

HOUSE BILL NO. 239

INTRODUCED BY B. HARRIS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING INCOME TAX BENEFITS TO EMPLOYERS AND
5 STUDENTS FOR HIGHER EDUCATION EXPENSES; PROVIDING TAX CREDITS TO EMPLOYERS THAT PAY
6 HIGHER EDUCATION EXPENSES AND STUDENT LOANS ON BEHALF OF CERTAIN EMPLOYEES;
7 PROVIDING AN EXCLUSION FROM STATE ADJUSTED GROSS INCOME FOR STUDENT LOAN
8 REPAYMENTS MADE BY AN EMPLOYER; EXEMPTING EMPLOYER HIGHER EDUCATION EXPENSES AND
9 STUDENT LOAN PAYMENTS FROM WAGES FOR PURPOSES OF UNEMPLOYMENT INSURANCE AND
10 WORKERS' COMPENSATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-2110,
11 39-51-201, AND 39-71-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
12 APPLICABILITY DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 NEW SECTION. **Section 1. Educational assistance program -- individual income tax credit.** There
17 is a credit against taxes otherwise imposed by this chapter for expenses paid or incurred by an employer for
18 educational assistance on behalf of an employee. The credit must be computed and administered as provided
19 in [section 2].

20
21 NEW SECTION. **Section 2. Educational assistance program tax credit.** (1) There is allowed as a
22 credit against the tax imposed by chapter 30 or this chapter a percentage of the amount paid or expense incurred
23 by an employer for educational assistance on behalf of an employee who worked in Montana for at least 160
24 hours during the tax year.

25 (2) Subject to subsection (3), the amount of the credit is 25% of the amount paid by an employer and
26 excluded from the gross income of an employee under section 127 of the Internal Revenue Code, 26 U.S.C. 127.

27 (3) (a) The credit allowed by this section may not be refunded if the employer has a tax liability less than
28 the amount of the credit.

29 (b) There is no carryback or carryforward of the credit permitted under this section.

30 (c) A credit is not allowed under this section with respect to any amount deducted by the employer for

1 state tax purposes as a business expense. This section does not prevent an employer from claiming a credit
2 under this section instead of a deduction.

3 (d) If the credit allowed under this section is claimed by a small business corporation, as defined in
4 15-30-3301, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or
5 partners using the same proportion as used to report the entity's income or loss.

6 (4) The employer shall provide to the department, on a form provided by the department, documentation
7 of the amount of the expenses paid or incurred by the employer for educational assistance on behalf of an
8 employee in any tax year for which the credit is claimed under this section and the employee's taxpayer
9 identification number.

10 (5) The department shall adopt rules necessary to implement and administer [section 1] and this section.
11

12 **NEW SECTION. Section 3. Employer individual income tax credit for employee student loan**
13 **repayment.** There is a credit against taxes otherwise imposed by this chapter for making student loan
14 repayments for an employee. The credit must be computed and administered as provided in [section 4].
15

16 **NEW SECTION. Section 4. Employer income tax credit for employee student loan repayment.** (1)
17 Subject to the conditions of this section, an employer is allowed a credit against the taxes imposed by chapter
18 30 or this chapter in the amount of 25% of a student loan repayment of principal and interest made by the
19 employer directly to the relevant lender or lenders on behalf of each qualified employee of the employer. The
20 credit allowed under this section applies only to student loans incurred by a qualified employee while attending
21 an accredited institution of higher education.

22 (2) The employer is allowed a credit of up to \$450 for each qualified employee for whom the employer
23 makes student loan repayments in the tax year. To qualify for the credit for a qualified employee under this
24 section, the student loan repayment for a qualified employee must be at least \$800 in the tax year.

25 (3) (a) The credit for a student loan repayment made by the employer for a qualified employee may be
26 claimed for no more than 3 tax years.

27 (b) The credit allowed by this section may not be refunded if the employer has a tax liability less than
28 the amount of the credit.

29 (c) There is no carryback or carryforward of the credit permitted under this section.

30 (d) If the credit allowed under this section is claimed by a small business corporation, as defined in

1 15-30-3301, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or
2 partners using the same proportion as used to report the entity's income or loss.

3 (4) The employer shall provide to the department, on a form provided by the department, documentation
4 of the amount of the student loan repayment made on behalf of a qualified employee in any tax year for which
5 a credit is claimed under this section and the qualified employee's taxpayer identification number.

