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## SENATE BILL NO. 467

INTRODUCED BY D. GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE LIABILITY OF A RAILROAD COMPANY OR MINING COMPANY FOR NEGLIGENCE OF EMPLOYEES DOES NOT APPLY WHEN AN EMPLOYEE IS COVERED BY A COLLECTIVE BARGAINING AGREEMENT; AMENDING SECTIONS 39-2-703 AND 39-2-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, Montana's Wrongful Discharge From Employment Act (Act) was created as the exclusive system to compensate an employee for a wrongful discharge by an employer, as implemented in 1987 by the Legislature in Title 39, chapter 2, part 9, MCA, except for those employees covered by a collective bargaining agreement; and

WHEREAS, the exclusive remedy provisions of the Act in Montana can be described as the part of the law that is applicable to people who assert a claim that their employers wrongfully discharged them, while exempting from the Act employees covered under a collective bargaining agreement or subject to a state or federal statute with a remedy for contesting the dispute and preempting common law remedies; and

WHEREAS, in 1905, the Montana Legislature enacted section 39-2-703, MCA, which allowed an injured employee a claim of relief against an employer for negligence, predating the Act, and the Workers' Compensation Act, which was enacted in 1915; and

WHEREAS, the Federal Employers' Liability Act has controlled the compensation for physical injuries to railroad workers since its inception in 1908, when it was enacted after the enactment of section 39-2-703, MCA; and

WHEREAS, in a 2000 decision, *Winslow v. Montana Rail Link, Inc.*, 2000 MT 292, the Montana Supreme Court reversed the District Court, in part, applying section 39-2-703, MCA, for the first time since its passage in 1905 to a wrongful discharge action by a railroad employee, and the District Court held that section 39-2-703, MCA, was intended to protect employees from personal injuries caused by coworkers and did not provide a cause of action for wrongful termination; and

WHEREAS, the Montana Supreme Court held that section 39-2-703, MCA, created a statutory remedy under state law for mismanagement of claims by an employee against an employer; and

1 WHEREAS, the Montana Supreme Court, in Winslow, held that the Legislature, in keeping section  
 2 39-2-703, MCA, codified after the creation of the Federal Employers' Liability Act, must have intended  
 3 section 39-2-703, MCA, with a scope broader than the Federal Employers' Liability Act, to include more  
 4 than personal injuries; and

5 WHEREAS, the statutory remedy used by the Montana Supreme Court in Winslow creates a  
 6 separate remedy outside of the terms of a collective bargaining agreement and the Act and the Act and  
 7 certain collective bargaining agreements were intended to be exclusive remedies, and therefore, the  
 8 Montana Supreme Court's decision in Winslow runs contrary to the intent of the Legislature as this  
 9 decision created a new remedy for relief; and

10 WHEREAS, the exclusive remedy provision in the Act provides that a discharged employee has a  
 11 cause of action under the Act unless exempted with a collective bargaining agreement, either of which  
 12 control the process for a terminated employee.

13

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

15

16 **Section 1.** Section 39-2-703, MCA, is amended to read:

17 **"39-2-703. Liability of railway corporation for negligence of fellow ~~servants~~ employees.** (1) ~~Every~~  
 18 Each person or corporation operating a railway or railroad in this state is liable for all damages sustained  
 19 by ~~any an~~ an employee of ~~such the~~ person or corporation ~~in consequence of~~ caused by the neglect of ~~any~~  
 20 ~~other~~ another employee, ~~thereof or~~ caused by the mismanagement of ~~any other~~ another employee, ~~thereof~~  
 21 and ~~in consequence~~ as a result of the willful ~~wrongs~~ misconduct, whether of commission or omission, of  
 22 ~~any other~~ another employee ~~thereof~~ when ~~such the~~ neglect, mismanagement, or ~~wrongs~~ misconduct ~~are~~  
 23 is in any manner connected with the use and operation of ~~any a~~ a railway or railroad ~~on or about which he~~  
 24 with whom the employee is employed. ~~No A~~ contract ~~which that~~ restricts ~~such the~~ liability of the railway  
 25 or railroad is not legal or binding.

26 (2) In case of the death of ~~any such an~~ an employee ~~in consequence of any~~ caused by an injury or  
 27 ~~damage so sustained~~ action referred to in subsection (1), the right of action provided by subsection (1)  
 28 ~~shall survive~~ survives and may be prosecuted and maintained by ~~his~~ the employee's heirs or personal  
 29 representatives.

30 (3) ~~Every~~ Each railway corporation doing business in this state, including electric railway

1 corporations, is liable for damages sustained by an employee ~~thereof~~ of a railway corporation within this  
 2 state, subject to the provisions of 27-1-702, when ~~such~~ the damages are caused by the negligence of ~~any~~  
 3 a train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer,  
 4 ~~motorman~~ driver, or any other employee who has ~~superintendence of any~~ supervision of a stationary or  
 5 hand signal.

6 (4) ~~No~~ A contract of insurance, relief, benefit, or indemnity in case of injury or death or any other  
 7 contract entered into, either before or after the injury, between the person injured and ~~any~~ of the  
 8 ~~employers named in subsection (3)~~ railway corporation is not a bar or defense to ~~any~~ a cause of action  
 9 brought under the provisions of this section, except as otherwise provided in the Workers' Compensation  
 10 Act.

11 (5) The provisions of this section do not apply to an employee covered by a collective bargaining  
 12 agreement that provides a procedure that allows the employee to process a claim or grievance contesting  
 13 alleged negligence, mismanagement, or misconduct."

14

15 **Section 2.** Section 39-2-704, MCA, is amended to read:

16 **"39-2-704. Liability of mining company for negligence of fellow ~~servants~~ employees.** (1) Every  
 17 Each company, corporation, or individual operating ~~any~~ a mine, smelter, or mill for the refining of ores is  
 18 liable for damages sustained by ~~any~~ an employee ~~thereof~~ of the company, corporation, or individual within  
 19 this state, subject to the provisions of 27-1-702, when ~~such~~ the damage is caused by the negligence,  
 20 mismanagement, or misconduct of ~~any~~ a superintendent, ~~foreman~~ lead supervisor, shift boss, hoisting or  
 21 other engineer, or ~~craneman~~ crane operator.

22 (2) ~~No~~ A contract of insurance, relief, benefit, or indemnity in case of injury or death or any other  
 23 contract entered into before the injury between the person injured and ~~any~~ of the ~~employers named in this~~  
 24 ~~section~~ employer is not a bar or defense to ~~any~~ a cause of action brought under the provisions of this  
 25 section, except as otherwise provided in the Workers' Compensation Act.

26 (3) In case of the death of ~~any~~ such an employee ~~in consequence of any~~ caused by an injury or  
 27 damages ~~so~~ sustained, the right of action survives and may be prosecuted and maintained by ~~his~~ the  
 28 employee's heirs or personal representatives.

29 (4) The provisions of this section do not apply to an employee covered by a collective bargaining  
 30 agreement that provides a procedure that allows the employee to process a claim or grievance contesting

1 alleged negligence, mismanagement, or misconduct."

2

3 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

4 - END -