate for consideration;

26 (c) engages in the business of charging an advance fee or contracting for collection of a fee in
27 connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other
28 disposition of real estate in this state through its listing in a publication issued primarily for this purpose or
29 for referral of information concerning real estate to brokers;

30 (d) makes the advertising, sale, lease, or other real estate information available by public display

1 to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining
2 any real estate for purchase or lease;

3 (e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate
4 for purchase or lease;

5 (f) receives a fee, commission, or other compensation for referring to a licensed broker or
6 salesperson the name of a prospective buyer or seller of real property; or

7 (g) advertises or represents to the public that the individual is engaged in any of the activities
8 referred to in subsections (4)(a) through (4)(f).

9 (5) "Broker associate" means a broker who associates, as an employee or independent ~~contractor~~
10 business owner, with a broker owner and does not own an interest in a real estate firm.

11 (6) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

12 (7) "Buyer" means a person who is interested in acquiring an ownership interest in real property
13 or who has entered into an agreement to acquire an interest in real property. The term includes tenants or
14 potential tenants with respect to leases or rental agreements of real property.

15 (8) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker
16 agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent
17 and an in-house buyer agent designate.

18 (9) "Buyer broker agreement" means a written agreement in which a prospective buyer employs
19 a broker to locate real estate of the type and with terms and conditions as designated in the written
20 agreement.

21 (10) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency,
22 acts as the agent of a buyer.

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

24 (12) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or
25 buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with
26 written authorization as provided in 37-51-314. An in-house buyer or seller agent designate may not be
27 considered a dual agent.

28 (13) "Franchise agreement" means a contract or agreement by which:

29 (a) a franchisee is granted the right to engage in business under a marketing plan prescribed in
30 substantial part by the franchisor;

1 (b) the operation of the franchisee's business is substantially associated with the franchisor's
2 trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

3 (c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the
4 agreement.

5 (14) "In-house buyer agent designate" means a broker associate or salesperson employed by or
6 associated as an independent ~~contractor~~ business owner with a broker owner and designated by the broker
7 owner as the exclusive agent for a buyer for a designated transaction and who may not be considered to
8 be acting for other than the buyer with respect to the designated transaction.

9 (15) "In-house seller agent designate" means a broker associate or salesperson employed by or
10 associated as an independent ~~contractor~~ business owner with a broker owner and designated by the broker
11 owner as the exclusive agent for a seller for a designated transaction and who may not be considered to
12 be acting for other than the seller with respect to the designated transaction.

13 (16) "Listing agreement" means a written agreement between a seller and broker for the sale of real
14 estate, with the terms and conditions set out in the agreement.

15 (17) "Negotiations" means:

16 (a) efforts to act as an intermediary between parties to a real estate transaction;

17 (b) facilitating and participating in contract discussions;

18 (c) completing forms for offers, counteroffers, addendums, and other writings; and

19 (d) presenting offers and counteroffers.

20 (18) "Person" includes individuals, partnerships, associations, and corporations, foreign and
21 domestic, except that when referring to a person licensed under this chapter, ~~the term~~ the term means an
22 individual.

23 (19) "Property manager" includes a person who for a salary, commission, or compensation of any
24 kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate
25 belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

26 (20) "Real estate" includes leaseholds as well as any other interest or estate in land, whether
27 corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or
28 elsewhere.

29 (21) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale,
30 exchange, or lease of an interest in real estate and includes all communication, interposition, advisement,

1 negotiation, and contract development and closing.

2 (22) "Salesperson" includes an individual who for a salary, commission, or compensation of any
3 kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell,
4 purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

5 (23) "Seller" means a person who has entered into a listing agreement to sell real estate and
6 includes landlords who have an interest in or are a party to a lease or rental agreement.

7 (24) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts
8 as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

9 (25) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency,
10 acts as the agent of a seller.

11 (26) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real
12 estate transaction without acting as an agent or representative of any party to the real estate transaction.

13 (b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or
14 salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or
15 has disclosed, as required in this chapter, a relationship other than that of a statutory broker."

16

17 **Section 22.** Section 37-51-313, MCA, is amended to read:

18 **"37-51-313. Duties, duration, and termination of relationship between broker or salesperson and**
19 **buyer or seller.** (1) The provisions of this chapter and the duties described in this section govern the
20 relationships between brokers or salespersons and buyers or sellers and are intended to replace the common
21 law as applied to these relationships. The duties of a broker or salesperson vary depending upon the
22 relationship with a party to a real estate transaction and are as provided in this section.

23 (2) A seller's agent is obligated to the seller to:

24 (a) act solely in the best interests of the seller;

25 (b) obey promptly and efficiently all lawful instructions of the seller;

26 (c) disclose all relevant and material information that concerns the real estate transaction and that
27 is known to the seller's agent and not known or discoverable by the seller, unless the information is subject
28 to confidentiality arising from a prior or existing agency relationship on the part of the seller's agent;

29 (d) safeguard the seller's confidences;

30 (e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying

- 1 with the terms established in the listing agreement;
- 2 (f) fully account to the seller for any funds or property of the seller that comes into the seller's
- 3 agent's possession; and
- 4 (g) comply with all applicable federal and state laws, rules, and regulations.
- 5 (3) A seller's agent is obligated to the buyer to:
- 6 (a) disclose to a buyer or the buyer's agent any adverse material facts that concern the property
- 7 and that are known to the seller's agent, except that the seller's agent is not required to inspect the
- 8 property or verify any statements made by the seller;
- 9 (b) disclose to a buyer or the buyer's agent when the seller's agent has no personal knowledge of
- 10 the veracity of information regarding adverse material facts that concern the property;
- 11 (c) act in good faith with a buyer and a buyer's agent; and
- 12 (d) comply with all applicable federal and state laws, rules, and regulations.
- 13 (4) A buyer's agent is obligated to the buyer to:
- 14 (a) act solely in the best interests of the buyer;
- 15 (b) obey promptly and efficiently all lawful instructions of the buyer;
- 16 (c) disclose all relevant and material information that concerns the real estate transaction and that
- 17 is known to the buyer's agent and not known or discoverable by the buyer, unless the information is
- 18 subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer's
- 19 agent;
- 20 (d) safeguard the buyer's confidences;
- 21 (e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying
- 22 with the terms established in the buyer broker agreement;
- 23 (f) fully account to the buyer for any funds or property of the buyer that comes into the buyer's
- 24 agent's possession; and
- 25 (g) comply with all applicable federal and state laws, rules, and regulations.
- 26 (5) A buyer's agent is obligated to the seller to:
- 27 (a) disclose any adverse material facts that are known to the buyer's agent and that concern the
- 28 ability of the buyer to perform on any purchase offer;
- 29 (b) disclose to the seller or the seller's agent when the buyer's agent has no personal knowledge
- 30 of the veracity of information regarding adverse material facts that concern the property;

- 1 (c) act in good faith with a seller and a seller’s agent; and
- 2 (d) comply with all applicable federal and state laws, rules, and regulations.

