

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING TIPS FROM THE DEFINITION OF WAGES
5 RELATING TO UNEMPLOYMENT INSURANCE; AND AMENDING SECTIONS 15-31-125 AND 39-51-201,
6 MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 15-31-125, MCA, is amended to read:

11 **"15-31-125. Determination of tax credit.** (1) A new or expanding manufacturing corporation may
12 receive an income tax credit based on a percentage of wages paid its new employees within this state for a
13 period of 3 years as provided in this section. For the first 3 years of operation of a new corporation or the first 3
14 years of expansion of an expanding corporation, a credit of 1% of the total new wages paid in this state, ~~as~~
15 ~~wages are defined in 39-51-201,~~ may be allowed. In determining total wages for an expanding corporation, only
16 those wages paid in support of the expansion are considered in ascertaining the credit. The payroll and number
17 of jobs of the corporation in the 12-month period immediately preceding the expansion are averaged to
18 determine eligibility for the credit.

19 (2) For the purposes of this section, "wages" means wages as defined in 39-51-201, including tips or
20 other gratuities received by the employee, to the extent that the tips or other gratuities are documented by the
21 employee to the employer for tax purposes."

22
23 **Section 2.** Section 39-51-201, MCA, is amended to read:

24 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires
25 otherwise, the following definitions apply:

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

28 (2) "Base period" means:

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

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

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

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

11 (3) "Benefit year" means the 52-consecutive-week period beginning with the first day of the calendar
12 week in which an individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new
13 valid claim would result in overlapping any quarter of the base period of a previously filed new claim. A
14 subsequent benefit year may not be established in Montana until the expiration of the current benefit year.
15 However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of
16 labor of the United States, the benefit year is the period applicable under the unemployment law of the paying
17 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,
21 part 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
25 by 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
27 17.

28 (9) (a) "Domestic or household service" means employment of persons other than members of the

1 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
2 family, including but not limited to housecleaning and yard work.

3 (b) The term does not include employment beyond the scope of normal household or domestic duties,
4 such as home health care or domiciliary care.

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

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

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

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

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

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

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

5 (17) (a) "Institution of higher education", for the purposes of this part, means an educational institution
6 that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) with respect to a person seeking unemployment insurance benefits who resides outside of this
28 state, a health care provider licensed or certified as a member of one of the professions listed in subsection

1 (18)(a) in the jurisdiction where the person seeking the benefit lives.

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

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

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

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

8 (C) dishonesty related to employment, including but not limited to deliberate falsification of company
9 records, theft, deliberate deception, or lying;

10 (D) false statements made as part of a job application process, including but not limited to deliberate
11 falsification of the individual's criminal history, work record, or educational or licensure achievements;

12 (E) repeated and inexcusable absences, including absences for which the employee was able to give
13 advance notice and failed to do so;

14 (F) deliberate acts that are illegal, provoke violence or violation of the law, or violate a collective
15 bargaining agreement by which the employee is covered. However, an employee who engages in lawful union
16 activity may not be disqualified because of misconduct under this subsection (19)(a)(i)(F).

17 (G) violations of a company rule if the rule is reasonable and if the claimant knew or should have
18 known of the existence of the rule; or

19 (H) actions by the claimant who, while acting within the scope of employment, commits violations of
20 law that significantly affect the claimant's job performance or that significantly harm the employer's ability to do
21 business;

22 (ii) deliberate violations or disregard of established employer standards or of standards of behavior that
23 the employer has the right to expect of an employee;

24 (iii) carelessness or negligence that causes or is likely to cause serious bodily harm to the employer or
25 a fellow employee; or

26 (iv) carelessness or negligence of a degree or that reoccurs to a degree to show an intentional or
27 substantial disregard of the employer's interest.

28 (b) The term does not include:

- 1 (i) inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;
- 2 (ii) inadvertent or ordinary negligence in isolated instances; or
- 3 (iii) good faith errors in judgment or discretion.

4 (20) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue
5 Code, 26 U.S.C. 132.

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

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

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

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

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

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

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

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

25 (b) The term does not include:

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

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

- 1 (B) sickness or accident disability under a workers' compensation policy;
- 2 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
- 3 health insurance for the employee or the employee's immediate family; or
- 4 (D) death, including life insurance for the employee or the employee's immediate family;
- 5 (ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other
- 6 expenses, as set forth in department rules;
- 7 (iii) a no-additional-cost service;
- 8 (iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers
- 9 program, 19 U.S.C. 2318; ~~or~~
- 10 (v) the amount paid as a salary, draw, or profit distribution to a sole proprietor, a working member of a
- 11 partnership, or a member of a limited liability company that is treated as a partnership or sole proprietorship
- 12 pursuant to 39-51-207 or to a partner in a limited partnership that has filed with the secretary of state when the
- 13 salary, draw, or profit distribution is paid directly by the enterprise in which the payee has an ownership interest;
- 14 or
- 15 (vi) tips or other gratuities received by the employee, to the extent that the tips or other gratuities are
- 16 documented by the employee to the employer for tax purposes.
- 17 (26) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.
- 18 (27) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to
- 19 receive for 1 week of total unemployment."

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