AN ACT GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; AUTHORIZING THE GOVERNOR TO APPOINT A SUBSTITUTE MEMBER TO THE BOARD OF LABOR APPEALS; PROVIDING FOR INELIGIBILITY FOR UNEMPLOYMENT BENEFITS DURING A LEAVE OF ABSENCE; ESTABLISHING THE INELIGIBILITY PERIOD FOR UNEMPLOYMENT BENEFITS FOR A PERSON SUSPENDED FROM EMPLOYMENT; CLARIFYING THE REQUISITIONING OF MONEY FROM THE UNEMPLOYMENT TRUST FUND; ALLOWING THE DEPARTMENT OF LABOR AND INDUSTRY TO CHARGE FEES FOR PROVIDING INFORMATION; REVISING CONFIDENTIALITY REQUIREMENTS; GRANTING RULEMAKING AUTHORITY; REVISING GENERAL BENEFIT ELIGIBILITY REQUIREMENTS; REVISING AGENCY REQUIREMENTS FOR PERSONS ACTING ON BEHALF OF A CLAIMANT; REVISING COLLECTION PROCEDURES FOR OVERPAYMENTS; AMENDING SECTIONS 2-15-1704, 35-8-304, 39-51-403, 39-51-501, 39-51-603, 39-51-1105, 39-51-1216, 39-51-1301, 39-51-2101, 39-51-2104, 39-51-2307, 39-51-2402, 39-51-2403, 39-51-2405, 39-51-3201, 39-51-3202, 39-51-3206, AND 39-51-3207, MCA; REPEALING SECTION 39-51-3104, MCA; AND PROVIDING EFFECTIVE DATES.

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 -- allocation -- composition -- function -- quasi-judicial. (1) There is a board of labor appeals.

(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 subsection (3) and in 2-15-124. 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.

~~(4)~~(5) The board is designated as a quasi-judicial board for purposes of 2-15-124."

Section 2. Benefit ineligibility for leave of absence. (1) An individual is ineligible to receive benefits during an approved leave of absence.

(2) An individual is eligible to receive benefits when the individual returns to and offers service to the individual's employer after returning from an approved leave of absence and the individual's regular or comparable suitable work is not available, as determined by the department, provided that the individual is otherwise eligible.

Section 3. Benefit ineligibility for suspension. (1) An individual who files for benefits during a disciplinary suspension is ineligible to receive benefits for 2 weeks or until the suspension ends, whichever occurs first.

(2) Ineligibility based upon a disciplinary suspension may not be imposed for any week beginning after the second week of the suspension. If the individual remains suspended, the individual must be considered discharged for purposes of unemployment insurance. The department shall determine whether the discharge constitutes misconduct under 39-51-2303.

Section 4. Section 35-8-304, MCA, is amended to read:

"35-8-304. Liability of members and managers to third parties. (1) Except as provided in 39-51-1105 and subsection (3) of this section, a person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

(2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers of the limited liability company.

(3) All or specified members of a limited liability company are liable in their capacity as members for all

or specified debts, obligations, or liabilities of the company if:

(a) a provision to that effect is contained in the articles of organization; and

(b) a member named as liable has consented in writing to the adoption of the provision or to be bound by the provision."

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

"39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits ~~-- exception~~. (1) Money may be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with section 904 of the Social Security Act, 42 U.S.C. 1104, and with regulations prescribed by the department~~, except that money credited to this state's account pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended, may also be withdrawn for the payment of expenses for the administration of this chapter and of public employment offices, as provided by this chapter~~. Money withheld by the department from a benefits payment at the request of an individual, ~~or~~ in accordance with the department's rules pertaining to deductions and withholding for federal income tax purposes pursuant to 39-51-2207, ~~or money withheld~~ for repayment of an overissuance of food stamp coupons pursuant to 39-51-2208, or for repayment of child support obligations pursuant to 39-51-3106 must be considered benefits for the purposes of this subsection.

