SENATE BILL NO. 105

INTRODUCED BY E. ARNTZEN

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE ADMINISTRATION OF UNEMPLOYMENT INSURANCE BY THE DEPARTMENT OF LABOR AND INDUSTRY; CLARIFYING EXCLUSIONS FROM THE DEFINITION OF "EMPLOYMENT"; CLARIFYING WHEN CERTAIN WAGE ADJUSTMENTS CANNOT BE MADE; SPECIFYING THE GROUNDS FOR EMPLOYER APPEALS OF CLASSIFICATION AND CONTRIBUTION RATES; CLARIFYING EXPERIENCE RATING FOR CERTAIN EMPLOYERS; REVISING NOTICE PROCEDURES; ~~REQUIRING ELECTRONIC PAYROLL REPORTING AND PAYMENT BY CERTAIN EMPLOYING UNITS;~~ AMENDING SECTIONS 2-15-1704, 15-31-150, 39-51-201, 39-51-204, 39-51-1110, 39-51-1206, 39-51-1212, ~~39-51-1213,~~ 39-51-1219, 39-51-2402, 39-51-2403, 39-51-2404, AND 39-51-2410, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 2-15-1704, MCA, is amended to read:

"2-15-1704. ~~Board of labor appeals~~ Unemployment insurance appeals board -- allocation -- composition -- function -- quasi-judicial. (1) There is ~~a board of labor appeals~~ an unemployment insurance appeals board.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The board is composed of three members of the public who are not employees of the state government, appointed by the governor as prescribed in 2-15-124.

(4) The governor may appoint a substitute board member to the board who is subject to the same qualifications and confirmation requirements as the regular board members as prescribed in 2-15-124 and subsection (3) of this section. The substitute board member may serve in place of any regular board member who is unable to attend a board meeting and participate in the proceedings and decisions of that board meeting. The substitute board member is entitled to the same compensation and per diem as the regular board members.

(5) The board is designated as a quasi-judicial board for purposes of 2-15-124."

Section 2. Section 15-31-150, MCA, is amended to read:

"15-31-150. Credit for research expenses and research payments. (1) (a) There is a credit against taxes otherwise due under this chapter for increases in qualified research expense and basic research payments for research conducted in Montana. Except as provided in this section, the credit must be determined in accordance with section 41 of the Internal Revenue Code, 26 U.S.C. 41, as that section read on July 1, 1996, or as subsequently amended.

(b) For purposes of the credit, the:

(i) applicable percentage specified in 26 U.S.C. 41(a) is 5%;

(ii) election of the alternative incremental credit allowed under 26 U.S.C. 41(c)(4) does not apply;

(iii) special rules in 26 U.S.C. 41(g) do not apply; and

(iv) termination date provided for in 26 U.S.C. 41(h)(1)(B) does not apply.

(2) The credit allowed under this section for a tax year may not exceed the tax liability under chapter 30 or 31. A credit may not be refunded if a taxpayer has tax liability less than the amount of the credit.

(3) The credit allowed under this section may be used as a carryback against taxes imposed under chapter 30 or 31 for the 2 preceding tax years and may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 15 succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) A taxpayer may not claim a current year credit under this section after December 31, 2010. However, any unused credit may be carried back or forward as provided in subsection (3).

(5) A corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes. The allocations in 26 U.S.C. 41(f) do not apply to this section.

(6) For purposes of calculating the credit, the following definitions apply:

(a) "Gross receipts" means:

(i) for a corporation that has income from business activity that is taxable only within the state, all gross sales less returns of the corporation for the tax year; and

(ii) for a corporation that has income from business activity that is taxable both within and outside of the

state, only the gross sales less returns of the corporation apportioned to Montana for the tax year.

(b) "Qualified research" has the meaning provided in 26 U.S.C. 41(d)~~,~~ but is limited to research conducted in Montana.

(c) "Qualified research expenses" has the meaning provided in 26 U.S.C. 41(b)~~,~~ but includes only the sum of amounts paid or incurred by the taxpayer for research conducted in Montana.

(d) "Supplies" has the meaning provided in 26 U.S.C. 41(b)(2)(C)~~,~~ but includes only those supplies used in the conduct of qualified research in Montana.

(e) (i) "Wages" has the meaning provided in 39-51-201, except as provided in subsection (6)(e)(ii) of this section, and includes only those wages paid or incurred for an employee for qualified services performed by the employee in Montana.

(ii) Notwithstanding the exception to the definition of wages in ~~39-51-201(24)(b)(v)~~ 39-51-201(25)(b)(v), for a self-employed individual and an owner-employee, the term includes the income, as defined in 26 U.S.C. 401(c)(2), of the employee.

