

HOUSE BILL NO. 111
INTRODUCED BY K. FUREY
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING UNEMPLOYMENT INSURANCE LAWS; CLARIFYING THE TREATMENT OF LIMITED LIABILITY COMPANIES; DEFINING THE TERM "LICENSED AND PRACTICING HEALTH CARE PROVIDER"; CLARIFYING EMERGENCY PROVISIONS; REMOVING BONDING REQUIREMENTS; CLARIFYING PROVISIONS FOR TAX APPEALS; RELIEVING CERTAIN EMPLOYERS OF BENEFIT CHARGES ASSOCIATED WITH REHIRING RETURNING MILITARY PERSONNEL; REVISING CONTRIBUTION RATE SCHEDULES; REVISING DISABILITY DISQUALIFICATION; REVISING THE FORMULA FOR EXTENDED BENEFIT AMOUNTS; AMENDING SECTIONS 39-51-201, 39-51-203, 39-51-204, 39-51-301, 39-51-405, 39-51-406, 39-51-1105, 39-51-1109, 39-51-1214, 39-51-1218, 39-51-2302, 39-51-2304, 39-51-2306, AND 39-51-2510, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. **Section 1. Treatment of limited liability companies.** For the purposes of this chapter, a limited liability company is treated as follows:

- (1) as a sole proprietorship if it is a single-member limited liability company;
- (2) as a partnership if it consists of more than a single member and it is not established as a corporation pursuant to the provisions of the Internal Revenue Code for income tax purposes; or
- (3) as a corporation if it is classified as a corporation for income tax purposes pursuant to the Internal Revenue Code.

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

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

- (1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.
- (2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the

arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

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

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

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

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

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

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

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals perform or performed services within this state, except as provided under 39-51-204(1)(a) and (1)(q). All

individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

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

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

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

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

(15) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

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

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

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

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

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

(18) "Licensed and practicing health care provider" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(IV) A PHYSICAL THERAPIST UNDER TITLE 37, CHAPTER 11;

~~(iv)~~(V) a chiropractor under Title 37, chapter 12;

~~(v)~~(VI) a clinical psychologist under Title 37, chapter 17; or

~~(vi)~~(VII) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

~~(18)~~(19) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

~~(19)~~(20) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

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

~~(21)~~(22) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.

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

~~(23)~~(24) (a) "Wages", unless specifically exempted under subsection ~~(23)~~(b) (24)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited

to:

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

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

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

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

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

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

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

(iii) a no-additional-cost service; or

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318.

~~(24)(25)~~ "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(25)(26)~~ "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment."

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

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

(2) (a) The term "employment" includes an individual's entire service performed within or both within and

outside this state if:

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

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

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

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

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

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

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

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

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

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

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

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service that is considered employment under the provisions of subsection (2) or the parallel provisions of another

state's law, if:

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

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

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

- (a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:
 - (i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and
 - (ii) keeps separate books and records to account for the employment of persons in domestic or household service.
- (b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;
- (c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged

in writing that the person performing the service and the service are not covered. As used in this subsection:

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

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

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

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

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

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

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

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

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

and

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

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

(g) service performed by sole proprietors, working members of a partnership, members of a ~~member-managed~~ limited liability company ~~that has filed with the secretary of state~~ treated as a partnership or sole proprietorship pursuant to [section 1], or partners in a limited liability partnership that has filed with the secretary of state;

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

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

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

- (iii) may perform service for anyone without limitation;
- (iv) may accept or reject any job;
- (v) furnishes substantially all tools and equipment necessary to provide the service; and
- (vi) works under a written contract that:
 - (A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;
 - (B) states that the installer is not covered by unemployment insurance; and
 - (C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;
 - (i) service performed as a direct seller as defined by 26 U.S.C. 3508;
 - (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:
 - (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;
 - (ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and
 - (iii) performs all services as an independent contractor pursuant to a written contract.
 - (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;
 - (l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;
 - (m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;
 - (n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;
 - (o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;
 - (p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

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

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

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

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

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

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

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

(w) service performed by an alien as identified in 8 U.S.C. 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J), (a)(15)(M), or (a)(15)(Q);

(x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

(y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; or

(aa) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than \$1,000 in the calendar year.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-417 is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act."