3 (6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them
 4 to:

- 5 (a) disclose to:
 - 6 (i) a buyer or a buyer’s agent any adverse material facts that concern the property and that are
 7 known to the statutory broker, except that the statutory broker is not required to inspect the property or
 8 verify any statements made by the seller;

- 9 (ii) a seller or a seller’s agent any adverse material facts that are known to the statutory broker and
 10 that concern the ability of the buyer to perform on any purchase offer;

- 11 (b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and
- 12 (c) comply with all applicable federal and state laws, rules, and regulations.

13 (7) A dual agent is obligated to a seller in the same manner as a seller’s agent and is obligated to
 14 a buyer in the same manner as a buyer’s agent under this section, except as follows:

- 15 (a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are
 16 known to the dual agent, regardless of any confidentiality considerations; and

- 17 (b) a dual agent may not disclose the following information without the written consent of the
 18 person to whom the information is confidential:

- 19 (i) the fact that the buyer is willing to pay more than the offered purchase price;

- 20 (ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking
 21 for the property;

- 22 (iii) factors motivating either party to buy or sell; and

- 23 (iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

24 (8) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the
 25 earliest of the following dates:

- 26 (i) completion of performance by the agent;

- 27 (ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

- 28 (iii) the occurrence of any authorized termination of the listing agreement or buyer broker
 29 agreement.

- 30 (b) A statutory broker’s relationship continues until the completion, termination, or abandonment

1 of the real estate transaction giving rise to the relationship.

2 (9) Upon termination of an agency relationship, a broker or salesperson does not have any further
3 duties to the principal, except as follows:

4 (a) to account for all money and property of the principal;

5 (b) to keep confidential all information received during the course of the agency relationship that
6 was made confidential at the principal's direction, except for:

7 (i) subsequent conduct by the principal that authorizes disclosure;

8 (ii) the disclosure required by law or to prevent the commission of a crime;

9 (iii) the information being disclosed by someone other than the broker or salesperson; and

10 (iv) the disclosure of the information being reasonably necessary to defend the conduct of the
11 broker or salesperson, including employees, independent ~~contractors~~ business owners, and subagents.

12 (10) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a
13 statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any
14 transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error,
15 exaggeration, misrepresentation, or concealment of pertinent facts."

16

17 **Section 23.** Section 37-51-315, MCA, is amended to read:

18 **"37-51-315. Vicarious liability.** (1) A party to a real estate transaction is not liable for a
19 misrepresentation made by the party's agent or subagent unless:

20 (a) the party has actual knowledge of the misrepresentation; or

21 (b) the agent or subagent is repeating a misrepresentation made by the party.

22 (2) A broker is not liable for a misrepresentation made by the broker's broker associate or subagent
23 unless:

24 (a) the broker has actual knowledge of the misrepresentation;

25 (b) a broker associate making the misrepresentation is an employee of the broker and not an
26 independent ~~contractor~~ business owner or subagent; or

27 (c) a broker associate or subagent is repeating a misrepresentation made by the broker.

28 (3) An agent is not liable for a misrepresentation made by the principal unless the agent has actual
29 knowledge of the misrepresentation."

30

1 **Section 24.** Section 39-2-903, MCA, is amended to read:

2 **"39-2-903. Definitions.** In this part, the following definitions apply:

3 (1) "Constructive discharge" means the voluntary termination of employment by an employee
4 because of a situation created by an act or omission of the employer ~~which~~ that an objective, reasonable
5 person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive
6 discharge does not mean voluntary termination because of an employer's refusal to promote the employee
7 or improve wages, responsibilities, or other terms and conditions of employment.

8 (2) "Discharge" includes a constructive discharge ~~as defined in subsection (1)~~ and any other
9 termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to
10 recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

11 (3) "Employee" means a person who works for another for hire. The term does not include a person
12 who is an independent ~~contractor~~ business owner.

13 (4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical
14 insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date
15 of the termination.

16 (5) "Good cause" means reasonable job-related grounds for dismissal based on a failure to
17 satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason.
18 The legal use of a lawful product by an individual off the employer's premises during nonworking hours is
19 not a legitimate business reason, unless the employer acts within the provisions of 39-2-313(3) or (4).

20 (6) "Lost wages" means the gross amount of wages that would have been reported to the internal
21 revenue service as gross income on Form W-2 and includes additional compensation deferred at the option
22 of the employee.

23 (7) "Public policy" means a policy in effect at the time of the discharge concerning the public
24 health, safety, or welfare established by constitutional provision, statute, or administrative rule."

25

26 **Section 25.** Section 39-3-703, MCA, is amended to read:

27 **"39-3-703. Contractor to furnish bond -- bond requirements -- deposit.** (1) Except as provided in
28 subsection (3), a contractor who contracts with ~~any~~ a person or entity to do any work or perform any
29 services for the person or entity shall furnish a surety bond or other form of security that must be:

30 (a) approved by the commissioner;

1 (b) in an amount:

2 (i) of \$6,000 for a general contractor or \$4,000 for a specialty contractor if the contractor is a sole
3 proprietor, an independent ~~contractor~~ business owner, or a corporate officer working as an individual
4 without employees; or

5 (ii) equal to a contractor's average monthly employee payroll, based on 12 consecutive months'
6 payroll, as estimated by the commissioner. However, the amount may not be less than \$6,000 for a general
7 contractor or \$4,000 for a specialty contractor and may not exceed \$25,000 for any contractor.

8 (c) in the name of the state of Montana;

9 (d) for the purpose of guaranteeing:

10 (i) the wages and fringe benefits of all workers employed by the contractor for the contracted
11 work;

12 (ii) all taxes and contributions due to the state;

13 (iii) payment to persons furnishing labor;

14 (e) filed with the commissioner within 1 week of the making of the contract or the commencement
15 of work under the contract, whichever comes first.

16 (2) Only one bond is required on any contractor for each year, and when the bond is filed with and
17 approved by the commissioner, the commissioner shall certify to any person contracting with a contractor
18 that the bond is in ~~full force and~~ effect.

19 (3) In lieu of the surety bond required by subsection (1), the contractor may file with the
20 department a deposit consisting of cash or other security acceptable to the department.

21 (4) A change in the name of a business or a change in the type of business may not impair a bond
22 for the purposes of this section as long as one of the original applicants for the bond maintains partial
23 ownership in the business covered by the bond."
24

25 **Section 26.** Section 39-8-102, MCA, is amended to read:

26 **"39-8-102. Definitions.** As used in this chapter, unless the context indicates otherwise, the
27 following definitions apply:

28 (1) "Applicant" means a person that seeks to be licensed under this chapter.

29 (2) "Client" means a person who obtains all or part of its workforce from another person through
30 a professional employer arrangement.

1 (3) "Controlling person" means an individual who possesses the right to direct the management
2 or policies of a professional employer organization or group through ownership of voting securities, by
3 contract or otherwise.

4 (4) "Department" means the department of labor and industry.

5 (5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which
6 a professional employer organization hires its own employees and assigns the employees to work for
7 another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or
8 enterprise on an ongoing basis.

9 (6) "Licensee" means a person licensed as a professional employer organization or group under this
10 chapter.

11 (7) "Person" means an individual, association, company, firm, partnership, corporation, or limited
12 liability company.

13 (8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under
14 which:

15 (i) a professional employer organization or group assigns employees to perform services for a client;

16 (ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and

17 (iii) the employer responsibilities are shared by the professional employer organization or group and
18 the client.