(7) The department shall adopt rules, prepare forms, maintain records, and perform other duties necessary to implement this section. In adopting rules to implement this section, the department shall conform the rules to regulations prescribed by the secretary of the treasury under 26 U.S.C. 41 except to the extent that the regulations need to be modified to conform to this section."

Section 3. 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:

(a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year;

(b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4 most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;

(c) in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the period applicable under the unemployment law of the paying state; or

(d) 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 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" means the 52-consecutive-week period beginning with the first day of the calendar week in which an 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 period of a previously filed new claim. A subsequent benefit year may not be established in Montana 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 benefit year 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~~ unemployment insurance appeals board 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)(p)~~ (1)(j). 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;

(v) a chiropractor under Title 37, chapter 12;

(vi) a clinical psychologist under Title 37, chapter 17; or

(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.

(19) (a) "Misconduct" includes but is not limited to the following conduct by an employee:

(i) willful or wanton disregard of the rights, title, and interests of a fellow employee or the employer, including:

(A) insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions, processes, or instructions of the employer;

(B) repeated inexcusable tardiness following warnings by the employer;

(C) dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;

(D) false statements made as part of a job application process, including but not limited to deliberate falsification of the individual's criminal history, work record, or educational or licensure achievements;

(E) repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;

(F) deliberate acts that are illegal, provoke violence or violation of the law, or violate a collective

bargaining agreement by which the employee is covered. However, an employee who engages in lawful union activity may not be disqualified because of misconduct under this subsection (19)(a)(i)(F).

(G) violations of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or

(H) actions by the claimant who, while acting within the scope of employment, commits violations of law that significantly affect the claimant's job performance or that significantly harm the employer's ability to do business;

(ii) deliberate violations or disregard of established employer standards or of standards of behavior that the employer has the right to expect of an employee;

(iii) carelessness or negligence that causes or is likely to cause serious bodily harm to the employer or a fellow employee; or

(iv) carelessness or negligence of a degree or that reoccurs to a degree to show an intentional or substantial disregard of the employer's interest.

(b) The term does not include:

(i) inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(ii) inadvertent or ordinary negligence in isolated instances; or

(iii) good faith errors in judgment or discretion.

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

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

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

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

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

(25) (a) "Wages", unless specifically exempted under subsection (25)(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;

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

(v) the amount paid as a salary, draw, or profit distribution to a sole proprietor, a working member of a partnership, or a member of a limited liability company that is treated as a partnership or sole proprietorship pursuant to 39-51-207 or to a partner in a limited partnership that has filed with the secretary of state when the salary, draw, or profit distribution is paid directly by the enterprise in which the payee has an ownership interest.

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

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

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 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;

(h) service performed as a direct seller as defined by 26 U.S.C. 3508;

(i) 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.

~~(j) 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;~~

~~(k) 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;~~

~~(l) 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;~~

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

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

~~(o) service performed by elected public officials;~~

~~(p)~~(j) 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.

~~(q)~~(k) 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;

~~(r)~~(l) 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;

~~(s)~~(m) 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;

~~(t)~~(n) 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)(t)~~ (1)(n) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

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

~~(v)~~(p) 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);

~~(w)~~(q) 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;

~~(x)~~(r) 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;

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

~~(z) 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; or~~

~~(aa)~~(t) service performed by a volunteer participant in a program funded under the National and Community Service Act of 1990, 42 U.S.C. 12501, et seq., or the Domestic Volunteer Service Act of 1973, 42 U.S.C. 4950, et seq.

(2) For the purposes of 39-51-203(5) and (6), the term "employment" does not include:

(a) 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;

(b) 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;

(c) 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, an agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(d) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

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

(f) service performed by elected public officials; or

(g) 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 a calendar year.

~~(2)(a)~~(3) (a) Except as provided in subsection ~~(2)(b)~~ (3)(b), 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.

(b) An officer or a manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) and who obtains an independent contractor exemption pursuant to 39-71-417(1)(a)(ii) is not considered an independent contractor for the purposes of this chapter.

~~(3)~~(4) 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 39-51-1110, MCA, is amended to read:

"39-51-1110. Refunds to employers. (1) (a) If an employer claims an adjustment or the department determines through an examination of the employer's account that the employer has overpaid the amount due, the amount of the overpayment must be applied to future unemployment insurance obligations or must be

refunded to the employer. The credit or refund may be allowed only if the claim is filed, or the determination is made, within a 5-year period after the date on which any taxes, penalty, or interest became due or within 1 year from the date the payment is made, whichever is later. The department shall credit or refund the amount to the employer, without interest.