Section 5. Section 39-51-301, MCA, is amended to read:

"39-51-301. Administration -- duties and powers of department -- emergency provisions. (1) It is the duty of the department to administer this chapter ~~and it.~~ The department may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action that it considers necessary or suitable in administering this chapter.

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

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

(4) The department and the board may issue subpoenas and compel testimony and the production of

evidence, including books and records, in regard to any investigation or proceeding under this chapter.

(5) (a) In the aftermath of a disaster, as defined in 10-3-103, the department may waive, suspend, or modify its rules concerning the filing of a claim for benefits, filing continued claims, registration for work, or work search if all of the following conditions are met:

(i) the president of the United States declares a disaster pursuant to 42 U.S.C. 5170, et seq.; and

(ii) the governor issues an executive order directing the department to waive, suspend, or modify rules relating to claims.

(b) In a disaster declared under subsection (5)(a), the department may waive, suspend, or modify its rules relating to claims in portions of the state named by the department as appropriate to address the nature of the disaster and the purposes of unemployment insurance laws.

~~(5)(6)~~ Employees transferring from the department of revenue to the department as a result of the termination of the delegation of duties associated with unemployment insurance contribution functions are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department of revenue for recruitment purposes for 1 year from the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.

~~(6)(7)~~ The department shall succeed the department of revenue in its rights to property relating to the termination of the delegation of duties associated with unemployment insurance contribution functions to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

~~(7)(8)~~ (a) The termination of the delegation of duties associated with unemployment insurance contribution functions does not affect the validity of any pending judicial or administrative proceeding.

(b) All appeals that have not been heard prior to the termination of the delegation of duties associated with unemployment insurance contribution functions must be made in accordance with the procedures identified in 39-51-1109.

(c) The department must be substituted for the department of revenue and succeed to all audits, determinations, and other actions following the date of the termination of the delegation of duties associated with unemployment insurance contribution functions.

~~(8)(9)~~ The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the termination of the delegation of duties associated with unemployment insurance contribution functions remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department is substituted for the department of revenue and succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection do not apply to the program budget plan agreement between the department and the United States department of labor."

Section 6. Section 39-51-405, MCA, is amended to read:

"39-51-405. Signatures required on warrants. All warrants issued by the treasurer for payment pursuant to 39-51-403 or 39-51-404 shall bear the signature of the treasurer and the countersignature of a member of the department or its duly authorized agent for that purpose the commissioner of labor and industry or an agent authorized for that purpose."

Section 7. Section 39-51-406, MCA, is amended to read:

"39-51-406. Unemployment insurance administration account. (1) There is an account in the federal special revenue fund to be known as the unemployment insurance administration account. All money that is deposited, appropriated, or paid into this account is appropriated and made available to the department. All money in the account must be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of other legislation specifically delegated by the legislature to the department for administration.

(2) All money received and deposited in the account from the United States or any agency of the United States pursuant to section 302, Title III, of the Social Security Act, ~~{42 U.S.C. 502}~~, must be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account consists of:

(a) all money received from the United States or any agency of the United States pursuant to section 302, Title III, of the Social Security Act, ~~{42 U.S.C. 502}~~, as amended; and

~~(b) all money appropriated by the state from the general fund for the purpose of administering this chapter; and~~

~~(e)(b)~~ all money, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from:

- ~~——(i) the United States or any agency of the United States;~~
- ~~(ii) this state or any agency of the state;~~
- ~~——(iii) any other state or any of its agencies;~~
- ~~——(iv) political subdivisions of the state; or~~
- ~~——(v) any other source for administrative expense and purpose.~~

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 must remain part of the unemployment insurance fund and must be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All money in this account must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. The balance in this account may not lapse at any time but must be continuously available to the department for expenditure consistent with this chapter.

