

HOUSE BILL NO. 127

INTRODUCED BY T. BERRY

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING UNEMPLOYMENT INSURANCE TO IMPROVE THE  
6 UNEMPLOYMENT INSURANCE SYSTEM'S INTEGRITY; PROVIDING INCENTIVES FOR EMPLOYERS TO  
7 PROVIDE TIMELY AND COMPLETE INFORMATION RELATED TO CLAIMS; CLARIFYING THE  
8 DISTRIBUTION OF PENALTIES FOR MAKING FALSE STATEMENTS TO OBTAIN OR INCREASE BENEFITS;  
9 EXTENDING RULEMAKING AUTHORITY; CLARIFYING INTERACTION OF UNEMPLOYMENT LAWS WITH  
10 CERTAIN CHILD SUPPORT LAWS; PROVIDING A LIMIT TO TEMPORARY SEPARATIONS FROM  
11 EMPLOYMENT FOR CHILD SUPPORT LAWS; AMENDING SECTIONS 39-51-401, 39-51-1125, 39-51-1212,  
12 39-51-1214, 39-51-3106, 39-51-3201, AND 40-5-901, MCA; AND PROVIDING A CONTINGENT TERMINATION  
13 DATE."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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17 **NEW SECTION. Section 1. Employing unit responsibility to respond to department requests for**  
18 **information -- waiver of rights.** (1) An employing unit or its representative shall provide to the department wage,  
19 employment, separation, and eligibility information requested by the department in a timely manner as established  
20 by rule.

21 (2) (a) Subject to the provisions of subsection (4), the department shall consider an employing unit, with  
22 respect to a specific claim, to have waived its rights as provided in subsection (3) for:

- 23 (i) untimely filing information required under subsection (1) without good cause; or
- 24 (ii) failing to provide complete answers in response to the department's request for information.

25 (b) A request from the employing unit or its representative for a hearing without providing the requested  
26 information is considered to be a failure to provide a timely or an adequate response as provided in subsection  
27 (2)(a).

28 (3) A waiver of rights provided for under subsection (2) means that the department shall:

- 29 (a) consider the employing unit to be no longer eligible as an interested party with respect to the claim;
- 30 and

1 (b) deny credit to the employing unit for any resulting erroneous payment to the claimant.

2 (4) The department shall accept information submitted by an employing unit or its representative after  
3 the required period established by rule and before the deadline set by 39-51-2402(3) if the information is related  
4 to a separation from employment or concerning a claimant's eligibility for benefits. After accepting the information,  
5 the department shall issue a determination or redetermination that must include a decision on whether the  
6 employing unit or its representative presented good cause for failure to meet the timely or complete information  
7 requirements in subsection (2). For good cause shown, the department may in its determination or  
8 redetermination rescind the waiver of rights.

9 (5) An employing unit that elects to make payments in lieu of contributions pursuant to 39-51-1103 is also  
10 subject to the provisions of this section.

11

12 **Section 2.** Section 39-51-401, MCA, is amended to read:

13 **"39-51-401. Unemployment insurance fund -- establishment and control.** There is established  
14 separate and apart from all public money or funds of this state a fund in the enterprise fund type known as the  
15 unemployment insurance fund, which must be administered by the department exclusively for the purposes of  
16 this chapter. Any reference to the unemployment insurance fund in the Montana Code Annotated means the  
17 unemployment insurance enterprise fund. All money in the fund must be mingled and undivided. This fund  
18 consists of:

19 (1) all contributions collected under this chapter and payments made in lieu of contributions as provided  
20 in 39-51-1124 through 39-51-1126;

21 (2) interest earned upon any money in the fund;

22 (3) any property or securities acquired through the use of money belonging to the fund;

23 (4) all earnings of the property or securities acquired by the fund; ~~and~~

24 (5) all money credited to this state's account in the unemployment trust fund pursuant to ~~sections 903~~  
25 ~~and 904 of the Social Security Act (42 U.S.C. 1103 and 1104)~~ 42 U.S.C. 1103 and 1104, as amended; and

26 (6) 30% of the penalty payments as provided in 39-51-3201."

27

28 **Section 3.** Section 39-51-1125, MCA, is amended to read:

29 **"39-51-1125. Computation of payments in lieu of contributions.** (1) Employers electing to make  
30 payments in lieu of contributions under 39-51-1103 shall pay into the unemployment insurance fund established

1 in 39-51-401 an amount equivalent to the full amount of regular benefits plus the state's share of extended  
2 benefits paid to individuals based on wages paid by the employing unit. Governmental entities shall pay the full  
3 amount of extended benefits.

4 (2) When the base period wages of an individual include wages from more than one employer, the  
5 amount to be paid into the unemployment insurance fund with respect to the benefits paid to the individual must  
6 be prorated among the liable employers in proportion to the wages paid to the individual by each employer during  
7 the base period.

8 (3) The amount of payment required from employers must be ascertained by the department monthly  
9 and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for  
10 delinquency must be assessed to employers as specified in 39-51-1301.