(b) The department may not adjust wages that have been used for the purpose of establishing benefit eligibility after the statute of limitations provided in 39-51-2402 has expired, and a credit or refund may not be made with respect to those wages.

(2) If the department determines that an employer has paid taxes to this state under this chapter but the taxes should have been paid to another state under a similar act of the other state, a transfer of the taxes to the other state must be made upon discovery or, upon proof of payment that the other state has been fully paid, then a refund to the employer must be made upon application without limitation of time.

(3) If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304 for any year, then refunds must be made of all taxes required under this chapter from employers for that year."

Section 6. Section 39-51-1206, MCA, is amended to read:

"39-51-1206. Department to provide for notification of employers of their classification and contribution rate. (1) The department shall by rule provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Except as provided in subsection (2), the notification is final for all purposes unless the employer files a written request with the department for a redetermination or hearing on the classification and rate of contribution within 30 days after ~~the mailing date of~~ the department sends the notice. The department may extend the 30-day period for good cause.

(2) The department may make changes in classification and rate of contribution upon an oral request for redetermination from the employer if the department finds that the department has made an error.

(3) The employer's request for a determination or redetermination pertains only to the experience factors or the major industrial classification that determines the classification and rate of contribution. The rate schedules provided by 39-51-1218 and the method of calculation provided by 39-51-1217 are not subject to appeal."

Section 7. Section 39-51-1212, MCA, is amended to read:

"39-51-1212. Experience rating for governmental entities. (1) The rates of governmental entities who have accumulated experience rating credits must be adjusted annually as follows with each governmental entity

assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods that are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates fixed using the median so that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(2) New governmental entities electing to pay contributions must be assigned the median rate for the year in which they become subject.

(3) The minimum rate may not be less than 0.06% and the maximum rate may not be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(4) If benefit charges exceed contributions paid in the last ~~2~~ completed state fiscal ~~years~~ year, governmental entities' rates must be adjusted by increasing all rates to the next higher schedule.

(5) The computed rate is effective July 1 of each year.

(6) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

(7) Subject to the provisions of 39-51-605, the department may relieve benefit charges paid by a governmental employer with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual without a reduction in hours or wages."

~~**Section 8.** Section 39-51-1213, MCA, is amended to read:~~

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

~~(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the~~

~~manner set forth below:~~

~~(a) Each employer is given an "experience factor", which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 federal fiscal years immediately preceding the computation date. The computation of the "experience factor" must be to six decimal places.~~

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

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

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

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

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

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

~~(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, those employers are included in and assigned the contribution rate specified for the class.~~

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

~~determining that employer's position in the first instance. However, the change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.~~

~~(6) An employer who has not filed all required payroll reports or paid all~~ owes more than $50 in ~~taxes, penalties, and interest due by~~ on ~~the cutoff date must be assigned a contribution rate in effect for the taxable year for the employer's classification as an eligible, deficit, or new employer, plus an additional assessment of 50% of the employer's assigned contribution rate, rounded to the nearest 1/100 of 1%."~~

Section 8. Section 39-51-1219, MCA, is amended to read:

"39-51-1219. Procedures for substitution, merger, transfer, or acquisition of employer account by successor employing unit -- prohibitions and penalties -- definitions. (1) (a) If an employer in any manner succeeds to or acquires all or a portion of the trade or business of another employer or transfers all or a portion of the employer's trade or business to another employer and both employers are under substantially common ownership, management, or control at the time of the succession, acquisition, or transfer, the experience rating record attributable to the predecessor employer must be transferred to and combined with the experience rating record of the successor employer.

(b) In the case of a partial transfer of a trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. The portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of the transfer.

(c) Whenever a transfer involves only a portion of the experience rating record and the predecessor employer or successor employer fails to supply the required payroll information to the department within 10 days after notification, the transfer must be based on estimates of the applicable payrolls.

(d) ~~Any~~ A successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

(e) A successor employer must be notified by the department in writing of the transfer of the experience rating record, and unless the successor employer appeals the transfer within 30 days of the date on which the notice was ~~mailed~~ sent, the successor employer's right to appeal the transfer is waived.

(2) (a) If an employer transfers, succeeds to, or acquires all or a portion of the trade or business of a covered employer and the employers are not under substantially common ownership, management, or control,

the predecessor employer and the successor employer have the option to transfer the applicable portion of the experience rating record from the predecessor employer to the successor employer if that portion of the trade or business is continued by the successor employer.

(b) In order to make the transfer, a joint application for the transfer of the experience rating record must be made by the predecessor employer and the successor employer within 90 days of the acquisition and approval by the department.