19 (b) The term does not include:

20 (i) services performed by a temporary service contractor;

21 (ii) arrangements under which a person shares employees with a commonly owned company within
22 the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

23 (A) that person's principal business activity is not entering into professional employer
24 arrangements; and

25 (B) that person does not represent to the public that the person is a professional employer
26 organization or group; and

27 (iii) arrangements exist for employment of an independent ~~contractor~~ business owner as defined in
28 ~~30-71-120~~ [section 2].

29 (9) "Professional employer group" or "group" means at least two but not more than five
30 professional employer organizations, each of which is majority-owned by the same person.

1 (10) "Professional employer organization" means:

2 (a) a person that provides services of employees pursuant to one or more professional employer
3 arrangements or to one or more employee leasing arrangements; or

4 (b) a person that represents to the public that the person provides services pursuant to a
5 professional employer arrangement.

6 (11) "Temporary service contractor" means a person conducting a business that hires its own
7 employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or
8 supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal
9 workloads, and special assignments and projects."

10

11 **Section 27.** Section 39-9-204, MCA, is amended to read:

12 **"39-9-204. Certificate of registration -- issuance -- duration -- renewal -- suspension.** (1) The
13 department shall issue to the applicant a certificate of registration upon compliance with the registration
14 requirements of this chapter.

15 (2) If the department approves an application, it shall issue a certificate of registration to the
16 applicant. The department shall place the expiration date on the certificate. Except as provided in
17 subsection (3), the certificate is valid until the earliest date of:

18 (a) 1 year;

19 (b) the date that the bond expires; or

20 (c) the date that the workers' compensation or unemployment insurance expires or any applicable
21 exemption terminates.

22 (3) The certificate issued under this section to an independent ~~contractor~~ business owner is invalid
23 on the date that the ~~contractor~~ independent business owner hires employees unless the ~~contractor~~
24 independent business owner provides proof to the department of workers' compensation coverage for those
25 employees.

26 (4) A contractor may supply a short-term bond or insurance policy to bring its registration period
27 to the full 1 year.

28 (5) If a contractor's surety bond or other security has an unsatisfied judgment against it or it is
29 canceled, the contractor's registration is automatically suspended on the effective date of the impairment
30 or cancellation. The department shall give notice of the suspension to the contractor."

1 **Section 28.** Section 39-9-206, MCA, is amended to read:

2 **"39-9-206. Fees -- education program.** (1) The department shall charge fees for:

3 (a) issuance, renewal, and reinstatement of certificates of registration; and

4 (b) changes of name, address, or business structure.

5 (2) The department shall set the fees by administrative rule. The fees shall cover the full cost of
6 issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs
7 include reproduction, travel, per diem, and administrative and legal support costs.

8 (3) The fees charged in subsection (1)(a) may not exceed \$80.

9 (4) The fees collected under this section must be deposited in the state special revenue account
10 to the credit of the department for the administration and enforcement of this chapter.

11 (5) The department shall establish, cooperatively with representatives of the building industry, an
12 industry and consumer information program, funded with 15% of the fees, to educate the building industry
13 about the registration program and to educate the public regarding the hiring of building contractors.

14 ~~(6) The fee for a joint application for a certificate of registration and an independent contractor~~
15 ~~exemption may not exceed the fee charged for a certificate of registration."~~

16

17 **Section 29.** Section 39-29-101, MCA, is amended to read:

18 **"39-29-101. Definitions.** For the purposes of this chapter, the following definitions apply:

19 (1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except
20 for training, determining physical fitness, or service in the reserve or national guard.

21 (2) "Armed forces" means the United States:

22 (a) army, navy, air force, marine corps, and coast guard; and

23 (b) merchant marine for service recognized by the United States department of defense as active
24 military service for the purpose of laws administered by the department of veterans affairs.

25 (3) "Disabled veteran" means a person:

26 (a) whether or not the person is a veteran as defined in this section, who was separated under
27 honorable conditions from active duty in the armed forces and has established the present existence of a
28 service-connected disability or is receiving compensation, disability retirement benefits, or pension because
29 of a law administered by the department of veterans affairs or a military department; or

30 (b) who has received a purple heart medal.

1 (4) "Eligible relative" means:

2 (a) the unmarried surviving spouse of a veteran or disabled veteran;

3 (b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

4 (c) the mother of a veteran who died under honorable conditions while serving in the armed forces

5 if:

6 (i) the mother's spouse is totally and permanently disabled; or

7 (ii) the mother is the widow of the father of the veteran and has not remarried;

8 (d) the mother of a service-connected permanently and totally disabled veteran if:

9 (i) the mother's spouse is totally and permanently disabled; or

10 (ii) the mother is the widow of the father of the veteran and has not remarried.

11 (5) "Position" means a permanent, temporary, or seasonal position, as defined in 2-18-101, for a
12 state position or a similar permanent, temporary, or seasonal position with a public employer other than the
13 state. The term does not include:

14 (a) a state or local elected office;

15 (b) appointment by an elected official to a body such as a board, commission, committee, or
16 council;

17 (c) appointment by an elected official to a public office if the appointment is provided for by law;

18 (d) a department head appointment by the governor or an executive department head appointment
19 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local
20 government; or

21 (e) engagement as an independent ~~contractor~~ business owner or employment by an independent
22 ~~contractor~~ business owner.

23 (6) "Public employer" means:

24 (a) a department, office, board, bureau, commission, agency, or other instrumentality of the
25 executive, legislative, or judicial branches of the government of this state;

26 (b) a unit of the Montana university system;

27 (c) a school district or community college; and

28 (d) a county, city, or town.

29 (7) "Scored procedure" means a written test, structured oral interview, performance test, or other
30 selection procedure or a combination of these procedures that results in a numerical score to which

1 percentage points may be added.

2 (8) "Under honorable conditions" means a discharge or separation from active duty characterized
3 by the armed forces as under honorable conditions. The term includes honorable discharges and general
4 discharges but does not include dishonorable discharges or other administrative discharges characterized
5 as other than honorable.

6 (9) "Veteran" means a person who:

7 (a) was separated under honorable conditions from active duty in the armed forces after having
8 served more than 180 consecutive days, other than for training; or

9 (b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C.
10 672(a), (d), or (g), 10 U.S.C. 673, or 10 U.S.C. 673b served on active duty during a period of war or in
11 a campaign or expedition for which a campaign badge is authorized and was discharged or released from
12 duty under honorable conditions."

13

14 **Section 30.** Section 39-30-103, MCA, is amended to read:

15 **"39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

16 (1) "Eligible spouse" means the spouse of a handicapped person determined by the department of
17 public health and human services to have a 100% disability who is unable to use the employment
18 preference because of the person's disability.

19 (2) "Handicapped person" means an individual certified by the department of public health and
20 human services to have a physical or mental impairment that substantially limits one or more major life
21 activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to
22 obtain, retain, or advance in employment.

23 (3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the
24 ranks of the current employees of:

25 (i) a department, as defined in 2-15-102, for a position within the executive branch;

26 (ii) a legislative agency for a position within the legislative branch;

27 (iii) a judicial agency, such as the office of supreme court administrator, the office of supreme court
28 clerk, the state law library, or a similar office in a state district court for a position within the judicial
29 branch;

30 (iv) a city or town for a municipal position, including a city or municipal court position; and

1 (v) a county for a county position, including a justice's court position.