11 (4) ~~A~~ Subject to the provisions of [section 1], a payment may not be required under this section with  
12 respect to benefits paid to an individual if the qualified employer continues to provide employment to the individual  
13 without a reduction in hours or wages."  
14

15 **Section 4.** Section 39-51-1212, MCA, is amended to read:

16 **"39-51-1212. Experience rating for governmental entities.** (1) The rates of governmental entities who  
17 have accumulated experience rating credits must be adjusted annually as follows with each governmental entity  
18 assigned a rate based upon:

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

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

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

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

30 (4) If benefit charges exceed contributions paid in the last 2 completed state fiscal years, governmental

1 entities' rates must be adjusted by increasing all rates to the next higher schedule.

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

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

7 (7) ~~The~~ Subject to the provisions of [section 1], the department may relieve benefit charges paid by a  
8 governmental employer with respect to benefits paid to an individual if the governmental employer continues to  
9 provide employment to the individual without a reduction in hours or wages."

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11 **Section 5.** Section 39-51-1214, MCA, is amended to read:

12 **"39-51-1214. Benefit payments chargeable to employer experience rating accounts.** (1) Except for  
13 cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period  
14 employers. The benefit charged must be based on the percentage of wages paid by the employer as compared  
15 to the total wages paid by all employers in the claimant's base period.

16 (2) The account of an employer with an experience rating as provided in 39-51-1213 may not be charged  
17 with respect to benefits paid under the following situations:

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

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

22 (c) subject to the provisions of [section 1], if the base period employer continues to provide employment  
23 with no reduction in hours or wages;

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

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

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

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

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

1 (g) if the worker separates from employment as a result of domestic violence, a sexual assault, or  
 2 stalking pursuant to 39-51-2111."

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4 **Section 6.** Section 39-51-3106, MCA, is amended to read:

5 **"39-51-3106. Child support interception of unemployment benefits.** (1) For purposes of this section,  
 6 the following definitions apply:

7 (a) "Child support obligations" includes only obligations that are being enforced pursuant to a plan  
 8 described in ~~section 454 of the Social Security Act (42 U.S.C. 654)~~ 42 U.S.C. 654 that has been approved by the  
 9 secretary of health and human services under ~~Part D of Title IV of the Social Security Act (now Subchapter IV)~~  
 10 Title 42, Chapter 7, Subchapter IV, Part D of the United States Code.

11 (b) "State or local child support enforcement agency" means any agency of a state or political subdivision  
 12 operating pursuant to a plan provided for in subsection (1)(a).

13 (c) "Unemployment benefits" means any benefits payable under the Montana unemployment insurance  
 14 law, including amounts payable by the department pursuant to an agreement under any federal law providing for  
 15 benefits, assistance, or allowances with respect to unemployment. These benefits are subject to the provisions  
 16 in Title 40, chapter 5, part 9.

17 (2) An individual filing a new claim for unemployment benefits shall, at the time of filing the claim,  
 18 disclose whether ~~or not~~ the individual owes child support obligations. If an individual discloses that the individual  
 19 owes child support obligations and the individual is determined to be eligible for unemployment benefits, the  
 20 department shall notify the state or local child support enforcement agency enforcing the obligation that the  
 21 individual has been determined to be eligible for unemployment benefits.

22 (3) The department shall deduct and withhold from any unemployment benefits payable to an individual  
 23 owing child support obligations:

24 (a) the amount specified by the individual to the department to be deducted and withheld under this  
 25 subsection if neither subsection (3)(b) nor (3)(c) is applicable;

26 (b) the amount, if any, determined pursuant to an agreement submitted to the department under ~~section~~  
 27 ~~454(19)(B)(i) of the Social Security Act (42 U.S.C. 654(19)(B)(i))~~ 42 U.S.C. 654(19)(B)(i) by the state or local child  
 28 support enforcement agency, unless subsection (3)(c) is applicable; or

29 (c) any amount otherwise required to be deducted and withheld from unemployment benefits pursuant  
 30 to legal process, ~~as that term is defined in section 462(e) of the Social Security Act (42 U.S.C. 662(e))~~, properly

1 served upon the department.

2 (4) The department shall pay any amount deducted and withheld under subsection (3) to the appropriate  
3 state or local child support enforcement agency.

4 (5) Deductions may be made pursuant to this section only if appropriate arrangements have been made  
5 for reimbursement by the state or local child support enforcement agency for the administrative costs incurred  
6 by the department under this section.

7 (6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the  
8 individual as unemployment benefits and paid by the individual to the state or local child support enforcement  
9 agency in satisfaction of the individual's child support obligations."  
10

11 **Section 7.** Section 39-51-3201, MCA, is amended to read:

12 **"39-51-3201. Making false statement or representation or failing to disclose material fact in order**  
13 **to obtain or increase benefits -- administrative penalty and remedy.** (1) (a) A person who makes a false  
14 statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order to  
15 obtain or increase any benefit or other payment under this chapter or under an employment security law of any  
16 other state or territory or the federal government, either for the individual or for any other person, is:

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

20 (ii) required to repay to the department, pursuant to the provisions of 39-51-3206, a sum equal to the  
21 amount wrongfully received by the individual, plus ~~the department may assess a~~ department-assessed penalty  
22 ~~not to exceed 100%~~ equal to 50% of the fraudulently obtained benefits. The department-assessed penalty  
23 incorporates the 15% penalty required under 42 U.S.C. 503(a).