6 (5) As used in this section, the following definitions apply:

7 (a) "Qualified employee" means an employee:

8 (i) who has been employed by the employer for at least 160 hours in Montana during the tax year; and

9 (ii) for whom a tax credit has not been claimed for more than 3 tax years, regardless of whether the
10 employee is a qualified employee of one or more employers.

11 (b) "Student loan" means a student educational loan for higher education expenses that is authorized
12 by Title 20 of the United States Code.

13 (6) The department shall adopt rules that are necessary to implement and administer [section 3] and this
14 section.

15

16 **Section 5.** Section 15-30-2110, MCA, is amended to read:

17 **"15-30-2110. Adjusted gross income.** (1) Subject to subsection (14), adjusted gross income is the
18 taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62,
19 and in addition includes the following:

20 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other
21 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana
22 under federal law;

23 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
24 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

25 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a
26 reduction of Montana income tax liability as determined under subsection (15);

27 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue
28 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

29 (d) depreciation or amortization taken on a title plant as defined in 33-25-105;

30 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the

1 amount recovered reduced the taxpayer's Montana income tax in the year deducted;

2 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of
3 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution
4 of the same estate or trust for the same tax period; and

5 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), the amount of any dividend
6 to the extent that the dividend is not included in federal adjusted gross income.

7 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not
8 include the following, which are exempt from taxation under this chapter:

9 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a
10 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt
11 from taxation by Montana under federal law;

12 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
13 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

14 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
15 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

16 (c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (16), the first \$4,070 of all
17 pension and annuity income received as defined in 15-30-2101;

18 (ii) subject to subsection (16), for pension and annuity income described under subsection (2)(c)(i), as
19 follows:

20 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
21 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
22 excess of \$33,910 as shown on the taxpayer's return;

23 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
24 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
25 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910
26 as shown on their joint return;

27 (d) all Montana income tax refunds or tax refund credits;

28 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

29 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section
30 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January

- 1 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,
2 or lodging;
- 3 (g) all benefits received under the workers' compensation laws;
- 4 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
5 employee under federal law;
- 6 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
7 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 8 (j) principal and income in a medical care savings account established in accordance with 15-61-201
9 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a
10 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- 11 (k) principal and income in a first-time home buyer savings account established in accordance with
12 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
13 of a single-family residence;
- 14 (l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition
15 program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal
16 Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of
17 a designated beneficiary;
- 18 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
19 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 20 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
21 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
22 of the same estate or trust for the same tax period;
- 23 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch
24 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction
25 is not provided for federal income tax purposes;
- 26 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant
27 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and
28 taxpayer meet the filing requirements in 15-30-2602.
- 29 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
30 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;

- 1 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero;
- 2 (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in
3 15-31-163; ~~and~~
- 4 (t) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to
5 15-30-3104; and
- 6 (u) student loan repayments made on behalf of the taxpayer pursuant to [section 3 or 4]. If a licensed
7 health care facility claims the credit under [section 3 or 4] for a health care professional that meets the
8 requirements of subsection (13)(a), the exclusion from adjusted gross income of the student loan repayment is
9 calculated pursuant to subsection (13).
- 10 (3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall
11 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as
12 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election
13 is effective.
- 14 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
15 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
16 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and
17 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries
18 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must
19 be made to determine the amount of income or loss of the partnership or small business corporation.
- 20 (5) Married taxpayers filing a joint federal return who are required to include part of their social security
21 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal
22 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement
23 benefits when they file separate Montana income tax returns. The federal base must be split equally on the
24 Montana return.
- 25 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
26 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
27 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
28 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
29 must be split equally on each return.
- 30 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and

1 who file separate Montana income tax returns are not required to recompute allowable passive losses according
2 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal
3 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must
4 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

5 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a
6 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.
7 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is
8 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

9 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a
10 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate
11 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.
12 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted
13 gross income.

14 (b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and
15 related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana
16 income tax returns may claim the same amount of the deduction that is allowed on the federal return. The
17 deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross
18 income.

19 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end
20 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income
21 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is
22 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the
23 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the
24 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
25 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted
26 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage
27 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting
28 or expected to last at least 12 months.

