

HOUSE BILL NO. 150
INTRODUCED BY R. BITNEY
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT MAINTAINING THE CURRENT EXEMPTION FROM ATTACHMENT FOR UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, OCCUPATIONAL DISEASE, AND SILICOSIS BENEFITS; DEFINING "INSURED WORK"; PROVIDING THAT CERTAIN WAGES CAN BE ATTRIBUTED OR IMPUTED TO TIME OFF FROM WORK FOR UNEMPLOYMENT INSURANCE PURPOSES; ELIMINATING THE NOTICE REQUIREMENT OF AN INTERVIEW IN THE UNEMPLOYMENT INSURANCE LAW; CLARIFYING APPEALS RELATED TO BENEFIT CHARGING ISSUES; AMENDING SECTIONS 30-9-129, 39-51-201, 39-51-1109, 39-51-1214, 39-51-2101, 39-51-2107, 39-51-2202, 39-51-2302, 39-51-2303, 39-51-2304, 39-51-2305, AND 39-51-2402, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 30-9-129, MCA, is amended to read:

"30-9-129. (Effective July 1, 2001) Scope. (1) Except as otherwise provided in subsections (3) and (4), this chapter applies to:

(a) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) an agricultural lien;

(c) a sale of an account, chattel paper, payment intangible, or promissory note;

(d) a consignment;

(e) a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5), to the extent provided in 30-9-130; and

(f) a security interest arising under 30-4-208 or 30-5-118.

(2) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

(3) This chapter does not apply to the extent that:

(a) a statute, regulation, or treaty of the United States preempts this chapter;

(b) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a

security interest created by this state or a governmental unit of this state;

(c) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(d) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under 30-5-134.

(4) This chapter does not apply to:

(a) a landlord's lien, other than an agricultural lien;

(b) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but 30-9-353 applies with respect to priority of the lien;

(c) an assignment of a claim for wages, salary, or other compensation of an employee;

(d) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(e) an assignment of accounts, chattel paper, payment intangibles, or promissory notes that is for the purpose of collection only;

(f) an assignment of a right to payment under a contract to an assignee that is also obliged to perform under the contract;

(g) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(h) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but 30-9-335 and 30-9-342 apply with respect to proceeds and priorities in proceeds;

(i) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(j) a right of recoupment or setoff, but:

(i) 30-9-360 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and

(ii) 30-9-444 applies with respect to defenses or claims of an account debtor;

(k) the creation or transfer of an interest in or lien on real property, including a lease or rents ~~thereunder~~ under the interest in real property, except to the extent that provision is made for:

(i) liens on real property in 30-9-213 and 30-9-328;

- (ii) fixtures in 30-9-354;
- (iii) fixture filings in 30-9-521, 30-9-522, 30-9-532, 30-9-536, and 30-9-539; and
- (iv) security agreements covering personal and real property in 30-9-604;
- (l) an assignment of a claim arising in tort, other than a commercial tort claim, but 30-9-335 and 30-9-342 apply with respect to proceeds and priorities in proceeds; ~~or~~
- (m) an assignment of a deposit account in a consumer transaction, except that 30-9-335 and 30-9-342 apply with respect to proceeds and priorities in proceeds; or
- (n) an assignment of payments made to or on behalf of a claimant pursuant to Title 39, chapter 51, 71, 72, or 73."

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

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

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

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

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

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

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

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

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

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

(9) "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, but 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), 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 that has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

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

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to 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 or 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 who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(16) (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 it 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) Notwithstanding subsection (16)(a), all universities in this state are institutions of higher education for purposes of this part.

(17) "Insured work" includes employment, as defined in 39-51-203, but does not include those services excluded in 39-51-204 except for:

(a) federal civilian service, as defined in 20 CFR, part 609;

(b) federal military service, as defined in 20 CFR, part 614; or

(c) employment, as defined in 20 CFR, part 616.

~~(17)~~(18) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

~~(18)~~(19) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

~~(19)~~(20) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be

paid.

~~(20)~~(21) (a) "Wages", unless specifically exempted under subsection ~~(20)(b)~~ (21)(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 "wages" 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; or

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

~~(21)~~(22) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(22)~~(23) An individual's "weekly benefit amount" means the amount of benefits that the individual would be entitled to receive for 1 week of total unemployment."