(2) The department shall from time to time requisition from the unemployment trust fund amounts, not exceeding the amounts in this state in the fund, as it considers necessary for the payment of benefits for a reasonable future period. Upon receipt of a requisition, the ~~treasurer~~ secretary of the treasury of the United States shall deposit the money in the benefit account. ~~and~~ Upon receipt of the deposit, the department shall issue warrants for the payment of benefits solely from the benefit account.

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

(4) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned must be deducted from estimates for and may be used for the payment of benefits during succeeding periods or, in the discretion of the department, must be redeposited with the secretary of the treasury of the United States to the

credit of this state's account in the unemployment trust fund, as provided in 39-51-402."

Section 6. Section 39-51-501, MCA, is amended to read:

"39-51-501. State-federal cooperation. (1) (a) In the administration of this chapter, the department shall:

~~(a) cooperate to the fullest extent consistent with the provisions of this chapter with the secretary of labor, pursuant to the provisions of the Social Security Act, as amended;~~

~~(b) make reports in a form and containing the information that the secretary of labor may require and shall comply with the provisions that the secretary of labor may find necessary to ensure the correctness and verification of the reports; and~~

~~(c) comply with the regulations prescribed by the secretary of labor governing the expenditures of the sums that are allotted and paid to this state under Title III of the Social Security Act (now Subchapter III), as amended, for the purpose of assisting in the administration of this chapter.~~

(i) afford reasonable cooperation to every agency of the United States charged with the administration of any unemployment insurance law;

(ii) disclose wage and other required information to authorized recipients as provided by 42 U.S.C. 503; and

(iii) establish necessary safeguards to ensure that any information disclosed is used only for the purposes outlined in 42 U.S.C. 503.

(b) The department may charge fees commensurate with the costs of providing any information pursuant to subsection (1)(a) and shall deposit the fees in the state special revenue fund.

(2) The department shall cooperate with the secretary of labor in the administration of any act of congress establishing unemployment insurance benefits or similar benefits for federal employees and veterans or ex-service personnel of the armed forces of the United States and shall do so in a manner considered advisable and expedient in order to carry out the purpose of this chapter.

(3) The department is authorized to perform any acts, including the execution of agreements and contracts that may be required under and pursuant to any act passed by the congress of the United States, authorizing the extension of unemployment insurance benefits by federal law if the department in its discretion considers it advisable to perform such acts.

(4) Upon request, the department shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to further benefits under this chapter."

Section 7. Section 39-51-603, MCA, is amended to read:

"39-51-603. Employing unit to keep records and make reports -- confidentiality -- rules. (1) Each employing unit shall keep true and accurate work records containing the information that the department may prescribe. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employing unit that maintains its records outside Montana shall furnish a copy of those records to the department at the employing unit's expense or shall pay the department for the costs associated with conducting the audit outside Montana.

(2) The department and the presiding officer of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it that the department considers necessary for the effective administration of this chapter.

(3) Information obtained from any individual under this chapter must, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and may not be published or be open to public inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or the claimant's legal representative at a hearing before the board or appeal tribunal must be supplied with information from the records to the extent necessary for the proper presentation of the claim.

(4) In order to prevent the misuse of personal and other sensitive information collected by the department in the administration of the unemployment insurance laws, the department shall adopt rules providing for confidentiality of unemployment insurance information, including the circumstances and conditions under which information may be disclosed to appropriate persons and government agencies. The rules must be consistent with federal requirements regarding confidentiality and disclosure of unemployment insurance information.

~~(4)~~(5) (a) Any employee or member of the department or other state or local government employee who violates any provision of this section shall be fined not less than $20 or more than $200 or shall be imprisoned for not longer than 90 days, or both.

(b) Any person other than those described in subsection (5)(a) who receives information from the department may only use the disclosed information for purposes authorized by law. A person who violates the provisions of this subsection (5)(b) is subject to the penalties provided for in subsection (5)(a)."

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

"39-51-1105. Liability for taxes, penalties, and interest owed. (1) The officer of a corporation whose responsibility it is to pay the taxes, penalties, and interest, as provided by 39-51-404, 39-51-1103(1) and (2), ~~and~~ 39-51-1125(1) and (2), and 39-51-1301, 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) The liability imposed upon an individual by this section remains unaffected by the bankruptcy of a business entity to which a discharge cannot be granted under 11 U.S.C. 727. The individual is liable for the unpaid amount of taxes, penalties, and interest.