2 (b) A personnel action limited to current employees of a specific public entity identified in
3 subsections (3)(a)(i) through (3)(a)(v), current employees in a reduction-in-force pool who have been laid
4 off from a specific public entity identified in subsections (3)(a)(i) through (3)(a)(v), or current participants
5 in a federally authorized employment program is not an initial hiring.

6 (4) (a) "Mental impairment" means:

7 (i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or
8 any other neurologically handicapping condition closely related to mental retardation and requiring treatment
9 similar to that required by mentally retarded individuals; or

10 (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive
11 or volitional functions.

12 (b) The term mental impairment does not include alcoholism or drug addiction and does not include
13 any mental impairment, disease, or defect that has been asserted by the individual claiming the preference
14 as a defense to any criminal charge.

15 (5) "Position" means a permanent or seasonal position, as defined in 2-18-101, for a state position
16 or a similar permanent or seasonal position with a public employer other than the state. However, the term
17 does not include:

18 (a) a temporary position, as defined in 2-18-101, for a state position or similar temporary position
19 with a public employer other than the state;

20 (b) a state or local elected official;

21 (c) employment as an elected official's immediate secretary, legal ~~adviser~~ adviser, court reporter,
22 or administrative, legislative, or other immediate or first-line aide;

23 (d) appointment by an elected official to a body such as a board, commission, committee, or
24 council;

25 (e) appointment by an elected official to a public office if the appointment is provided for by law;

26 (f) a department head appointment by the governor or an executive department head appointment
27 by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local
28 government; or

29 (g) engagement as an independent ~~contractor~~ business owner or employment by an independent
30 ~~contractor~~ business owner.

- 1 (6) (a) "Public employer" means:
- 2 (i) ~~any~~ a department, office, board, bureau, commission, agency, or other instrumentality of the
- 3 executive, judicial, or legislative branch of the government of the state of Montana; and
- 4 (ii) ~~any~~ a county, city, or town.
- 5 (b) The term does not include a school district, a vocational-technical program, a community
- 6 college, the board of regents of higher education, the Montana university system, a special purpose district,
- 7 an authority, or any political subdivision of the state other than a county, city, or town.
- 8 (7) "Substantially equal qualifications" means the qualifications of two or more persons among
- 9 whom the public employer cannot make a reasonable determination that the qualifications held by one
- 10 person are significantly better suited for the position than the qualifications held by the other persons."

11

12 **Section 31.** Section 39-51-201, MCA, is amended to read:

13 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires

14 otherwise, the following definitions apply:

15 (1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time

16 of payment, for employment during a calendar year.

17 (2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding

18 the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to

19 the arrangement approved by the secretary of labor of the United States, the base period is the period

20 applicable under the unemployment law of the paying state. For an individual who fails to meet the

21 qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability,

22 as defined in 39-71-116, or a similar statute of another state or the United States, the base period means

23 the first 4 quarters of the last 5 quarters preceding the disability if a claim for unemployment benefits is

24 filed within 24 months of the date on which the individual's disability was incurred.

25 (3) "Benefits" means the money payments payable to an individual, as provided in this chapter,

26 with respect to the individual's unemployment.

27 (4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning

28 with the first day of the calendar week in which the individual files a valid claim for benefits, except that

29 the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base

30 year of a previously filed new claim. A subsequent benefit year may not be established until the expiration

1 of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement
2 approved by the secretary of labor of the United States, the base period is the period applicable under the
3 unemployment law of the paying state.

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

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

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

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

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

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

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

30 (12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law,

1 for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates
 2 a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the
 3 employer.

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

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

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

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

11 ~~(15)~~(14) (a) "Institution of higher education", for the purposes of this part, means an educational
 12 institution that:

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

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

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

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

21 (b) Notwithstanding subsection ~~(15)(a)~~ (14)(a), all universities in this state are institutions of higher
 22 education for purposes of this part.

23 ~~(16)~~(15) "State" includes, in addition to the states of the United States of America, the District of
 24 Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

25 ~~(17)~~(16) "Taxes" means contributions and assessments required under this chapter but does not
 26 include penalties or interest for past-due or unpaid contributions or assessments.

27 ~~(18)~~(17) "Unemployment insurance administration fund" means the unemployment insurance
 28 administration fund established by this chapter from which administrative expenses under this chapter must
 29 be paid.

30 ~~(19)~~(18) (a) "Wages" means all remuneration payable for personal services, including commissions

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

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

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

9 (A) retirement;

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

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

12 (D) death;

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

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

17 ~~(20)~~(19) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

18 ~~(21)~~(20) An individual's "weekly benefit amount" means the amount of benefits that the individual
 19 would be entitled to receive for 1 week of total unemployment."
 20

21 **Section 32.** Section 39-51-203, MCA, is amended to read:

22 **"39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section,
 23 means service by an individual, by a manager or member of a manager-managed limited liability company
 24 that has filed with the secretary of state, or by an officer of a corporation, including service in interstate
 25 commerce, performed for wages or under any contract of hire, written or oral, express or implied.

26 (2) (a) The term "employment" includes an individual's entire service performed within or both
 27 within and outside this state if:

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

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

30 (A) the base of operations or, if there is no base of operations, the place from which the service

1 is directed or controlled is in this state; or

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

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

5 (i) the service is performed entirely within the state; or

6 (ii) the service is performed both within and outside the state, but the service performed outside
7 the state is incidental to the individual's service within the state; for example, the out-of-state service is
8 temporary or transitory in nature or consists of isolated transactions.

9 (3) Service not covered under subsection (2) and performed entirely outside the state and on which
10 contributions are neither required nor paid under an unemployment insurance law of any other state or of
11 the federal government is considered to be employment subject to this chapter if the individual performing
12 the services is a resident of this state and the department approves the election of the employing unit for
13 whom the services are performed in order that the entire service of the individual is considered to be
14 employment subject to this chapter.

15 ~~(4) Service performed by an individual for wages is considered to be employment subject to this~~
16 ~~chapter until it is shown to the satisfaction of the department that the individual is an independent~~
17 ~~contractor.~~

18 ~~(5)~~(4) The term "employment" includes service performed by an individual in the employ of this
19 state or any of its instrumentalities (or in the employ of this state and one or more other states or their
20 instrumentalities) for a hospital or institution of higher education located in this state. The term
21 "employment" includes service performed by all individuals, including those individuals who work for the
22 state of Montana, its universities, public schools, components or units of universities or public schools, or
23 any local government unit and one or more other states or their instrumentalities or political subdivisions
24 whose services are compensated by salary or wages.

25 ~~(6)~~(5) The term "employment" includes service performed by an individual in the employ of a
26 religious, charitable, scientific, literary, or educational organization.