Section 3. Section 39-51-1109, MCA, is amended to read:

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

(2) A decision, determination, or redetermination involving contribution liability, contribution rate, application for refund, subject wages, or other tax-related issues must be issued by the department of revenue as provided in Title 15, chapter 1, part 2, and 15-30-257, if applicable. The decision is final unless an interested party entitled to notification follows the uniform dispute review procedures as prescribed in 15-1-211 and 15-30-257, if applicable."

Section 4. Section 39-51-1214, MCA, is amended to read:

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

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

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

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

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

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

(e) if the base period employer is ordered to state or federal active duty in the national guard or reserves.

(3) An appeal of a benefits charging decision must follow the same procedure as an appeal of a decision involving claims for benefits prescribed in part 24 of this chapter."

Section 5. Section 39-51-2101, MCA, is amended to read:

"39-51-2101. (Temporary) Total unemployment -- when. (1) An individual is considered to be totally unemployed in any week during which the individual:

~~(1)(a)~~ performed no insured work in employment and earned no wages for ~~employment~~ insured work;

or

~~(2)~~ (b) performed less than full-time insured work in employment with wages for ~~employment~~ insured work of less than two times the individual's weekly benefit amount.

(2) Payments for vacation, sick leave, or compensatory time or other similar payments made during

periods of temporary layoff, mandated or voluntary vacation periods, or other time off from work when the employment relationship is not terminated may be considered wages earned and attributable to or imputed to the time taken off from work. (Terminates July 1, 2001--sec. 4, Ch. 400, L. 1999.)

39-51-2101. (Effective July 1, 2001) Total unemployment -- when. (1) An individual ~~shall be deemed~~ is considered to be totally unemployed in any week during which the individual performed no work and earned no wages or in a week of less than full-time work with wages of less than two times the individual's weekly benefit amount.

(2) Payments for vacation, sick leave, or compensatory time or other similar payments made during periods of temporary layoff, mandated or voluntary vacation periods, or other time off from work when the employment relationship is not terminated may be considered wages earned and attributable to or imputed to the time taken off from work."

Section 6. Section 39-51-2107, MCA, is amended to read:

"39-51-2107. Services for remuneration insured work to be performed during benefit year as condition for receiving benefits in ~~second~~ subsequent benefit year -- amount required. An individual who received benefits during a benefit year ~~must~~ shall perform ~~services for remuneration following the initial separation from employment in the previous~~ insured work after the beginning of that benefit year as a condition for receiving benefits in a ~~second~~ subsequent benefit year. ~~The service must constitute employment as defined in 39-51-203 and 39-51-204. However, the~~ The individual must have earned wages for insured work equal to or in excess of the lesser of three-thirteenths of his high quarter of his second benefit year the wages in the calendar quarter of the subsequent benefit year in which wages were the highest or 6 six times his the individual's weekly benefit amount of that same in the subsequent benefit year."

Section 7. Section 39-51-2202, MCA, is amended to read:

"39-51-2202. (Temporary) Partial payment of benefits. Partial payment for a week of unemployment, as used in this section, is the claimant's weekly benefit amount less 50% of wages for ~~employment~~ insured work earned in excess of one-fourth of the claimant's weekly benefit amount. ~~The wages for employment and insured work, the one-fourth weekly benefit amount, and the 50% of wages for insured work earned in excess of one-fourth of the claimant's weekly benefit amount,~~ if not a multiple of \$1, must be rounded to the nearest lower full dollar amount. (Terminates July 1, 2001--sec. 4, Ch. 400, L. 1999.)

39-51-2202. (Effective July 1, 2001) Partial payment of benefits. Partial payment for a week of

unemployment, as used in this section, ~~shall be~~ is the claimant's weekly benefit amount less 50% of wages earned in excess of one-fourth of ~~his~~ the claimant's weekly benefit amount. ~~Such~~ The wages ~~and~~, the one-fourth weekly benefit amount, ~~and the 50% of wages earned in excess of one-fourth of the claimant's weekly benefit amount,~~ if not a multiple of \$1, ~~shall~~ must be rounded to the nearest lower full dollar amount."