(4) In the case of a limited liability company treated as a partnership pursuant to 39-51-207, the liability for unemployment insurance taxes, penalties, and interest owed extends jointly and severally to each member and to each manager, if any.

(5) In the case of a limited liability company that is not treated as a partnership pursuant to 39-51-207, liability for unemployment insurance taxes, penalties, and interest owed extends jointly and severally to the managers and members of the limited liability company."

Section 9. Section 39-51-1216, MCA, is amended to read:

"39-51-1216. Experience rating record voided when account inactive. ~~Whenever an~~ An employer who has not had covered employment or whose coverage has been terminated because ~~he~~ the employer has ceased to do business for 5 consecutive years ~~or because he has not covered employment for a period of 3 years~~

~~becomes a covered employer, he~~ is considered a new employer and ~~he is not to~~ may not be credited with ~~his~~ the employer's previous experience for the purpose of computing any future "experience factor"."

Section 10. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due reports and ~~taxes~~ payments. (1) Failure to file reports and make payments in a timely manner, as required under 39-51-404, 39-51-603, 39-51-1103, and 39-51-1125, may subject an employer to penalty and interest, as provided in subsection (2).

(2) The department may assess penalties and interest under this section as follows:

(a) a penalty of $25 for the failure to file reports or make payments in a timely manner;

(b) in addition to the late penalty provided in subsection (2)(a), a penalty of $50 if the department issues a subpoena or makes a summary or jeopardy assessment, as provided in 39-51-1302, as the result of an employer's refusal or failure to provide requested information;

(c) in addition to the penalties in subsections (2)(a) and (2)(b), a penalty of $100 for failure to comply with a subpoena; and

(d) interest at the rate of 1.5% a month on any amounts owed to the department under this subsection (2) that are not paid in a timely manner.

(3) The department may waive all or any portion of any penalties and interest assessed ~~pursuant to~~ under subsection (2).

(4) There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations must be deposited in that account. Money deposited in that account and appropriated to the department may be used by the department only to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

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

Section 11. Section 39-51-2101, MCA, is amended to read:

"39-51-2101. Total unemployment -- when. An individual is considered to be totally unemployed in any week during which the individual:

(1) ~~performed no~~ did not perform any work in employment and ~~earned no~~ did not earn any wages for employment; or

(2) ~~performed~~ worked less than ~~full-time work in employment with wages for employment of~~ the customary hours that are normal for the individual's particular occupation due to a lack of work and provided that the wages payable to the individual are less than two times the individual's weekly benefit amount."

Section 12. Section 39-51-2104, MCA, is amended to read:

"39-51-2104. General benefit eligibility conditions. (1) An unemployed individual, including an alien entitled to benefits under the provisions of 39-51-2110, is eligible to receive benefits for any week of total unemployment within the individual's benefit year only if the department finds that the individual:

(a) has filed a claim and has filed continued claims in accordance with rules that the department may prescribe;

(b) is able to work, is available for work, and is seeking work. An individual may not place limitations on the individual's availability that would constitute a withdrawal from the labor market. A claimant is not considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the failure is because of~~:~~

~~(i)~~ an illness or disability that occurs after the claimant has filed or reopened a claim for unemployment insurance benefits and suitable work has not been offered to the claimant after the beginning of the illness or disability~~; or~~

~~(ii) enrollment as a student as provided in 39-51-2307~~.

(c) prior to the first week for which the individual is paid benefits, has been totally unemployed for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes of this subsection:

(i) if benefits have been paid for that week;

(ii) unless the individual was eligible for benefits during the week;

(iii) unless it occurs within the benefit year of the claimant;

(iv) unless it occurs after benefits first could become payable to any individual under this chapter.

(d) has registered for work with the individual's local job service office unless the individual is excused by department rule from registering for work.