~~(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of the treasurer's duties in connection with the unemployment insurance administration account in an amount to be fixed by the department and in a form prescribed by law or approved by the attorney general. The premiums for the bond must be paid from the money in the unemployment insurance administration account.~~

~~(7)(6)~~ Any reference to the unemployment insurance administration fund in this code means the unemployment insurance administration account in the federal special revenue fund."

Section 8. Section 39-51-1105, MCA, is amended to read:

"39-51-1105. Liability of corporate officers for taxes, penalties, and interest owed by corporation.

(1) The officer of a corporation whose responsibility it is to pay the taxes, penalties, and interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the taxes, penalties, and interest due.

(2) (a) The department shall consider the officer of the corporation individually liable with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that the corporate officer:

- (i) possessed the responsibility to file reports and pay taxes on behalf of the corporation; and
- (ii) possessed the responsibility on behalf of the corporation to direct the filing of reports or payment of other corporate obligations and exercised the responsibility that resulted in failure to file reports or pay taxes due.

(b) The department is not limited to considering the elements set forth in subsection (2)(a) to establish individual liability and may consider any other available information.

(3) ~~In the case of a corporate bankruptcy, the~~ The liability of the imposed upon an individual by this section remains unaffected by the bankruptcy of a business entity to which a discharge of penalty and interest against the corporation cannot be granted under 11 U.S.C. 727. The individual is liable for any the unpaid amount of taxes, penalties, and interest ~~unpaid by the corporation.~~

(4) ~~For determining~~ In the case of a limited liability company treated as a partnership pursuant to [section 1], the liability for unemployment insurance taxes, penalties, and interest owed, ~~a member-managed limited liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed extending~~ extends jointly and severally to each member.

(5) ~~For determining~~ In the case of a limited liability company that is not treated as a partnership pursuant to [section 1], liability for unemployment insurance taxes, penalties, and interest owed ~~by a manager-managed limited liability company, extends jointly and severally to the managers of the limited liability company are jointly and severally liable for any taxes, penalties, and interest owed."~~

Section 9. Section 39-51-1109, MCA, is amended to read:

"39-51-1109. Tax appeals -- procedure. (1) A decision, determination, or redetermination of the department involving an employer-employee relationship ~~or the charging of benefit payments to employers~~ is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. The appeal must be made in the same manner as provided in 39-71-415.

(2) A decision, determination, or redetermination involving contribution liability, contribution rate, application for refund, subject wages, ~~the charging of benefit payments to employers,~~ or other contribution-related issues must be issued by the department and is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. An appeal must be made in the same manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be conducted by telephone or by videoconference. The decision of the appeals referee and any subsequent appeal must be made in the same manner as provided in 39-51-2403 through 39-51-2410."

SECTION 10. SECTION 39-51-1214, MCA, IS AMENDED TO READ:

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

to the total wages paid by all employers in the claimant's base period.

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

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

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

(c) if the base period employer continues to provide employment with no reduction in hours or wages;

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

(e) if the base period employer is ordered to military service, as defined in 10-1-1003; or

(f) if benefits are paid to an employee laid off as the result of the return to work of a permanent employee

who:

(i) was called to military service, as defined in 10-1-1003; and

(ii) had completed 4 or more weeks of military service and exercised reemployment rights under Title 10, chapter 1, part 10."