Section 8. Section 39-51-2302, MCA, is amended to read:

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

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

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

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

(3) To requalify for benefits, an individual shall perform ~~services for which remuneration is received~~ insured work for which wages are earned in an amount equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the individual's enrollment. ~~The services must constitute employment as defined in 39-51-203 and 39-51-204.~~"

Section 9. Section 39-51-2303, MCA, is amended to read:

"39-51-2303. Disqualification for discharge due to misconduct. An individual must be disqualified for benefits after being discharged from insured work:

(1) for misconduct connected with ~~the individual's work~~ or affecting the individual's employment work until the individual has performed ~~services~~:

~~(a) for which remuneration is received~~ insured work for which wages are earned in an amount equal to

or in excess of eight times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred; ~~and; or~~

~~(b) that constitute employment as defined in 39-51-203 and 39-51-204; or~~

(2) for gross misconduct connected with the individual's insured work or committed on the employer's premises, as determined by the department, for a period of 52 weeks."

Section 10. Section 39-51-2304, MCA, is amended to read:

"39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) An individual is disqualified for benefits if the individual fails without good cause either to apply for available and suitable insured work when directed to do so by ~~the employment office or~~ the department or to accept an offer of suitable insured work ~~which that~~ the individual is physically able and mentally qualified to perform ~~or to return to customary self-employment, if any, when directed to do so by the department.~~ The disqualification continues for the week in which the failure occurs and until the individual has performed ~~services for which remuneration is received~~ insured work for which wages are earned in an amount equal to or in excess of six times that individual's weekly benefit amount subsequent to the week the act causing the disqualification occurred, with a reduction in the individual's maximum benefit amount equal to six times the weekly benefit amount, as determined by the department, provided the individual has not left this work under disqualifying circumstances. ~~The services must constitute employment as defined in 39-51-203 and 39-51-204.~~

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

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

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

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

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

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

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

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

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

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the individual's earnings in previous insured work in the individual's customary occupation. No individual, however, is required to accept a job paying less than the federal minimum wage."

Section 11. Section 39-51-2305, MCA, is amended to read:

"39-51-2305. Disqualification when unemployment due to strike. (1) An individual ~~shall~~ must be disqualified for benefits for any week with respect to which the department finds that ~~his~~ the individual's total unemployment is due to a strike ~~which~~ that exists because of a labor dispute at the factory, establishment, or other premises at which ~~he~~ the individual is or was last employed in insured work, ~~provided that~~. However, this subsection ~~shall~~ does not apply if it is shown to the satisfaction of the department that the individual:

(a) ~~he~~ is not participating in or financing or directly interested in the labor dispute ~~which~~ that caused the strike; and

(b) ~~he~~ does not belong to a grade or class of workers of which, immediately before the commencement of the strike, there were members employed at the premises at which the strike occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) If in any case separate branches of work ~~which~~ that are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each ~~such~~ department ~~shall~~ must, for the purpose of this section, be ~~deemed~~ considered to be a separate factory, establishment, or other premises.

(3) If the department, upon investigation, ~~shall find~~ finds that ~~such~~ the labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state ~~wherein~~ in which the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages, or other conditions of work, ~~such~~ the labor dispute ~~shall~~ does not render the workers ineligible for benefits."

Section 12. Section 39-51-2402, MCA, is amended to read:

"39-51-2402. Initial determination -- redetermination. (1) A representative designated by the department and referred to as a deputy shall promptly examine the claim and, on the basis of the facts the deputy has found, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy will

determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The deputy 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. With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in accordance with procedures for unemployment insurance benefit claimant appeals as prescribed in 15-2-302 and 15-30-257. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons for reaching the decision.

(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and other interested parties of the amended decision and the reasons for the decision.

~~(3) A determination or redetermination of an initial or additional claim may not be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.~~

~~(4)~~(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.

~~(5)~~(4) Except as provided in subsection ~~(6)~~ (5), a redetermination of a claim for benefits may not be made after 2 years from the date of the initial determination.

~~(6)~~(5) A redetermination may be made within 3 years from the date of the initial determination of a claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer."

NEW SECTION. Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 14. Effective date -- applicability. [This act] is effective July 1, 2001, and applies to a claim for benefits or an appeal filed on or after July 1, 2001.

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