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

28 (2) (a) An individual, other than a person with a bona fide disability that prevents the individual from  
29 making or filing a claim for benefits on the individual's own behalf, who allows or authorizes another person to  
30 make or file a claim for benefits on the individual's behalf without designating that person as an authorized agent

1 is subject to the penalties prescribed in subsection (1).

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

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

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

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

8 (3) ~~All~~ Of the money accruing collected from the penalty penalties under subsection (1)(a), 70% must  
9 be deposited in the ~~federal special revenue~~ account provided for in 39-51-406. The remaining 30% of the  
10 collected penalties must be deposited in the unemployment insurance fund provided for in 39-51-401. Money  
11 deposited in ~~that the~~ the account provided for in 39-51-406 may be appropriated to the department to be used to  
12 detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are  
13 inadequate for these purposes. Money in the account provided for in 39-51-406 not appropriated for these  
14 purposes must be transferred by the department to the unemployment insurance trust fund at the end of each  
15 fiscal year."

16

17 **Section 8.** Section 40-5-901, MCA, is amended to read:

18 **"40-5-901. Definitions.** As used in this part, unless the context requires otherwise, the following  
19 definitions apply:

20 [(1) "Date of hire" means the first day that an employee starts work for which the employee is owed  
21 compensation by the payor of income.]

22 (2) "Department" means the department of public health and human services provided for in 2-15-2201.

23 [(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for an  
24 employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from  
25 the employee's compensation.

26 (b) The term does not include an employee of a federal or state agency performing intelligence or  
27 counterintelligence functions if the head of the agency has determined that reporting pursuant to 40-5-922 with  
28 respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or  
29 intelligence mission.]

30 (4) "Employer" means a person, firm, corporation, association, governmental entity, or labor organization

1 that engages an employee for compensation and withholds federal or state tax liabilities from the employee's  
2 compensation.

3 (5) "Foreign support order" means a support order entered or last modified by a court or administrative  
4 agency of another state, the District of Columbia, the Commonwealth of Puerto Rico, a territory or insular  
5 possession subject to the jurisdiction of the United States, an Indian tribe, or a foreign jurisdiction.

6 (6) "Income withholding" generally means procedures for directing a payor to withhold from an obligor's  
7 income an amount sufficient to pay the obligor's support obligation and to defray arrears that are or may become  
8 due. Specifically:

9 (a) when preceded by "IV-D", income withholding means the procedures set out in Title 40, chapter 5,  
10 part 4; and

11 (b) when preceded by "non IV-D", income withholding means those cases in which an immediate  
12 income-withholding order is issued under 40-5-315 after January 1, 1994.

13 (7) "Interstate case" means a case referred to the department by, or from the department to, another  
14 IV-D agency.

15 [(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.]

16 (9) "Obligee" means the payee under a support order or a person or agency entitled to receive support  
17 payments.

18 (10) "Obligor" means a person who is obligated to pay support under a support order.

19 (11) "Payor" means:

20 (a) an employer or person engaged in a trade or business in this state who engages an employee for  
21 compensation; or

22 (b) when used in context with income withholding, means a person, firm, corporation, association,  
23 employer, trustee, political subdivision, state agency, or agent paying income to an obligor on a periodic basis.

24 [(12) "Rehire" means the first day, following a termination of employment, that an employee begins to  
25 again perform work or provide services for a payor. Termination of employment does not include temporary  
26 separations of less than 60 days from employment, such as unpaid medical leave, an unpaid leave of absence,  
27 or a temporary or seasonal layoff.]

28 (13) "Support order" means a judgment, decree, or order, whether temporary or final, that:

29 (a) is for the benefit of a child or a state agency;

30 (b) provides for monetary support, health care, arrearages, or reimbursement;

1 (c) may include related costs and fees, interest, and similar other relief; and

2 (d) may include an order for maintenance or other support to be paid to a child's custodial parent.

3 (14) "IV-D" or "IV-D case" means a case in which the department is providing services under the  
4 provisions of Title IV-D of the Social Security Act and the regulations promulgated under that act. A IV-D case  
5 also includes a case in which the department is collecting a support debt assigned to this or another state or an  
6 Indian tribe under Title IV-D. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L.  
7 1999.)"

8  
9 **NEW SECTION. Section 9. Notification to tribal governments.** The secretary of state shall send a  
10 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
11 Chippewa tribe.

12  
13 **NEW SECTION. Section 10. Codification instruction.** [Section 1] is intended to be codified as an  
14 integral part of Title 39, chapter 51, part 6, and the provisions of Title 39, chapter 51, part 6, apply to [section 1].  
15

16 **NEW SECTION. Section 11. Contingent termination.** [Section 8] terminates on occurrence of the  
17 contingency contained in section 1, Chapter 27, Laws of 1999.

18 - END -