27 ~~(7)~~(6) (a) The term "employment" includes the service of an individual who is a citizen of the United
28 States performed outside the United States, except in Canada, in the employ of an American employer,
29 other than service that is considered employment under the provisions of subsection (2) or the parallel
30 provisions of another state's law, if:

- 1 (i) the employer's principal place of business in the United States is located in this state;
- 2 (ii) the employer has no place of business in the United States, but:
- 3 (A) the employer is an individual who is a resident of this state;
- 4 (B) the employer is a corporation that is organized under the laws of this state; or
- 5 (C) the employer is a partnership or a trust and the number of the partners or trustees who are
- 6 residents of this state is greater than the number who are residents of any other state; or
- 7 (iii) none of the criteria of subsections ~~(7)(a)(i)~~ (6)(a)(i) and ~~(7)(a)(ii)~~ (6)(a)(ii) are met, but the
- 8 employer has elected coverage in this state or, the employer having failed to elect coverage in any state,
- 9 the individual has filed a claim for benefits based on the service under the law of this state.
- 10 (b) An "American employer", for purposes of this subsection ~~(7)~~ (6), means a person who is:
- 11 (i) an individual who is a resident of the United States;
- 12 (ii) a partnership if two-thirds or more of the partners are residents of the United States;
- 13 (iii) a trust if all of the trustees are residents of the United States; or
- 14 (iv) a corporation organized under the laws of the United States or of any state."

15

16 **Section 33.** Section 39-51-204, MCA, is amended to read:

17 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not

18 include:

19 (a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to

20 this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded

21 from coverage under this chapter if the employer:

22 (i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the

23 monetary amount or number of employees and days worked, for the subject wages attributable to

24 agricultural labor; and

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

26 labor.

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

28 college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to

29 this chapter and has domestic service employment, all employees engaged in domestic service must be

30 excluded from coverage under this chapter if the employer:

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

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

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

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

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(c)(7) of the Federal Unemployment
14 Tax Act (26 U.S.C. 3306(c)(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) services performed as a newspaper carrier or ~~free-lance~~ freelance correspondent if the person
23 performing the services or a parent or guardian of the person performing the services in the case of a minor
24 has acknowledged in writing that the person performing the services and the services are not covered. As
25 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) services performed by real estate, securities, and insurance salespeople paid solely by
2 commissions and without guarantee of minimum earnings;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (iv) may accept or reject any job;

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

13 (vi) works under a written contract that:

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

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

17 (C) ~~requires the installer to provide a current workers' compensation policy or to obtain an~~
 18 ~~exemption from workers' compensation requirements~~ states that the installer is an independent business
 19 owner;

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

21 (q) services performed by a petroleum land professional. As used in this subsection, "petroleum
 22 land professional" means 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~~ business owner pursuant to a written
 28 contract.

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

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

1 performed:

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

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

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

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

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

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

20 ~~(5)(4)~~ This section does not apply to a state or local governmental entity or a nonprofit organization
21 defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from
22 employment as defined in the Federal Unemployment Tax Act."

23

24 **Section 34.** Section 39-51-310, MCA, is amended to read:

25 "39-51-310. **Function of board.** The board shall act in a quasi-judicial capacity for the hearing of
26 disputes concerning the administration of Montana's unemployment insurance laws and disputes arising
27 under Title 39, chapter 71, not concerning benefits, regarding whether an individual is an employee or an
28 independent ~~contractor~~ business owner as defined in that chapter."

29

30 **Section 35.** Section 39-51-2108, MCA, is amended to read:

1 **"39-51-2108. Payment of benefits based on service in public, charitable, or educational**
 2 **organizations.** (1) Benefits based on service in employment defined in ~~subsections (5) and (6) of~~
 3 ~~39-51-203(4) and (5) and subsections (2) and (3) of 39-51-204(2) and (3)~~ are payable in the same amount,
 4 on the same terms, and subject to the same conditions as compensation payable on the basis of other
 5 service subject to this chapter, except that benefits based on service in an instructional, research, or
 6 principal administrative capacity for an educational institution may not be paid to an individual for any week
 7 of unemployment ~~which that~~ begins during the period between ~~two~~ 2 successive academic years or during
 8 a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical
 9 leave provided for in the individual's contract if the individual has a contract or reasonable assurance of a
 10 contract to perform services in any such capacity for ~~any such the~~ the educational institution for both ~~such~~
 11 academic years or both ~~such~~ terms.

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

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

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

1 institutions."

2

3 **Section 36.** Section 39-71-117, MCA, is amended to read:

4 **"39-71-117. Employer defined.** (1) "Employer" means:

5 (a) the state and each county, city and county, city school district, and irrigation district; all other
6 districts established by law; all public corporations and quasi-public corporations and public agencies; each
7 person; each prime contractor; each firm, voluntary association, limited liability company, and private
8 corporation, including any public service corporation and including an independent ~~contractor~~ business
9 owner who has any person in service under any appointment or contract of hire, expressed or implied, oral
10 or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased
11 employer;

12 (b) any association, corporation, limited liability company, or organization that seeks permission
13 and meets the requirements set by the department by rule for a group of individual employers to operate
14 as self-insured under plan No. 1 of this chapter; and

15 (c) any nonprofit association, limited liability company, or corporation or other entity funded in
16 whole or in part by federal, state, or local government funds that places community service participants,
17 as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local
18 government entities.

19 (2) A temporary service contractor is the employer of a temporary worker for premium and loss
20 experience purposes.

21 (3) Except as provided in chapter 8 ~~of this title~~, an employer defined in subsection (1) who uses
22 the services of a worker furnished by another person, association, contractor, firm, limited liability
23 company, or corporation, other than a temporary service contractor, is presumed to be the employer for
24 workers' compensation premium and loss experience purposes for work performed by the worker. The
25 presumption may be rebutted by substantial credible evidence of the following:

26 (a) the person, association, contractor, firm, limited liability company, or corporation, other than
27 a temporary service contractor, furnishing the services of a worker to another retains control over all
28 aspects of the work performed by the worker, both at the inception of employment and during all phases
29 of the work; and

30 (b) the person, association, contractor, firm, limited liability company, or corporation, other than

1 a temporary service contractor, furnishing the services of a worker to another has obtained workers'
 2 compensation insurance for the worker in Montana both at the inception of employment and during all
 3 phases of the work performed.

4 (4) An interstate or intrastate common or contract motor carrier doing business in this state who
 5 uses drivers in this state is considered the employer, is liable for workers' compensation premiums, and is
 6 subject to loss experience rating in this state unless:

7 (a) the driver in this state is ~~certified as an independent contractor as provided in 39-71-401(3) an~~
 8 independent business owner as defined in [section 2]; or

9 (b) the person, association, contractor, firm, limited liability company, or corporation furnishing
 10 drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in
 11 Montana both at the inception of employment and during all phases of the work performed."

12

13 **Section 37.** Section 39-71-118, MCA, is amended to read:

14 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term
 15 "employee" or "worker" means:

16 (a) each person in this state, including a contractor other than an independent ~~contractor~~ business
 17 owner, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract
 18 of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or
 19 unlawfully employed, and all of the elected and appointed paid public officers and officers and members
 20 of boards of directors of quasi-public or private corporations, except those officers identified in
 21 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined
 22 by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and
 23 if an employer has elected to be bound by the provisions of the compensation law for these casual
 24 employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

25 (b) any juvenile performing work under authorization of a district court judge in a delinquency
 26 prevention or rehabilitation program;

27 (c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under
 28 a state or federal vocational training program, whether or not under an appointment or contract of hire with
 29 an employer, as defined in this chapter, and whether or not receiving payment from a third party. However,
 30 this subsection does not apply to students enrolled in vocational training programs, as outlined in this

1 subsection, while they are on the premises of a public school or community college.

