

HOUSE BILL NO. 261

INTRODUCED BY T. BERRY

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A CHARGE FOR UNEMPLOYMENT INSURANCE MAY NOT BE MADE AGAINST A BUSINESS IMPACTED BY A PRESIDENTIALLY DECLARED NATURAL DISASTER IF EMPLOYEE LAYOFFS ARE DIRECTLY RELATED TO THE DISASTER; REQUIRING VERIFICATION OF EMPLOYER LOCATION IN DISASTER AREA; AMENDING SECTIONS 39-51-301, 39-51-1213, AND 39-51-1214, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

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

**Section 1.** Section 39-51-301, MCA, is amended to read:

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

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

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

(4) (a) The department and the board may jointly or individually issue subpoenas and compel testimony and the production of evidence, including books, records, papers, documents, and other objects that may be necessary and proper in regard to any investigation or proceeding under this chapter.

(b) If a subpoena issued and served under this section is disobeyed or if a witness refuses to testify to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court.

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



1 search if all of the following conditions are met:

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

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

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

8 (c) The department shall verify that an employer who has laid off employees because of a disaster  
9 declared under subsection (5)(a) is in the portion of the state covered by the disaster order. If the employer is  
10 eligible, the department shall implement the provisions of 39-71-1214(2)(h)."

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12 **Section 2.** Section 39-51-1213, MCA, is amended to read:

13 **"39-51-1213. Classification of employers for experience rating purposes.** (1) The department shall  
14 for each calendar year classify employers in accordance with their actual experience in the payment of  
15 contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit  
16 experience. Each employer's rate for a calendar year must be determined on the basis of the employer's record  
17 as of October 1 of the preceding calendar year.

18 (2) In making the classification, each eligible and deficit employer's contribution rate is determined in the  
19 manner set forth below:

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

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

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

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

1 employer on the schedules.

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

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

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

13 (c) If one or more employers on the schedules have experience factors identical to that of the last  
14 employer included in a particular rate class, those employers are included in and assigned the contribution rate  
15 specified for the class, ~~notwithstanding the provisions of 39-51-1214.~~

16 (5) If the taxable payroll amount, the experience factor, or both of any eligible or deficit employer listed  
17 on the schedules is changed, the employer is placed in that position on the schedules that the employer would  
18 have occupied had that employer's taxable payroll amount or experience factor as changed been used in  
19 determining that employer's position in the first instance. However, the change does not affect the position or rate  
20 classification of any other employer listed on the schedules and does not affect the rate determination for previous  
21 years.

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

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27 **Section 3.** Section 39-51-1214, MCA, is amended to read:

28 **"39-51-1214. Benefit payments chargeable to employer experience rating accounts.** (1) Except for  
29 cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period  
30 employers. The benefit charged must be based on the percentage of wages paid by the employer as compared

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

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

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

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

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

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

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

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

12 who:

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

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

16 (g) if the worker separates from employment as a result of domestic violence, a sexual assault, or  
17 stalking pursuant to 39-51-2111;

18 (h) if benefits are paid to a claimant laid off as a direct result of a major natural disaster declared by the  
19 president pursuant to 42 U.S.C. 5170, et seq., if the recipient of the benefits would have been eligible for federal  
20 disaster unemployment assistance with respect to that unemployment except for their receipt of state  
21 unemployment insurance benefits."

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23 **NEW SECTION. Section 4. Retroactive applicability.** [This act] applies retroactively, within the  
24 meaning of 1-2-109, to any claims filed on or after January 1, 2011, that were charged to the account of an  
25 employer with an experience rating if that employer was in an area covered by a disaster declaration under 42  
26 U.S.C. 5170, et seq.

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