

SENATE BILL NO. 414

INTRODUCED BY E. BUTTREY

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A DESIGNATION FOR SEASONAL EMPLOYMENT FOR EMPLOYERS PAYING UNEMPLOYMENT INSURANCE; DEFINING "SEASONAL EMPLOYER" AND "SEASONAL EMPLOYEE"; PROVIDING FOR AN APPLICATION PROCESS, FEE, AND EMPLOYEE NOTIFICATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 39-51-406, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

WHEREAS, the state of Montana has many employers who are subject to seasonal change; and

WHEREAS, unemployment insurance does not contemplate seasonal employees of the seasonal employer; and

WHEREAS, reducing the number of employees of a seasonal employer that are eligible for unemployment insurance commensurate with the employer's seasonal business may allow the employer to pay lower amounts to unemployment insurance.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Montana Seasonal Unemployment Insurance Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 6] is to allow a qualifying employer to be recognized as a seasonal employer.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 6], the following definitions apply:

- (1) "Established season" means the period of time, as specified by rule and not exceeding 2 consecutive quarters, in which a seasonal employer uses the services of its seasonal employees.
- (2) (a) "Seasonal employee" means an individual who is employed by a seasonal employer and whose services are performed solely within the established season for that employer.

1 (b) The term does not include:

2 (i) an employee who performs services for the same seasonal employer outside that employer's  
3 established season; ~~or~~

4 (ii) agricultural labor; OR

5 (III) AN EMPLOYEE PAID PREVAILING WAGES AND BENEFITS UNDER FEDERAL OR STATE LAW ANY TIME DURING THE  
6 ESTABLISHED SEASON.

7 (3) (A) "Seasonal employer" means an employer that:

8 ~~(a)(i)~~ meets the definition of employer as defined in 39-51-202;

9 ~~(b)(ii)~~ operates primarily in an industry that the department has designated, by rule, as a seasonal  
10 industry;

11 ~~(c)(iii)~~ pays 75% of the employer's annual payroll during 2 consecutive quarters;

12 ~~(d)(iv)~~ is in good standing with the department; and

13 ~~(e)(v)~~ has been approved by the department as a seasonal employer.

14 (B) THE TERM DOES NOT INCLUDE AN EMPLOYER THAT PAYS PREVAILING WAGES AND BENEFITS UNDER FEDERAL  
15 OR STATE STATUTES TO ANY EMPLOYEES DURING THE ESTABLISHED SEASON.

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17 NEW SECTION. Section 4. Application -- fee -- department approval. (1) An employer may apply  
18 to the department to be designated as a seasonal employer. The application must be submitted no later than 3  
19 months before the employer employs its seasonal workers and must be accompanied by a \$5 fee. The application  
20 must contain business information for the department to determine whether the employer qualifies as a seasonal  
21 employer.

22 (2) (a) The department must review all applications and approve all employers that meet the criteria of  
23 a seasonal employer under [section 3]. The department's determination as to whether the employer qualifies as  
24 a seasonal employer must be provided to the employer in writing within 30 days of the department's receipt of  
25 the employer's completed application. The department may consider the operations of related or affiliated  
26 enterprises or facilities in determining whether an employer qualifies as a seasonal employer.

27 (b) An employer who contests the department's denial of seasonal employer status is entitled to a  
28 hearing governed under the provisions of part 24 of this chapter as if it were a dispute concerning benefits.

29 (3) The department may, after notice and opportunity to be heard, for good cause suspend or revoke  
30 an employer's status as a seasonal employer.

1           (4) THE APPLICATION FEE PROVIDED FOR IN SUBSECTION (1) MUST BE DEPOSITED IN THE UNEMPLOYMENT  
 2 INSURANCE ADMINISTRATION ACCOUNT PROVIDED BY 39-51-406.

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 4           NEW SECTION. Section 5. Seasonal employer contribution -- benefits payable based on services  
 5 in seasonal employment. (1) Seasonal employers shall make contributions to the unemployment system as  
 6 required under this chapter.

7           (2) Benefits based on services in seasonal employment may not be paid to an individual for any week  
 8 of unemployment outside the established season. Benefits based on other than seasonal employment are  
 9 payable in the same amount, on the same terms, and subject to the same conditions as are otherwise provided  
 10 in this chapter.

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 12           NEW SECTION. Section 6. Seasonal employer notification. (1) Prior to each seasonal hiring, a  
 13 seasonal employer shall provide written notification to its seasonal employee applicants of the following:

- 14           (a) that the employer is classified as a seasonal employer by the department;  
 15           (b) that the seasonal employee might not be entitled to unemployment insurance after the established  
 16 season ends; and  
 17           (c) any other information as required by the department.

18           (2) A seasonal employer shall retain records showing that each seasonal employee was informed of the  
 19 seasonal status of the position, acknowledged in writing by the seasonal employer and seasonal employee.

20           (3) For each employee for which the records and written acknowledgment provided by this section are  
 21 not maintained by the employer or furnished to the department upon demand, the employer loses its status as  
 22 a seasonal employer with respect to that employee.

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 24           SECTION 7. SECTION 39-51-406, MCA, IS AMENDED TO READ:

25           "**39-51-406. Unemployment insurance administration account.** (1) There is an account in the federal  
 26 special revenue fund to be known as the unemployment insurance administration account. All money that is  
 27 deposited, appropriated, or paid into this account is available for appropriation to the department. All money in  
 28 the account must be expended solely for the purpose of defraying the costs of administration of this chapter and  
 29 costs of administration of other legislation specifically delegated by the legislature to the department for  
 30 administration of unemployment insurance laws.

1 (2) All money received and deposited in the account from the United States or any agency of the United  
2 States pursuant to section 302 of the Social Security Act, 42 U.S.C. 502, must be expended solely for the purpose  
3 and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this  
4 chapter.

5 (3) The account consists of:

6 (a) all money received from the United States or any agency of the United States pursuant to section  
7 302 of the Social Security Act, 42 U.S.C. 502, as amended; ~~and~~

8 (b) all money, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from  
9 the United States or any agency of the United States that are designated for use in the administration of the  
10 unemployment insurance program; and

11 (c) all application fees collected pursuant to [section 4].

12 (4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account  
13 pursuant to 39-51-403 through 39-51-405 must remain part of the unemployment insurance fund and must be  
14 used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

15 (5) All money in this account must be deposited, administered, and disbursed in the same manner and  
16 under the same conditions and requirements as is provided by law for other accounts. The balance in this account  
17 may not lapse at any time but must be continuously available to the department for expenditure consistent with  
18 this chapter.

19 (6) Any reference to the unemployment insurance administration fund in this code means the  
20 unemployment insurance administration account in the federal special revenue fund."

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22 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 6] are intended to be codified  
23 as an integral part of Title 39, chapter 51, and the provisions of Title 39, chapter 51, apply to [sections 1 through  
24 6].

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26 **NEW SECTION. Section 9. Effective date.** [This act] is effective July 1, 2016.

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