(2) (a) Except as provided in subsection (2)(b), if an individual is unavailable for work for less than 3 days within a week for which work is available, the individual must be paid the weekly benefit amount reduced by one-fifth of that amount for each day or part of a day that the individual is unavailable for work.

(b) If the individual is unavailable for work for 3 days or more, or part of each of 3 days or more, within a week for which work is available, the individual must be considered unavailable for work for the entire week, and is not eligible to receive benefits for the week.

~~(2)~~(3) (a) The department shall establish a profiling system to identify individuals who are likely to exhaust their regular benefits and who are in need of reemployment services.

(b) In addition to the requirements listed in subsection (1), an individual identified pursuant to subsection ~~(2)(a)~~ (3)(a) may be required to participate in reemployment services in order to be eligible for unemployment benefits.

(c) The requirement for participation in reemployment services may be waived if the department determines that:

(i) the individual has completed reemployment services; or

(ii) the individual's failure to participate in reemployment services is justifiable."

Section 13. Section 39-51-2307, MCA, is amended to read:

"39-51-2307. ~~Disqualification because of student status~~ School attendance. (1) ~~Except as provided in subsection (2) or (3), an individual is disqualified for benefits during the school year (within the autumn, winter, and spring seasons of the year) or the vacation periods within the school year or during any prescribed school term if the individual is a student regularly attending an established educational institution.~~ An individual who is a student attending an established educational institution may qualify for benefits provided that the individual can demonstrate to the department's satisfaction that the individual meets the requirements of 39-51-2104.

(2) An individual attending an adult basic education class 20 hours a week or less while laid off from a job is not disqualified from receiving benefits if the individual is willing to return to work when notified.

(3) An otherwise eligible individual may not be denied benefits for any week because the individual is in training approved by the department, nor may the individual be denied benefits with respect to any week in

which the individual is in training approved by the department by reason of the application of provisions in 39-51-2304 or the application of provisions in 39-51-2104(1)(b)."

Section 14. Section 39-51-2402, MCA, is amended to read:

"39-51-2402. ~~Initial determination~~ Determination -- redetermination. (1) ~~A representative designated by the department and referred to as a deputy~~ The department shall promptly examine a claim for benefits, and on the basis of the ~~deputy's~~ department's findings of fact, the ~~deputy~~ department shall determine whether or not the claim is valid. If the claim is valid, the ~~deputy~~ department shall determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The ~~deputy~~ 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 ~~deputy~~ department shall promptly notify the claimant and any other interested party of ~~the decision~~ its determination and the reasons for reaching the ~~decision~~ determination.

(2) The ~~deputy~~ department may for good cause reconsider ~~the decision~~ its determination and shall promptly notify the claimant and other interested parties of the ~~amended decision~~ redetermination and the reasons for the ~~decision~~ 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 to the interested party's last-known address. The 10-day period may be extended for good cause.

(4) Except as provided in subsection (5), a redetermination of ~~a claim for benefits~~ any issue of an original determination may not be made after 2 years from the date of the ~~initial~~ 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 ~~initial~~ original determination of that issue ~~of a claim~~ if the ~~initial~~ original determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer."

Section 15. 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 ~~deputy's~~ 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 to the interested party's last-known address. The 10-day period may be extended for good cause."

Section 16. Section 39-51-2405, MCA, is amended to read:

"39-51-2405. Prompt payment of claims. (1) Notwithstanding any provision in 39-51-2402 or 39-51-2404, benefits ~~shall~~ must be paid promptly in accordance with a determination or redetermination under 39-51-2402 or the decision of an appeals referee, the board, or a reviewing court under 39-51-2404 upon the issuance of ~~such~~ the determination, redetermination, or decision. The benefits must be paid regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect to the application, filing, or petition ~~thereto~~ in 39-51-2404, as the case may be, or the pendency of ~~any such~~ the actual application, filing, or petition, unless and until ~~such~~ the determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which ~~event~~ case the benefits ~~shall~~ must be paid or denied for the following weeks of unemployment ~~thereafter~~ in accordance with ~~such~~ the modifying or reversing redetermination or decision.