29 (11) (a) An individual who contributes to one or more accounts established under the Montana family
30 education savings program or to a qualified tuition program established and maintained by another state as

1 provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted
2 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each
3 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses
4 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The
5 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account
6 of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the
7 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect
8 to withdrawals of contributions that reduced adjusted gross income.

9 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in
10 15-62-208.

11 (12) (a) An individual who contributes to one or more accounts established under the Montana achieving
12 a better life experience program or to a qualified program established and maintained by another state as
13 provided by section 529A(e)(7) of the Internal Revenue Code, 26 U.S.C. 529A(e)(7), may reduce adjusted gross
14 income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse
15 is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions to the accounts. Spouses may
16 jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The
17 reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an
18 account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild
19 if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with
20 respect to withdrawals of contributions that reduced adjusted gross income.

21 (b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in
22 53-25-118.

23 (13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection
24 (13)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

25 (i) is a health care professional licensed in Montana as provided in Title 37;

26 (ii) is serving a significant portion of a designated geographic area, special population, or facility
27 population in a federally designated health professional shortage area, a medically underserved area or
28 population, or a federal nursing shortage county as determined by the secretary of health and human services
29 or by the governor;

30 (iii) has had a student loan incurred as a result of health-related education; and

1 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment
2 program described in subsection (13)(b) as an incentive to practice in Montana.

3 (b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or
4 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as
5 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility
6 as a licensed health care professional.

7 (14) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of
8 capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are
9 determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

10 (15) A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the
11 following order as applicable:

12 (a) to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax
13 year;

14 (b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year
15 but did not result in a reduction in state income tax liability in that prior tax year; and

16 (c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year
17 and that reduced the taxpayer's state income tax liability in that prior tax year.

18 (16) By November 1 of each year, the department shall multiply the amount of pension and annuity
19 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)
20 by the inflation factor for the following tax year, rounded to the nearest \$10. The resulting amounts are effective
21 for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c).
22 (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates
23 on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(t) terminates December 31, 2023--sec.
24 33, Ch. 457, L. 2015.)"

25

26 **Section 6.** Section 39-51-201, MCA, is amended to read:

27 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise,
28 the following definitions apply:

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

1 (2) "Base period" means:

2 (a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an
3 individual's benefit year;

4 (b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4
5 most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;

6 (c) in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of
7 labor of the United States, the period applicable under the unemployment law of the paying state; or

8 (d) for an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state
9 because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United
10 States, the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for
11 unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

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

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

20 (5) "Board" means the unemployment insurance appeals board provided for in Title 2, chapter 15, part
21 17.

22 (6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June
23 30, September 30, or December 31.

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

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

27 (9) (a) "Domestic or household service" means employment of persons other than members of the
28 household for the purpose of tending to the aid and comfort of the employer or members of the employer's family,
29 including but not limited to housecleaning and yard work.

30 (b) The term does not include employment beyond the scope of normal household or domestic duties,

1 such as home health care or domiciliary care.

2 (10) "Employing unit" means any individual or organization, including the state government and any of
3 its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate,
4 joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with
5 the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee
6 or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals
7 perform or performed services within this state, except as provided under 39-51-204(1)(a) and (1)(j). All
8 individuals performing services within this state for any employing unit that maintains two or more separate
9 establishments within this state are considered to be employed by a single employing unit for all the purposes
10 of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee
11 of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether
12 the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the
13 employing unit has actual or constructive knowledge of the work.

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

18 (12) "Fund" means the unemployment insurance fund established by this chapter to which all
19 contributions and payments in lieu of contributions must be paid and from which all benefits provided under this
20 chapter must be paid.

21 (13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for
22 which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant
23 and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

24 (14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a
25 hospital.

26 (15) "Independent contractor" means an individual working under an independent contractor exemption
27 certificate provided for in 39-71-417.

28 (16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education
29 Assistance Act, 25 U.S.C. 450b(e).

30 (17) (a) "Institution of higher education", for the purposes of this part, means an educational institution

1 that:

2 (i) admits as regular students only individuals having a certificate of graduation from a high school or the
3 recognized equivalent of a certificate;

4 (ii) is legally authorized in this state to provide a program of education beyond high school;

5 (iii) provides an educational program for which the institution awards a bachelor's or higher degree or
6 provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of
7 postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a
8 recognized occupation; and

9 (iv) is a public or other nonprofit institution.