Section 11. Section 39-51-1218, MCA, is amended to read:

"39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES - Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0245)	(.0225)	(.0200)	(.0170)
Average Tax Rate	1.37	1.57	1.77	1.97
Rate Class	Contribution Rates for Eligible Employers			
1	0.00%	0.07%	0.27%	0.47%
2	0.07	0.27	0.47	0.67
3	0.27	0.47	0.67	0.87
4	0.47	0.67	0.87	1.07
5	0.67	0.87	1.07	1.27
6	0.87	1.07	1.27	1.47
7	1.07	1.27	1.47	1.67

8	1.27	1.47	1.67	1.87
9	1.47	1.67	1.87	2.07
10	1.67	1.87	2.07	2.27

Rate Class

Contribution Rates for Deficit Employers

1	3.17%	3.37%	3.57%	3.77%
2	3.37	3.57	3.77	3.97
3	3.57	3.77	3.97	4.17
4	3.77	3.97	4.17	4.37
5	3.97	4.17	4.37	4.57
6	4.17	4.37	4.57	4.77
7	4.37	4.57	4.77	4.97
8	4.57	4.77	4.97	5.17
9	4.77	4.97	5.17	5.37
10	6.37	6.37	6.37	6.37

SCHEDULES OF CONTRIBUTION RATES - Part II

Sched.	Sched.	Sched.	Sched.	Sched.	Sched.
V	VI	VII	VIII	IX	X
(.0135)	(.0095)	(.0075)	(.0050)	(.0025) (.0025)	(...)
2.17	2.37	2.57	2.77	2.97	3.17

Contribution Rates for Eligible Employers

0.67%	0.87%	1.07%	1.27%	1.47%	1.67%
0.87	1.07	1.27	1.47	1.67	1.87
1.07	1.27	1.47	1.67	1.87	2.07
1.27	1.47	1.67	1.87	2.07	2.27
1.47	1.67	1.87	2.07	2.27	2.47
1.67	1.87	2.07	2.27	2.47	2.67
1.87	2.07	2.27	2.47	2.67	2.87
2.07	2.27	2.47	2.67	2.87	3.07
2.27	2.47	2.67	2.87	3.07	3.27
2.47	2.67	2.87	3.07	3.27	3.47

Contribution Rates for Deficit Employers

3.97%	4.17%	4.37%	4.57%	4.77%	4.97%
4.17	4.37	4.57	4.77	4.97	5.17
4.37	4.57	4.77	4.97	5.17	5.37
4.57	4.77	4.97	5.17	5.37	5.57
4.77	4.97	5.17	5.37	5.57	5.77
4.97	5.17	5.37	5.57	5.77	5.97
5.17	5.37	5.57	5.77	5.97	6.17
5.37	5.57	5.77	5.97	6.17	6.37
5.57	5.77	5.97	6.17	6.37	6.37
6.37	6.37	6.37	6.37	6.37	6.37"

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

"39-51-2302. Disqualification for leaving work without good cause. (1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual's employment.

(2) The individual may not be disqualified if the individual leaves:

(a) employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing physician health care provider and, after recovering from the illness or injury when recovery is certified by a licensed and practicing physician health care provider, the individual returned to and offered service to the individual's employer and the individual's regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible;

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

(c) employment because of being ordered to military service, as defined in 10-1-1003, for a period of less than 6 weeks and the individual upon checking with the employer finds that the individual's prior employment has terminated due to the military service or for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the employer's account.

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational

institution accredited by the state of Montana for at least 3 consecutive months from the date of the act that caused the disqualification. The services must constitute employment as defined in 39-51-203 and 39-51-204."

Section 13. Section 39-51-2304, MCA, is amended to read:

"39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) (a) An individual is disqualified for benefits if the individual fails without good cause ~~either~~ to:

(i) apply for available and suitable work when directed to do so by the employment office or the department ~~or to~~;

(ii) accept an offer from a former employer or a new employer of suitable work ~~which~~ that the individual is physically able and mentally qualified to perform; ~~or to~~

(iii) return to customary self-employment, if any, when directed to do so by the department.