2 (d) an aircrew member or other person employed as a volunteer under 67-2-105;

3 (e) a person, other than a juvenile as defined in subsection (1)(b), performing community service
4 for a nonprofit organization or association or for a federal, state, or local government entity under a court
5 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under
6 appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving
7 payment from a third party. For a person covered by the definition in this subsection (1)(e):

8 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an
9 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,
10 chapter 3, part 4, for a full-time employee at the time of the injury; and

11 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon
12 the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community
13 service required under the order from the court or hearings officer.

14 (f) an inmate working in a federally certified prison industries program authorized under 53-1-301;
15 and

16 (g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109,
17 or a person who provides ambulance services under Title 7, chapter 34, part 1.

18 (2) The terms defined in subsection (1) do not include a person who is:

19 (a) participating in recreational activity and who at the time is relieved of and is not performing
20 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,
21 permit, device, or other emolument of employment;

22 (b) performing voluntary service at a recreational facility and who receives no compensation for
23 those services other than meals, lodging, or the use of the recreational facilities; or

24 (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage
25 under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs
26 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages, as defined
27 in 39-71-123.

28 (3) With the approval of the insurer, an employer may elect to include as an employee under the
29 provisions of this chapter any volunteer, as defined in subsection (2)(c).

30 (4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member

1 of a fire company organized and funded by a county, a rural fire district, or a fire service area.

2 (b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service
3 of an employer, including but not limited to training time, response time, and time spent at the employer's
4 premises.

5 (5) (a) If the employer is a partnership, sole proprietor, or a member-managed limited liability
6 company, the employer may elect to include as an employee within the provisions of this chapter any
7 member of the partnership, the owner of the sole proprietorship, or any member of the limited liability
8 company devoting full time to the partnership, proprietorship, or limited liability company business.

9 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
10 naming the partners, sole proprietor, or members to be covered and stating the level of compensation
11 coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection
12 (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice
13 has been given.

14 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
15 following notification.

16 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
17 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
18 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less
19 than \$900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

20 (6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited
21 liability company, the employer may elect to include as an employee within the provisions of this chapter
22 any corporate officer or manager exempted under 39-71-401(2).

23 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
24 naming the corporate officer or manager to be covered and stating the level of compensation coverage
25 desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A
26 corporate officer or manager is not considered an employee within this chapter until notice has been given.

27 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
28 following notification.

29 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
30 the minimum and maximum limitations of this subsection. For premium ratemaking and for the

1 determination of the weekly wage for weekly compensation benefits, the electing employer may elect not
2 less than \$200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

3 (7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection,
4 or the county commissioners or trustees for a fire service area may elect to include as an employee within
5 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
6 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

7 (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for
8 premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the
9 average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

10 (8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services
11 are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than
12 a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the
13 control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

14 (9) For purposes of this section, an "employee or worker in this state" means:

15 (a) a resident of Montana who is employed by an employer and whose employment duties are
16 primarily carried out or controlled within this state;

17 (b) a nonresident of Montana whose principal employment duties are conducted within this state
18 on a regular basis for an employer;

19 (c) a nonresident employee of an employer from another state engaged in the construction industry,
20 as defined in 39-71-116, within this state; or

21 (d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose
22 employer elects coverage with an insurer that allows an election for an employer whose:

23 (i) nonresident employees are hired in Montana;

24 (ii) nonresident employees' wages are paid in Montana;

25 (iii) nonresident employees are supervised in Montana; and

26 (iv) business records are maintained in Montana.

27 (10) An insurer may require coverage for all nonresident employees of a Montana employer who
28 do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under
29 subsection (9)(d)."

30

1 **Section 38.** Section 39-71-401, MCA, is amended to read:

2 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
3 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
4 all employees, as defined in 39-71-118. An employer who has any employee in service under any
5 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
6 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
7 Compensation Act is subject to and bound by the compensation plan that has been elected by the
8 employer.

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

11 (a) household and domestic employment;

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

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

15 (d) employment of sole proprietors, working members of a partnership, or working members of a
16 member-managed limited liability company, ~~except as provided in subsection (3) if the individuals are~~
17 independent business owners as defined in [section 2];

18 (e) employment of a broker or ~~salesman~~ salesperson performing under a license issued by the board
19 of realty regulation;

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

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

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

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

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

29 (k) employment of a person performing services as a newspaper carrier or ~~free-lance~~ freelance
30 correspondent if the person performing the services or a parent or guardian of the person performing the

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

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

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

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

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

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

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

20 (p) a person who performs services as a petroleum land professional. As used in this subsection,
21 a "petroleum land professional" is 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 that are directly related to the completion of a contracted specific task rather
25 than on an hourly wage basis; and

26 (iii) performs all services as an independent ~~contractor~~ business owner pursuant to a written
27 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 ~~(3) (a) A sole proprietor, a working member of a partnership, or a working member of a~~
11 ~~member managed limited liability company who represents to the public that the person is an independent~~
12 ~~contractor shall elect to be bound personally and individually by the provisions of compensation plan No.~~
13 ~~1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.~~

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

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

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

26 ~~(e) A person who makes a false statement or misrepresentation concerning that person's status~~
27 ~~as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose~~
28 ~~the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured~~
29 ~~employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.~~

30 ~~(f) If the department denies the application for exemption, the applicant may contest the denial by~~

1 ~~petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An~~
 2 ~~applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with~~
 3 ~~the procedure established in 39-51-2403 and 39-51-2404.~~

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

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

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

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

18 ~~(5)(4)~~ The appointment or election of an employee as an officer of a corporation, a partner in a
 19 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
 20 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
 21 exemption from coverage.

22 ~~(6)(5)~~ Each employer shall post a sign in the workplace at the locations where notices to employees
 23 are normally posted, informing employees about the employer's current provision of workers' compensation
 24 insurance. A workplace is any location where an employee performs any work-related act in the course of
 25 employment, regardless of whether the location is temporary or permanent, and includes the place of
 26 business or property of a third person while the employer has access to or control over the place of
 27 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
 28 The sign must be provided by the department, distributed through insurers or directly by the department,
 29 and posted by employers in accordance with rules adopted by the department. An employer who purposely
 30 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

1 **Section 39.** Section 39-71-405, MCA, is amended to read:

2 **"39-71-405. Liability of employer who contracts work out.** (1) An employer who contracts with
 3 an independent ~~contractor~~ business owner to have work performed of a kind ~~which~~ that is a regular or a
 4 recurrent part of the work of the trade, business, occupation, or profession of ~~such~~ the employer is liable
 5 for the payment of benefits under this chapter to the employees of the ~~contractor~~ independent business
 6 owner if the ~~contractor~~ independent business owner has not properly complied with the coverage
 7 requirements of the Worker's Compensation Act. ~~Any~~ An insurer who becomes liable for payment of
 8 benefits may recover the amount of benefits paid and to be paid and necessary expenses from the
 9 ~~contractor~~ independent business owner primarily liable ~~therein~~ for the payment of benefits and expenses.