10 (b) All universities in this state are institutions of higher education for purposes of this part.

11 (18) "Licensed and practicing health care provider" means a health care provider who is primarily
12 responsible for the treatment of a person seeking unemployment insurance benefits and who is:

13 (a) licensed to practice in this state as:

14 (i) a physician under Title 37, chapter 3;

15 (ii) a dentist under Title 37, chapter 4;

16 (iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse
17 practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

18 (iv) a physical therapist under Title 37, chapter 11;

19 (v) a chiropractor under Title 37, chapter 12;

20 (vi) a clinical psychologist under Title 37, chapter 17; or

21 (vii) a physician assistant under Title 37, chapter 20; or

22 (b) with respect to a person seeking unemployment insurance benefits who resides outside of this state,
23 a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in
24 the jurisdiction where the person seeking the benefit lives.

25 (19) (a) "Misconduct" includes but is not limited to the following conduct by an employee:

26 (i) willful or wanton disregard of the rights, title, and interests of a fellow employee or the employer,
27 including:

28 (A) insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions,
29 processes, or instructions of the employer;

30 (B) repeated inexcusable tardiness following warnings by the employer;

- 1 (C) dishonesty related to employment, including but not limited to deliberate falsification of company
2 records, theft, deliberate deception, or lying;
- 3 (D) false statements made as part of a job application process, including but not limited to deliberate
4 falsification of the individual's criminal history, work record, or educational or licensure achievements;
- 5 (E) repeated and inexcusable absences, including absences for which the employee was able to give
6 advance notice and failed to do so;
- 7 (F) deliberate acts that are illegal, provoke violence or violation of the law, or violate a collective
8 bargaining agreement by which the employee is covered. However, an employee who engages in lawful union
9 activity may not be disqualified because of misconduct under this subsection (19)(a)(i)(F).
- 10 (G) violations of a company rule if the rule is reasonable and if the claimant knew or should have known
11 of the existence of the rule; or
- 12 (H) actions by the claimant who, while acting within the scope of employment, commits violations of law
13 that significantly affect the claimant's job performance or that significantly harm the employer's ability to do
14 business;
- 15 (ii) deliberate violations or disregard of established employer standards or of standards of behavior that
16 the employer has the right to expect of an employee;
- 17 (iii) carelessness or negligence that causes or is likely to cause serious bodily harm to the employer or
18 a fellow employee; or
- 19 (iv) carelessness or negligence of a degree or that reoccurs to a degree to show an intentional or
20 substantial disregard of the employer's interest.
- 21 (b) The term does not include:
- 22 (i) inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;
- 23 (ii) inadvertent or ordinary negligence in isolated instances; or
- 24 (iii) good faith errors in judgment or discretion.
- 25 (20) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code,
26 26 U.S.C. 132.
- 27 (21) "State" includes, in addition to the states of the United States of America, the District of Columbia,
28 Puerto Rico, the Virgin Islands, and Canada.
- 29 (22) "Taxes" means contributions and assessments required under this chapter but does not include
30 penalties or interest for past-due or unpaid contributions or assessments.

1 (23) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise
2 that is wholly owned by that tribe.

3 (24) "Unemployment insurance administration fund" means the unemployment insurance administration
4 fund established by this chapter from which administrative expenses under this chapter must be paid.

5 (25) (a) "Wages", unless specifically exempted under subsection (25)(b), means all remuneration payable
6 for personal services, including the cash value of all remuneration paid in any medium other than cash. The
7 reasonable cash value of remuneration payable in any medium other than cash must be estimated and
8 determined pursuant to rules prescribed by the department. The term includes but is not limited to:

9 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness
10 periods;

11 (ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service
12 by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

13 (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are
14 documented by the employee to the employer for tax purposes.

15 (b) The term does not include:

16 (i) the amount of any payment made by the employer for employees, if the payment was made for:

17 (A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal
18 Revenue Code;

19 (B) sickness or accident disability under a workers' compensation policy;

20 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
21 health insurance for the employee or the employee's immediate family; or

22 (D) death, including life insurance for the employee or the employee's immediate family;

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

25 (iii) a no-additional-cost service;

26 (iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers
27 program, 19 U.S.C. 2318; or

28 (v) the amount paid as a salary, draw, or profit distribution to a sole proprietor, a working member of a
29 partnership, or a member of a limited liability company that is treated as a partnership or sole proprietorship
30 pursuant to 39-51-207 or to a partner in a limited partnership that has filed with the secretary of state when the

1 salary, draw, or profit distribution is paid directly by the enterprise in which the payee has an ownership interest;
 2 or

3 (vi) expenses paid or incurred by an employer for educational assistance on behalf of an employee
 4 provided for in [sections 1 and 2] or student loan repayments for an employee provided for in [sections 3 and 4].