(b) The disqualification continues for the week in which the failure occurs and until the individual has performed services for which remuneration is received equal to or in excess of six times that individual's weekly benefit amount subsequent to the week the act causing the disqualification occurred, with a reduction in the individual's maximum benefit amount equal to six times the weekly benefit amount, as determined by the department, provided the individual has not left this work under disqualifying circumstances. The services must constitute employment as defined in 39-51-203 and 39-51-204.

(2) In determining whether or not any work is suitable for an individual, the department shall consider:

(a) the degree of risk involved to the individual's health, safety, and morals;

(b) the individual's physical fitness and prior training;

(c) the individual's experience and previous earnings;

(d) the individual's length of unemployment and prospects for securing local work in the customary occupation; and

(e) the distance of the available work from the individual's residence.

(3) Notwithstanding any other provisions of this chapter, including subsection (4), ~~no~~ work may not be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to

resign from or refrain from joining any bona fide labor organization.

(4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the individual's earnings in previous insured work in the individual's customary occupation. ~~No~~ An individual, however, is not required to accept a job paying less than the federal minimum wage."

Section 14. Section 39-51-2306, MCA, is amended to read:

"39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits. (1) ~~Effective April 1, 1977, an~~ An individual ~~shall be~~ is disqualified for benefits for any week with respect to which ~~he is receiving or has received~~ the individual receives payment in the form of:

(a) compensation for disability under the workers' compensation law or the occupational disease law of this or any other state or under a similar law of the United States ~~or under the social security disability law.~~ However, when an injured claimant ~~has ceased~~ ceases to draw compensation benefits and ~~shall have returned~~ returns to the labor market, ~~he~~ the claimant shall then be is entitled to receive unemployment compensation benefits under this chapter if ~~he shall be~~ the claimant is otherwise qualified. Compensation ~~which is~~ received as a payment for a permanent partial disability ~~shall~~ may not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter; ~~provided~~ if the recipient has returned to the labor market and is otherwise qualified.

(b) benefits under the Railroad Unemployment Insurance Act, 45 U.S.C. 351, et seq., or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual ~~is receiving or has received~~ receives benefits under an unemployment compensation law of another state or of the United States if ~~such~~ the benefits are paid pursuant to 39-51-504.

(2) ~~Receipt of any~~ If an individual receives wages, compensation, or benefits as set forth in subsection (1) ~~of this section~~ after payment of unemployment benefits ~~and~~ with respect to the same week for which unemployment benefits were received ~~will thereupon require such individual to,~~ the individual shall repay ~~such~~ the unemployment benefits, and the department may collect ~~such~~ the unemployment benefits in the same manner as provided for collection of benefits under 39-51-3206."

Section 15. Section 39-51-2510, MCA, is amended to read:

"39-51-2510. Total extended benefit amount. The total extended benefit amount payable to ~~any~~ an

eligible individual with respect to ~~his~~ that individual's applicable benefit year ~~shall~~ must be the least of the following amounts:

(1) 50% of the total amount of regular benefits ~~which~~ that were payable to ~~him~~ the individual under this chapter in ~~his~~ the individual's applicable benefit year;

(2) 13 times ~~his~~ the individual's weekly benefit amount ~~which~~ that was payable to ~~him~~ the individual under this chapter for a week of total unemployment in the individual's applicable benefit year; or

(3) 39 times the individual's weekly benefit amount, less the amount of regular benefits paid or considered paid during the individual's applicable benefit year."

NEW SECTION. Section 16. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. Section 17. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 51, part 2, and the provisions of Title 39, chapter 51, part 2, apply to [section 1].

NEW SECTION. Section 18. Effective dates. (1) [SECTIONS 10, 16, AND 17 AND THIS SECTION] ARE EFFECTIVE JULY 1, 2007.

~~(1)(2)~~ [Sections 2, 5 through 7, ~~and 9, AND 11~~ through 16 ~~and this section 15~~] are effective October 1, 2007.

~~(2)(3)~~ [Sections 1, 3, 4, and 8] are effective January 1, 2008.

- END -