(2) If ~~a deputy's~~ the department's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee or by the board or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board, ~~such~~ the benefits ~~shall~~ must be paid promptly regardless of any further appeal or the disposition of ~~such~~ the appeal and ~~no~~ an injunction, supersedeas, stay, or other writ or process suspending the payment of ~~such~~ the benefits ~~shall~~ may not be issued by the board or any court. Benefits ~~shall~~ may not be paid for any weeks of unemployment involved in ~~such~~ any modification or reversal that begins after ~~such~~ the final decision."

Section 17. Section 39-51-3201, MCA, is amended to read:

"39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits -- administrative penalty and remedy. (1) (a) A person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any

other state or territory or the federal government, either for the individual or for any other person, is:

~~(a)~~(i) disqualified for benefits for a period of not more than 52 weeks, beginning with the first compensable week following the date of determination by the department, with the length of time of the disqualification to be determined by the department in accordance with the severity of each case; and

~~(b)~~(ii) required to repay to the department, pursuant to the provisions of 39-51-3206, ~~either directly or as authorized by the department, by offset of future benefits to which the individual may be entitled, or by a combination of both methods,~~ a sum equal to the amount wrongfully received by the individual, plus the department may assess a penalty not to exceed 100% of the fraudulently obtained benefits.

(b) Future benefits may not be used to offset the penalty due. However, the individual is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that the individual made false statements, willful nondisclosure, or misrepresentation.

(2) (a) An individual, other than a person with a bona fide disability that prevents the individual from making or filing a claim for benefits on the individual's own behalf, who allows or authorizes another person to make or file a claim for benefits on the individual's behalf without designating that person as an authorized agent is subject to the penalties prescribed in subsection (1).

(b) The designation of a person who is not an attorney as an individual's agent must be in writing and signed by the individual. The designation must specify:

(i) the period of time covered by the designation; and

(ii) any limits on the agent's authority.

(c) Any action taken or information provided by an agent has the same effect as an action taken or information provided by the individual.

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

Section 18. Section 39-51-3202, MCA, is amended to read:

"39-51-3202. Making false statement or representation or failing to disclose material fact in order

to obtain or increase benefits -- criminal penalty. (1) A person who, in order to obtain or increase for personal gain or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203, and the department may cause criminal proceedings to be initiated against the person.

(2) A person will be required to repay to the department an amount as determined by 39-51-3201(1)~~(b)~~(a).

(3) For purposes of this section, restitution awarded under this section must include a sum equal to the amount wrongfully received, plus the department may assess a penalty not to exceed 100% of the amount wrongfully received. All money accruing from the penalty must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year."

Section 19. Section 39-51-3206, MCA, is amended to read:

"39-51-3206. Collection of benefit overpayments. (1) A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment.

(2) The department may collect a benefit overpayment and any penalty:

(a) by having the claimant pay the amount owed directly to the department by check, money order, credit card, debit card, or electronic funds transfer; or

(b) by offsetting the amount of the overpaid benefits owed against future unemployment benefits to be received by the claimant.

(3) The claimant is responsible for any:

(a) penalty established in accordance with 39-51-3201; and

(b) costs or processing fees associated with using the repayment methods set out in subsection (2)(a).

(4) The department may enter into an agreement with a claimant for the repayment of any benefit

overpayment and penalty provided that repayment in full is made within 5 years of the date that it was established that an overpayment occurred.

(5) A benefit offset may not exceed 50% of the weekly benefits to which a claimant is entitled unless the claimant gives written consent, except in cases of theft or fraud, when benefits may be offset by as much as 100% of the weekly benefits to which a claimant is entitled. ~~The sum is collectible in the manner provided in this chapter for the collection of past-due contributions.~~

(6) (a) The department may collect any benefit overpayment and penalty by directing the offset of any funds due the claimant from the state, except future unemployment benefits as provided in subsection (1) and retirement benefits. The department, through the department of revenue, shall provide the claimant with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30 days of the date of the notice.

(b) The debt does not have to be determined to be uncollectible before being transferred for offset.

(7) (a) The department may direct the offset of funds owed to a person under 26 U.S.C. 6402 if the person owes a covered unemployment compensation debt.