(c) In the case of a complete transfer of the trade or business, all of the experience rating record of the predecessor employer is transferred to the successor employer.

(d) In the case of a partial transfer of the trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. This portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of transfer.

(e) A successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

(f) The 90-day period for filing the joint application may be extended at the discretion of the department.

(3) (a) If the successor employer was a covered employer prior to the date of the acquisition of all or a portion of the predecessor employer's trade or business and if:

(i) the employers are not under substantially common ownership, management, or control at the time of acquisition, the successor employer's rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor employer and successor employer; or

(ii) the employers were under substantially common ownership, management, or control at the time of acquisition, the successor employer's experience rate must be combined with the predecessor employer's experience rate and must be recalculated and become effective at the beginning of the calendar quarter in which the acquisition occurred.

(b) If the successor employer was not a covered employer prior to the date of the acquisition of all or a portion of the predecessor employer's trade or business and the employers are not under substantially common ownership, management, or control, upon joint application by the employers, the successor employer's rate is the rate assigned to the predecessor employer as of the date of acquisition. If there was more than one predecessor employer, the successor employer's rate must be computed based on the combined experience of

the predecessor employers and becomes effective immediately after the date of acquisition and remains in effect for the balance of the rate year.

(4) The transfer of all or part of an employer's workforce to another employer must be considered a transfer of a trade or business if, as a result of the workforce transfer, the transferring employer is not any longer performing the trade or business with respect to the transferred workforce and the trade or business is performed by the employer to which the workforce is transferred.

(5) (a) The experience rating record of a predecessor trade or business may not be transferred to a person acquiring the trade or business if:

(i) the person is not otherwise an employer at the time of the acquisition; and

(ii) the department finds that the person acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions.

(b) A person subject to the provisions of subsection (5)(a) must be assigned the applicable new employer rate pursuant to 39-51-1217.

(6) Factors that the department may consider in determining if a person acquired a trade or business solely or primarily for the purpose of obtaining a lower rate of contributions include but are not limited to:

(a) the cost of acquisition;

(b) whether the person continued the trade or business operation;

(c) the length of time that the trade or business operation was continued after acquisition; and

(d) whether a substantial number of new employees were to perform duties unrelated to the trade or business operations conducted prior to the acquisition.

(7) A person who knowingly violates, attempts to violate, or provides advice on violating the provisions of this section is subject to the following penalties:

(a) If the person is an employer, the employer shall be assessed a penalty equal to 6% of the employer's average annual taxable wages used in computing the employer's most recent year's experience rating record. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).

(b) If the person is not an employer, the person is subject to a civil penalty of not more than $5,000. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).

(c) In addition to the penalties provided for in subsections (7)(a) and (7)(b), a person who violates a provision of this section:

(i) is subject to any other penalties prescribed by this chapter;

(ii) may be subject to a criminal penalty pursuant to 39-51-3204; and

(iii) may be charged with any other applicable criminal violations provided by law.

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

(a) "Knowingly" means having actual knowledge of, acting with deliberate ignorance of, or reckless disregard for the prohibitions established in this section.

(b) "Person" includes an individual, trust, estate, partnership, association, company, or corporation.

(c) "Trade or business" includes an employer's workforce.

(9) The department shall establish procedures to identify the transfer or acquisition of a trade or business for the purposes of this section.

(10) This section must be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States department of labor."

Section 9. Section 39-51-2402, MCA, is amended to read:

"39-51-2402. Determination -- redetermination. (1) The department shall promptly examine a claim for benefits, and on the basis of the department's findings of fact, the department shall determine whether or not the claim is valid. If the claim is valid, the department shall determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The department may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. The department shall promptly notify the claimant and any other interested party of its determination and the reasons for reaching the determination.

(2) The department may for good cause reconsider its determination and shall promptly notify the claimant and other interested parties of the redetermination and the reasons for the redetermination.

(3) A determination or redetermination is final unless an interested party ~~entitled to notice of the decision~~ applies for reconsideration of the determination or appeals ~~the decision~~ within 10 days after the ~~notification was mailed~~ determination or redetermination was sent to the interested party's ~~last-known~~ address of record. The 10-day period may be extended for good cause.

(4) Except as provided in subsection (5), a redetermination of any issue of an original determination may not be made after 2 years from the date of the original determination of that issue.

(5) A redetermination of any issue of an original determination may be made within 3 years from the date of the original determination of that issue if the original determination was based on a false claim,

misrepresentation, or failure to disclose a material fact by the claimant or the employer."