10 (2) ~~Where~~ When an employer contracts to have any work to be done by a contractor other than
 11 an independent ~~contractor~~ business owner, and the work ~~se~~ contracted to be done is a part or process in
 12 the trade or business of the employer, then the employer is liable to pay all benefits under this chapter to
 13 the same extent as if the work were done without the intervention of the contractor, and the work ~~se~~
 14 contracted to be done ~~shall~~ may not be construed to be casual employment. ~~Where~~ When an employer
 15 contracts work to be done as specified in this subsection, the contractor and the contractor's employees
 16 ~~shall~~ must come under that plan of compensation adopted by the employer.

17 (3) ~~Where~~ When an employer contracts any work to be done, wholly or in part for the employer,
 18 by an independent ~~contractor~~ business owner, ~~where~~ when the work ~~se~~ contracted to be done is casual
 19 employment as to ~~such~~ the employer, then the ~~contractor shall become~~ independent business owner is the
 20 employer for the purposes of this chapter."

21

22 **Section 40.** Section 39-71-415, MCA, is amended to read:

23 **"39-71-415. Procedure for resolving disputes regarding independent ~~contractor~~ business owner**
 24 **status.** (1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent
 25 ~~contractor~~ business owner or an employee as defined in this chapter, any party may petition a department
 26 of labor and industry appeals referee for resolution of the dispute in accordance with 39-51-1109 and may
 27 appeal from a decision of the appeals referee in the same manner as prescribed in 39-51-2403 and
 28 39-51-2404.

29 (2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of
 30 whether the claimant is an independent ~~contractor~~ business owner or employee as defined in this chapter,

1 either party may petition the workers' compensation judge for resolution of the dispute in accordance with
2 39-71-2905.

3 (3) Notwithstanding the provisions of subsection (1), an individual may apply to the department
4 for an exemption from the Workers' Compensation Act in accordance with 39-71-401."

5

6 **Section 41.** Section 39-72-102, MCA, is amended to read:

7 **"39-72-102. Definitions.** As used in this chapter, unless the context requires otherwise, the
8 following definitions apply:

9 (1) "Beneficiary" is as defined in 39-71-116.

10 (2) "Child" is as defined in 39-71-116.

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

12 (4) "Disablement" means the event of becoming physically incapacitated by reason of an
13 occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active
14 pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally
15 disabled" are synonymous with "disablement", but ~~they~~ the terms have no reference to "permanent partial
16 disability".

17 (5) "Employee" is as defined in 39-71-118.

18 (6) "Employer" is as defined in 39-71-117.

19 (7) "Independent ~~contractor~~ business owner" is as defined in ~~39-71-120~~ [section 2].

20 (8) "Insurer" is as defined in 39-71-116.

21 (9) "Invalid" is as defined in 39-71-116.

22 (10) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out
23 of or contracted in the course and scope of employment and caused by events occurring on more than a
24 single day or work shift. The term does not include a physical or mental condition arising from emotional
25 or mental stress or from a nonphysical stimulus or activity.

26 (11) "Order" is as defined in 39-71-116.

27 (12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal
28 mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of
29 ~~such~~ the employment.

30 (13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon

1 dioxide (SiO₂) and characterized by small discrete nodules of fibrous tissue similarly disseminated
2 throughout both lungs, causing the characteristic x-ray pattern, and by other variable clinical
3 manifestations.

4 (14) "Wages" is as defined in 39-71-123.

5 (15) "Year" is as defined in 39-71-116."

6
7 **Section 42.** Section 41-2-103, MCA, is amended to read:

8 **"41-2-103. Definitions.** As used in this part, the following definitions apply:

9 (1) "Agriculture" means:

10 (a) all aspects of farming, including the cultivation and tillage of the soil;

11 (b) (i) dairying; and

12 (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural
13 commodities, including commodities defined as agricultural commodities in the federal Agricultural
14 Marketing Act (12 U.S.C. 1141j(g));

15 (c) the raising of livestock, bees, fur-bearing animals, or poultry; and

16 (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm
17 as an incident to or in conjunction with farming operations, including preparation for market or delivery to
18 storage, to market, or to carriers for transportation to market.

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

20 (3) "Domestic service" means an occasional, irregular, or incidental nonhazardous occupational
21 activity related to and conducted in or around a private residence, including but not limited to babysitting,
22 pet sitting or similar household chore, and manual yard work. Domestic service specifically excludes
23 industrial homework.

24 (4) (a) "Employed" or "employment" means an occupation engaged in, permitted, or suffered, with
25 or without compensation in money or other valuable consideration, whether paid to the minor or to some
26 other person, including but not limited to occupations as servant, agent, subagent, or independent
27 ~~contractor~~ business owner.

28 (b) The term does not include casual, community service, nonrevenue raising, uncompensated
29 activities.

30 (5) "Employer" includes an individual, partnership, association, corporation, business trust, person,

1 or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

2 (6) "Minor" means an individual under 18 years of age, except for an individual who:

3 (a) has received a high school diploma or has received a passing score on the general education
4 development examination; or

5 (b) is 16 years of age or older and is enrolled in a registered state or federal apprenticeship
6 program.

7 (7) "Occupation" means:

8 (a) an occupation, service, trade, business, or industry in which employees are employed;

9 (b) any branch or group of industries in which employees are employed; or

10 (c) any employment or class of employment in which employees are employed."

11

12 **Section 43.** Section 50-72-102, MCA, is amended to read:

13 **"50-72-102. Definitions.** (1) "Authorized representative" means a mine inspector or any other
14 person employed or authorized by the department to perform any ~~and all~~ duties under this chapter.

15 (2) "Corporation" means a body formed and authorized by law to act as a single person although
16 constituted by one or more persons and legally endowed with various rights and duties, including the
17 capacity of succession.

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

19 (4) "Employee" means every person in this state, including a contractor other than an independent
20 ~~contractor~~ business owner, who is in the service of an employer, ~~as hereinafter defined~~, in or about any
21 mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied,
22 oral or written, whether lawfully or unlawfully employed and whether the employment is casual or
23 otherwise.

24 (5) "Employer" means every person, firm, partnership, corporation, or association, including an
25 independent ~~contractor~~ business owner, who has any person in service in or about any mine, mill, smelter,
26 excavation, or quarry under any appointment or contract of hire, express or implied, oral or written.

27 (6) "Inspector" means a person employed by the department to inspect metallic and nonmetallic
28 mines, mills, smelters, or quarries as provided in this chapter.

29 (7) "Mine" means any mine or excavation when clay, metallic ore, mineral, gypsum, or rock is dug
30 or mined, whether on surface or underground, where metal-bearing ores or nonmetallic mineral commodities

1 (exclusive of coal or lignite) are dug or mined whether at the surface or underground.

2 (8) "Notice" means a written notice, work order, or correction notice issued by an authorized
3 representative of the department, ~~which notice~~ that specifies a violation and directs or recommends
4 corrective measures and may specify a definite date or time in which to abate ~~said~~ the violation.

5 (9) "Occupational health" means any of those health conditions that occur as a result of
6 employment in a mine.

7 (10) "Order" means and includes any decision, rule, regulation, direction, requirement, or standard
8 set, adopted, or issued by the department or any other determination or decision made by the department."
9

10 **Section 44.** Section 81-23-101, MCA, is amended to read:

11 **"81-23-101. Definitions.** (1) Unless the context requires otherwise, in this chapter, the following
12 definitions apply:

13 (a) "Board" means the board of milk control provided for in 2-15-3105.