5 (26) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

6 (27) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive
 7 for 1 week of total unemployment."

8

9 **Section 7.** Section 39-71-123, MCA, is amended to read:

10 **"39-71-123. Wages defined.** (1) "Wages" means all remuneration paid for services performed by an
 11 employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all
 12 remuneration paid in any medium other than cash. The term includes but is not limited to:

13 (a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays,
 14 vacations, and periods of sickness;

15 (b) backpay or any similar pay made for or in regard to previous service by the employee for the
 16 employer, other than retirement or pension benefits from a qualified plan;

17 (c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented
 18 by the employee to the employer for tax purposes;

19 (d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken
 20 by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or
 21 provided services for that remuneration;

22 (e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based
 23 on its actual value; and

24 (f) payments made to an employee on any basis other than time worked, including but not limited to
 25 piecework, an incentive plan, or profit-sharing arrangement.

26 (2) The term "wages" does not include any of the following:

27 (a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other
 28 expenses, as set forth in department rules;

29 (b) the amount of the payment made by the employer for employees, if the payment was made for:

30 (i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal

1 Revenue Code;

2 (ii) sickness or accident disability under a workers' compensation policy;

3 (iii) medical or hospitalization expenses in connection with sickness or accident disability, including health

4 insurance for the employee or the employee's immediate family;

5 (iv) death, including life insurance for the employee or the employee's immediate family;

6 (c) vacation or sick leave benefits accrued but not paid;

7 (d) special rewards for individual invention or discovery; or

8 (e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201;

9 or

10 (f) expenses paid or incurred by an employer for educational assistance on behalf of an employee

11 provided for in [sections 1 and 2] or student loan repayments for an employee provided for in [sections 3 and 4].

12 (3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual
13 earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the
14 term of employment for the same employer is less than four pay periods, the employee's wages are the hourly
15 rate times the number of hours in a week for which the employee was hired to work.

16 (b) For good cause shown, if the use of the last four pay periods does not accurately reflect the
17 claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for
18 an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period,
19 including periods of idleness or seasonal fluctuations.

20 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent
21 employments, the average actual wages must be calculated as provided in subsection (3). As used in this
22 subsection, "concurrent employment" means employment in which the employee was actually employed at the
23 time of the injury and would have continued to be employed without a break in the term of employment if not for
24 the injury.

25 (b) Except as provided in 39-71-118(10)(c), the compensation benefits for a covered volunteer must be
26 based on the average actual wages in the volunteer's regular employment, except self-employment as a sole
27 proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

28 (c) The compensation benefits for an employee working at two or more concurrent remunerated
29 employments must be based on the aggregate of average actual wages of all employments, except for the wages
30 earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be

1 covered, from which the employee is disabled by the injury incurred.

2 (5) For the purposes of calculating compensation benefits for an employee working for an employer, as
3 provided in 39-71-117(1)(d), and for calculating premiums to be paid by that employer, the wages must be based
4 upon all hours worked multiplied by the mean hourly wage by area, as published by the department in the edition
5 of Montana Informational Wage Rates by Occupation, adopted annually by the department, that is in effect as
6 of the date of injury or for the period in which the premium is due."

7
8 **NEW SECTION. Section 8. Codification instruction.** (1) [Sections 1 and 3] are intended to be codified
9 as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1 and 3].

10 (2) [Sections 2 and 4] are intended to be codified as an integral part of Title 15, chapter 31, and the
11 provisions of Title 15, chapter 31, apply to [sections 2 and 4].

12

13 **NEW SECTION. Section 9. Effective date.** [This act] is effective on passage and approval.

14

15 **NEW SECTION. Section 10. Retroactive applicability.** [This act] applies retroactively, within the
16 meaning of 1-2-109, to tax years beginning after December 31, 2016.

17

- END -