

HOUSE BILL NO. 54

INTRODUCED BY A. PERSON

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE TITLE USED TO IDENTIFY THE UNITED STATES OFFICIAL RESPONSIBLE FOR CERTAIN ACTIONS UNDER THE SOCIAL SECURITY ACT; PROVIDING A DEFINITION OF "COMMISSIONER OF SOCIAL SECURITY"; AND AMENDING SECTIONS 19-1-102, 19-1-304, 19-1-401, 19-1-402, AND 19-1-823, MCA."

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

Section 1. Section 19-1-102, MCA, is amended to read:

"19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Commissioner of social security" means the commissioner of the United States social security administration or an individual to whom the commissioner of social security has delegated any function under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions, except:

(a) with respect to an action taken prior to April 11, 1953, the term means the federal security administrator or an individual to whom the administrator delegated any function; and

(b) with respect to an action taken on or after April 11, 1953, through March 30, 1995, the term means the secretary of the United States department of health and human services or an individual to whom the secretary delegated any function.

~~(1)~~(2) "Employee" means an elective or appointive officer or employee of the state or a political subdivision of the state.

~~(2)~~(3) "Employee tax" means the tax imposed by section 3101 of the Internal Revenue Code, 26 U.S.C. 3101, as amended.

~~(3)~~(4) (a) "Employment" means any service performed for the employer by an employee ~~in the employ~~ of the state or any political subdivision of the state ~~for the employer~~, except:

(i) service that in the absence of an agreement entered into under this chapter would constitute employment as defined in the Social Security Act; or

1 (ii) service that under the Social Security Act may not be included in an agreement between the state and
2 the ~~secretary of health and human services~~ commissioner of social security entered into under this chapter.

3 (b) Service performed by civilian employees of national guard units is specifically included within the term
4 ~~employment~~ "employment".

5 (c) Service that under the Social Security Act may be included in an agreement only upon certification
6 by the governor in accordance with section 218(d)(3) of that act is included in the term ~~employment~~ "employment"
7 if and when the governor issues, with respect to the service, a certificate to the ~~secretary of health and human~~
8 ~~services~~ commissioner of social security pursuant to 19-1-304.

9 ~~(4)~~(5) "Federal Insurance Contributions Act" means subchapters A and B of chapter 21 of the Internal
10 Revenue Code.

11 ~~(5)~~(6) "Political subdivision" means an instrumentality of the state, of one or more of its political
12 subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations, but
13 only if the instrumentality is a legally constituted entity that is legally separate and distinct from the state or
14 subdivision and only if its employees are not by virtue of their relation to the entity employees of the state or
15 subdivision. The term includes special districts or authorities created by the legislature or local governments,
16 including but not limited to school districts and housing authorities.

17 ~~(6)~~ "~~Secretary of health and human services~~" means the ~~secretary of the United States department of~~
18 ~~health and human services. The term includes any individual to whom the secretary of health and human services~~
19 ~~has delegated any functions under the Social Security Act with respect to coverage under that act of employees~~
20 ~~of states and their political subdivisions and, with respect to any action taken prior to April 11, 1953, includes the~~
21 ~~federal security administrator and any individual to whom the administrator had delegated any function.~~

22 (7) "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat.
23 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant to the
24 act, as the act has been and may be amended.

25 (8) "State agency" means the department of administration provided for in 2-15-1001.

26 (9) "Wages" means all remuneration for employment, including the cash value of all remuneration paid
27 in any medium other than cash, except that the term does not include that part of remuneration that, even if it
28 were for employment within the meaning of the Federal Insurance Contributions Act, would not constitute wages
29 within the meaning of that act."
30

1 **Section 2.** Section 19-1-304, MCA, is amended to read:

2 **"19-1-304. Certification by governor.** Upon receiving satisfactory evidence that with respect to a
3 referendum the conditions specified in section 218(d)(3) of the Social Security Act (42 U.S.C. 418(d)(3)) have
4 been met, the governor shall certify the results of the referendum to the ~~secretary of health and human services~~
5 commissioner of social security."

6

7 **Section 3.** Section 19-1-401, MCA, is amended to read:

8 **"19-1-401. Authority for federal-state agreement.** The state agency, with the approval of the governor,
9 may enter, on behalf of the state, into an agreement with the ~~secretary of health and human services~~
10 commissioner of social security, consistent with the terms and provisions of this chapter, for the purpose of
11 extending the benefits of the federal old age and survivors' insurance system to employees of the state or any
12 political subdivision of the state with respect to services specified in the agreement that constitute "employment",
13 as defined in 19-1-102."

14

15 **Section 4.** Section 19-1-402, MCA, is amended to read:

16 **"19-1-402. Contents of federal-state agreement.** The agreement authorized by 19-1-401 may contain
17 provisions relating to coverage, benefits, effective date, and modification of the agreement, administration, and
18 other appropriate provisions as the state agency and ~~secretary of health and human services~~ the commissioner
19 of social security agree upon. Except as otherwise required or permitted by the Social Security Act regarding the
20 services to be covered, the agreement must provide that:

21 (1) benefits will be provided for employees whose services are covered by the agreement and for their
22 dependents and survivors on the same basis as though the services constituted employment within the meaning
23 of Title II of the Social Security Act;

24 (2) the agreement must be effective with respect to services in employment covered by the agreement
25 performed after a date specified in the agreement, but may not be effective with respect to services performed
26 prior to the first day of the calendar year in which the agreement is entered into or in which the modification of
27 the agreement making it applicable to services is entered into, except that the effective date may be made
28 retroactive to the extent permitted by section 218(e) of the Social Security Act, 42 U.S.C. 418(e);

29 (3) all services that constitute employment and are performed by employees of the state must be covered
30 by the agreement; and

1 (4) all services that constitute employment, are performed by employees of a political subdivision of the
2 state, and are covered by a plan that is in conformity with the terms of the agreement and that has been approved
3 by the state agency under Title 19, chapter 1, part 5, must be covered by the agreement."
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5 **Section 5.** Section 19-1-823, MCA, is amended to read:

6 **"19-1-823. Certification by governor.** If the majority of votes cast in the referendum ~~indicates~~ indicate
7 that the majority of voters desire it, the governor shall certify to the ~~secretary of health and human services~~
8 commissioner of social security that the conditions set forth in section 218 of the Social Security Act (42 U.S.C.
9 418) have been complied with in respect to the retirement system voting in the referendum."
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