(b) For the purposes of this subsection (7), "covered unemployment compensation debt" means:

(i) a benefit overpayment and penalty owed because of the erroneous payment of unemployment compensation resulting from fraud, which has been adjudicated as a debt under Montana law and has remained uncollected for not more than 10 years; or

(ii) employer contributions, penalty, and interest owed to the unemployment trust fund that the department determines are attributable to fraud and that have remained uncollected for not more than 10 years.

(8) If, upon demand of the department, the claimant fails to make the payments provided for in this section, the unpaid benefit overpayment and associated penalty may be treated as a judgment against the claimant at the time the payments become due. The department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real property of the claimant. The department may enforce the judgment at any time within 10 years of creation of the lien.

(9) The department may waive the benefit overpayment if the department finds that:

(a) the claimant did not conceal or misrepresent material facts to obtain the overpaid benefits and that

recovery of the benefit overpayment would cause a long-term financial hardship on the claimant; or

(b) the overpayment was the result of department error.

(10) An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment.

(11) Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit program of the United States."

Section 20. Section 39-51-3207, MCA, is amended to read:

"39-51-3207. Authority to determine uncollectibility of debts -- transfer of debts for collection -- liability for payment of fees and costs of collection. (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404, and penalties and interest, or overpaid benefits and penalties under 39-51-3206 ~~and interest~~, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the department of revenue for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of revenue may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of revenue. If less than the full amount of the debt is collected, the department of revenue shall retain only a proportionate share of the collection fees or costs."

Section 21. Repealer. Section 39-51-3104, MCA, is repealed.

Section 22. Codification instruction. [Sections 2 and 3] are intended to be codified as an integral part of Title 39, chapter 51, part 21, and the provisions of Title 39, chapter 51, part 21, apply to [sections 2 and 3].

Section 23. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Sections 5 through 7, 9, 13, and 18] are effective July 1, 2009.

(3) [Sections 2 and 3, 11, 12, 17, and 19] are effective January 1, 2010.

- END -

I hereby certify that the within bill,

SB 0150, originated in the Senate.

_____

Secretary of the Senate

_____

President of the Senate

Signed this _____ day

of _____, 2009.

_____

Speaker of the House

Signed this _____ day

of _____, 2009.

SENATE BILL NO. 150

INTRODUCED BY J. BRUEGGEMAN

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

AN ACT GENERALLY REVISING UNEMPLOYMENT INSURANCE LAWS; AUTHORIZING THE GOVERNOR TO APPOINT A SUBSTITUTE MEMBER TO THE BOARD OF LABOR APPEALS; PROVIDING FOR INELIGIBILITY FOR UNEMPLOYMENT BENEFITS DURING A LEAVE OF ABSENCE; ESTABLISHING THE INELIGIBILITY PERIOD FOR UNEMPLOYMENT BENEFITS FOR A PERSON SUSPENDED FROM EMPLOYMENT; CLARIFYING THE REQUISITIONING OF MONEY FROM THE UNEMPLOYMENT TRUST FUND; ALLOWING THE DEPARTMENT OF LABOR AND INDUSTRY TO CHARGE FEES FOR PROVIDING INFORMATION; REVISING CONFIDENTIALITY REQUIREMENTS; GRANTING RULEMAKING AUTHORITY; REVISING GENERAL BENEFIT ELIGIBILITY REQUIREMENTS; REVISING AGENCY REQUIREMENTS FOR PERSONS ACTING ON BEHALF OF A CLAIMANT; REVISING COLLECTION PROCEDURES FOR OVERPAYMENTS; AMENDING SECTIONS 2-15-1704, 35-8-304, 39-51-403, 39-51-501, 39-51-603, 39-51-1105, 39-51-1216, 39-51-1301, 39-51-2101, 39-51-2104, 39-51-2307, 39-51-2402, 39-51-2403, 39-51-2405, 39-51-3201, 39-51-3202, 39-51-3206, AND 39-51-3207, MCA; REPEALING SECTION 39-51-3104, MCA; AND PROVIDING EFFECTIVE DATES.