14 (b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk,
15 whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks,
16 and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized,
17 sterile, or aseptic.

18 (c) "Class II milk" includes milk used in the manufacture of ice cream and ice cream mix, ice milk,
19 sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human
20 consumption.

21 (d) "Class III milk" includes milk used in the manufacture of butter, cheddar cheese, process
22 cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

23 (e) "Consumer" means a person or an agency, other than a dealer, who purchases milk for
24 consumption or use.

25 (f) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent ~~contractor~~
26 business owner.

27 (g) "Distributor" means a person purchasing milk from any source, either in bulk or in packages,
28 and distributing it for consumption in this state. The term includes what are commonly known as jobbers
29 and independent ~~contractors~~ business owners. The term, however, excludes a person purchasing milk from
30 a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the

1 premises.

2 (h) "Licensee" means a person who holds a license from the department.

3 (i) "Market" means an area of the state designated by the department as a natural marketing area.

4 (j) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when
5 raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or
6 otherwise processed and all of which ~~is~~ are designated as grade A by a duly constituted health authority
7 and also includes those secretions that are in any manner rendered sterile or aseptic, notwithstanding
8 whether they are regulated by any health authority of this or any other state or nation.

9 (k) "Person" means an individual, firm, corporation, or cooperative association or the dairy operated
10 by the department of corrections at the Montana state prison.

11 (l) "Producer" means a person who produces milk for consumption in this state, selling it to a
12 distributor.

13 (m) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a
14 distributor.

15 (n) "Producer-distributor" means a person both producing and distributing milk for consumption
16 in this state.

17 (o) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for
18 consumption on the premises and includes but is not limited to retail stores of all types, restaurants,
19 boardinghouses, fraternities, sororities, confectioneries, public and private schools, including colleges and
20 universities, and both public and private institutions and instrumentalities of all types and description.

21 (2) The department may assign new milk products, not expressly included in one of the classes
22 defined in this section, to the class ~~which~~ that in its discretion it determines to be proper."
23

24 **Section 45.** Section 82-1-101, MCA, is amended to read:

25 **"82-1-101. Persons required to comply.** (1) A person, firm, or corporation operating individually
26 or through agents within the state of Montana for the purpose of seismic exploration in which exploration
27 entry is made upon the surface estate for the acquisition of geophysical data for any purpose ~~whatsoever,~~
28 and ~~which~~ the person, firm, or corporation either through its own employees or by hiring the services of
29 others operates seismograph crews, as the term is generally known, shall comply with the following
30 provisions of this part; ~~provided, however, that~~ However, compliance with the provisions of this part by

1 a seismograph crew or its employer ~~shall constitute~~ constitutes compliance ~~herewith~~ by that person, firm,
 2 or corporation who has engaged the services of ~~such the~~ crew or its employer as an independent ~~contractor~~
 3 business owner ~~insofar as~~ in the geophysical operations of ~~such the~~ crew ~~are concerned~~.

4 (2) The board of oil and gas conservation shall adopt rules:

5 (a) requiring adequate identification of seismic exploration crews operating in this state;

6 (b) designating areas where seismic exploration and activities may not be allowed; and

7 (c) regulating the plugging and abandonment of seismic shot holes."

8
 9 **Section 46.** Section 90-15-302, MCA, is amended to read:

10 **"90-15-302. Natural heritage program.** (1) There is a Montana natural heritage program to be
 11 operated by the library. In order to establish the program, the library may contract with an independent
 12 ~~contractor~~ business owner or may employ necessary staff. In order to minimize costs, the library or other
 13 state agencies may make available state resources and facilities to an independent ~~contractor~~ business
 14 owner as part of a contract for services.

15 (2) The Montana natural heritage program ~~shall~~ must be designed to be compatible with similar
 16 programs in other states. This program is to be an initial step in the formulation of the comprehensive
 17 natural resource information system referred to in 90-15-301 and is to be considered a part of the system."

18
 19 **NEW SECTION. Section 47. Repealer.** Sections 39-51-604 and 39-71-120, MCA, are repealed.

20
 21 **NEW SECTION. Section 48. Name change -- directions to code commissioner.** Wherever a
 22 reference to "independent contractor" appears in legislation enacted by the 55th legislature, the code
 23 commissioner is directed to change it to an appropriate reference to "independent business owner".

24
 25 **NEW SECTION. Section 49. Codification instruction.** (1) [Section 1] is intended to be codified
 26 as an integral part of Title 39, chapter 51, part 2, and the provisions of Title 39, chapter 51, part 2, apply
 27 to [section 1].

28 (2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 1, and the
 29 provisions of Title 39, chapter 71, part 1, apply to [section 2].

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0307, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act substituting the term "independent business owner" for "independent contractor" for workers' compensation, unemployment insurance, and income tax withholding; defining "independent business owner."

ASSUMPTIONS:

1. The independent contractor (IC) exemptions would no longer be issued.
2. During the 54th legislative session, HB550 established uniform definitions of employer-employee relationships and that the final determination by the Department of Labor and Industry (DLI) or Board of Labor Appeals regarding employer-employee relationships also applies to Department of Revenue issues. The employer-employee relationship issue of whether a person is an employee or an independent business owner (IBO) would still have to be answered for such federal and state programs as Unemployment Insurance, Wage and Hour, Prevailing Wage, Construction Contractors' Registration, Workers' Compensation, Uninsured Employers' Fund, and the Department of Revenue.
3. The current IC staff would be responsible for making IBO determinations. The 1999 biennium budget as submitted by DLI requested \$118,034 per fiscal year for contracted services to carryout this workload. Since the workload would be reduced, there would be a reduction in operating expenses (contracted services).
4. The change in terminology from independent contractor (IC) to independent business owner (IBO) would generate questions from the public and issues to be resolved about the change and its implications. Increase to workload cannot be measured at this time.
5. Pamphlets and other forms of public information would be re-written to explain the new IBO terminology and definition. It would require 16,800 copies for all current IC exemption holders to inform them of the changes (16,800 x .035/pamphlet = \$588; handling and postage costs of 16,800 x .45/postage = \$7,560). In general, 15,000 additional pamphlets would be printed for use in Small Business Clinics and to respond to public requests (15,000 x .035/pamphlet = \$525). (\$588 + \$525 + \$7,560 = \$8,673). Costs associated with the pamphlets would be reflected in fiscal 1998 only.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	(55,914)	(64,587)
<u>Funding:</u>		
IC SSR (02)	(55,914)	(64,587)
<u>Revenues:</u>		
IC exemption fees (02091)	(341,503)	(338,267)

TECHNICAL NOTES:

1. The term 'independent contractor' has been thoroughly litigated and defined in case law. Though the term 'independent business owner' is similar, there is potential for increased litigation to test the meaning of the new definition.
2. New Section. Section 29(a)(v). The term 'assistants' is not defined in statute. This term should be clarified or possibly amended to read 'employees'.

Dave Lewis 2-15-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

William Crismore 2/17/97
 WILLIAM CRISMORE, PRIMARY SPONSOR DATE

Fiscal Note for SB0307 as introduced
SB 307