Section 10. Section 39-51-2403, MCA, is amended to read:

"39-51-2403. Hearing -- decision of appeals referee. Upon appeal of a determination or redetermination under 39-51-2402, an appeals referee shall hold a hearing, which may be conducted by telephone or by videoconference. After the hearing, the appeals referee shall promptly make findings and conclusions and affirm, modify, or reverse the department's determination or redetermination. Each interested party must be promptly furnished a copy of the decision and the supporting findings and conclusions. This decision is final unless further review is initiated pursuant to 39-51-2404 within 10 days after ~~notification was mailed~~ the decision was sent to the interested party's ~~last-known~~ address of record. The 10-day period may be extended for good cause."

Section 11. Section 39-51-2404, MCA, is amended to read:

"39-51-2404. Appeal to board procedure. An interested party who is dissatisfied with a decision of an appeals referee may appeal to the board. The department shall promptly transmit all records pertinent to the appeal to the board. The appeal hearing may be conducted by telephone or by videoconference. When a decision is rendered by the board and copies of the decision are mailed to all interested parties, including the department, that decision is final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within 30 days of the date of ~~mailing of~~ sending the board's decision to the party's ~~last-known~~ address of record."

Section 12. Section 39-51-2410, MCA, is amended to read:

"39-51-2410. Finality of board's decision -- judicial review. (1) ~~Any~~ A decision of the board, in the absence of an appeal ~~therefrom as herein~~ as provided by this section, ~~shall become~~ becomes final 30 days after the ~~date of notification or mailing thereof~~ decision was sent to the parties at their respective addresses of record. ~~and judicial~~ Judicial review ~~shall be~~ is permitted only after any party claiming to be aggrieved has exhausted all remedies before the board. The department is ~~deemed~~ considered to be a party to any judicial action involving ~~any such~~ a decision and may be represented in ~~any such~~ that action by an attorney employed by the department or, at the department's request, by the attorney general.

(2) Within 30 days after ~~the date of notification or mailing of~~ the decision of the board was sent to the

parties at their respective addresses of record, any party aggrieved ~~thereby~~ by the decision may secure judicial review ~~thereof~~ by commencing an action in the district court of the county in which ~~said~~ the party resides and in which action any other party to the proceeding before the board ~~shall~~ must be made a defendant. In such an action a petition, which need not be verified but ~~which shall~~ must state the grounds upon which a review is sought, ~~shall~~ must be served upon the commissioner of labor and industry and all interested parties in the manner provided in the Montana Rules of Civil Procedure.

(3) The department shall certify and file with ~~said~~ the court all documents and papers and a record of all testimony taken in the matter, together with the board's findings of fact and decision. The board may also in its discretion certify to ~~such~~ the court questions of law involved in any decision by ~~it~~ the board.

(4) Whenever the department seeks review of a decision of the board, all interested parties ~~shall~~ must be served with a copy of its petition together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, ~~shall be~~ are conclusive and the jurisdiction of ~~said~~ the court ~~shall be~~ is confined to questions of law. ~~Such~~ The action and the questions so certified ~~shall~~ must be heard in a summary manner and ~~shall~~ must be given precedence over all other civil cases ~~except cases arising under the workers' compensation law of this state~~.

(6) An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It ~~shall not be~~ is not necessary in any judicial proceeding under this section to enter exceptions to the rulings of the board and ~~no~~ a bond ~~shall~~ may not be required for entering ~~such~~ an appeal. Upon the final determination of ~~such~~ the judicial proceeding, the department shall enter an order in accordance with ~~such~~ the determination."

~~NEW SECTION. **Section 14. Electronic wage reporting -- electronic payments of contributions, penalties, and interest.** (1) An employing unit shall electronically submit to the department wage reports for wages paid on or after January 1, 2016, if it previously reported:~~

~~(a) 50 or more employees in any of the 4 calendar quarters in the most recently completed calendar year; or~~

~~(b) $1 million or more in annual payroll in the preceding calendar year.~~

~~(2) Wage information must be submitted using an electronic file format and reporting medium approved by the department.~~

~~(3) An employing unit required by subsection (1) to report wage information electronically shall pay contributions, penalties, and interest using an electronic funds transfer method approved by the department.~~

~~(4) An employing unit that fails to comply with subsections (1) and (3) may be subject to a $1 penalty for each employee who should have been reported for the filing period or for whom contributions were due. The penalty may be assessed for each reporting period in which the employing unit failed to file electronically or to make the required payments electronically.~~

~~NEW SECTION. **Section 15. Codification instruction.** [Section 14] is intended to be codified as an integral part of Title 39, chapter 51, part 6, and the provisions of Title 39, chapter 51, part 6, apply to [section 14].~~

NEW SECTION. **Section 13. Effective date.** [This act] is effective July 1, 2015.

- END -