

1 HOUSE BILL NO. 19

2 INTRODUCED BY R. LENHART

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4 A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE EXEMPTION FROM COVERAGE UNDER THE
5 WORKERS' COMPENSATION ACT TO INCLUDE EMPLOYMENT AS AN OFFICIAL AT ALL AMATEUR
6 ATHLETIC EVENTS; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
7 DATE."

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

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11 **Section 1.** Section 39-71-401, MCA, is amended to read:

12 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
13 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
14 all employees, as defined in 39-71-118. An employer who has any employee in service under any
15 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
16 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
17 Compensation Act is subject to and bound by the compensation plan that has been elected by the
18 employer.

19 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
20 allows an election, the Workers' Compensation Act does not apply to any of the following employments:

21 (a) household and domestic employment;

22 (b) casual employment as defined in 39-71-116;

23 (c) employment of a dependent member of an employer's family for whom an exemption may be
24 claimed by the employer under the federal Internal Revenue Code;25 (d) employment of sole proprietors, working members of a partnership, working members of a
26 limited liability partnership, or working members of a member-managed limited liability company, except
27 as provided in subsection (3);28 (e) employment of a broker or salesperson performing under a license issued by the board of realty
29 regulation;

30 (f) employment as a direct seller as defined by 26 U.S.C. 3508;

1 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
2 under the laws of the United States;

3 (h) employment of a person performing services in return for aid or sustenance only, except
4 employment of a volunteer under 67-2-105;

5 (i) employment with a railroad engaged in interstate commerce, except that railroad construction
6 work is included in and subject to the provisions of this chapter;

7 (j) employment as an official, including a timer, referee, UMPIRE, or judge, at ~~a school~~ an amateur
8 athletic event, ~~unless the person is otherwise employed by a school district~~;

9 (k) employment of a person performing services as a newspaper carrier or freelance correspondent
10 if the person performing the services or a parent or guardian of the person performing the services in the
11 case of a minor has acknowledged in writing that the person performing the services and the services are
12 not covered. As used in this subsection, "freelance correspondent" is a person who submits articles or
13 photographs for publication and is paid by the article or by the photograph. As used in this subsection,
14 "newspaper carrier":

15 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
16 bundles; but

17 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
18 carries or delivers papers.

19 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

20 (m) a person who is employed by an enrolled tribal member or an association, business,
21 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
22 business is conducted solely within the exterior boundaries of an Indian reservation;

23 (n) employment of a jockey who is performing under a license issued by the board of horseracing
24 from the time that the jockey reports to the scale room prior to a race through the time that the jockey
25 is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the
26 board of horseracing, that the jockey is not covered under the Workers' Compensation Act while
27 performing services as a jockey;

28 (o) employment of an employer's spouse for whom an exemption based on marital status may be
29 claimed by the employer under 26 U.S.C. 7703;

30 (p) a person who performs services as a petroleum land professional. As used in this subsection,

1 a "petroleum land professional" is a person who:

2 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
3 negotiating a business agreement for the exploration or development of minerals;

4 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
5 than on an hourly wage basis; and

6 (iii) performs all services as an independent contractor pursuant to a written contract.

7 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
8 liability company who qualifies under one or more of the following provisions:

9 (i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or
10 the limited liability company and does not receive any pay from the corporation or the limited liability
11 company for performance of the duties;

12 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
13 limited liability company;

14 (iii) the officer or manager either:

15 (A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more
16 of the limited liability company; or

17 (B) owns less than 20% of the number of shares of stock in the corporation or limited liability
18 company if the officer's or manager's shares when aggregated with the shares owned by a person or
19 persons listed in subsection (2)(q)(iv) total 20% or more of the number of shares in the corporation or
20 limited liability company; or

21 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
22 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of
23 subsection (2)(q)(iii)(A) or (2)(q)(iii)(B).

24 (r) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

25 (s) service performed by an ordained, commissioned, or licensed minister of a church in the
26 exercise of the church's ministry or by a member of a religious order in the exercise of duties required by
27 the order.

28 (3) (a) A sole proprietor, a working member of a partnership, a working member of a limited
29 liability partnership, or a working member of a member-managed limited liability company who represents
30 to the public that the person is an independent contractor shall elect to be bound personally and

1 individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an
2 exemption from the Workers' Compensation Act.

3 (b) The application must be made in accordance with the rules adopted by the department. There
4 is a \$25 fee for the initial application. Any subsequent application renewal must be accompanied by a \$25
5 application fee. The application fee must be deposited in the administration fund established in 39-71-201
6 to offset the costs of administering the program.

7 (c) When an application is approved by the department, it is conclusive as to the status of an
8 independent contractor and precludes the applicant from obtaining benefits under this chapter.

9 (d) The exemption, if approved, remains in effect for 3 years following the date of the
10 department's approval. To maintain the independent contractor status, an independent contractor shall
11 every 3 years submit a renewal application. A renewal application must be submitted for all independent
12 contractor exemptions approved on or after July 1, 1995. The renewal application and the \$25 renewal
13 application fee must be received by the department at least 30 days before the anniversary date of the
14 previously approved exemption.

15 (e) A person who makes a false statement or misrepresentation concerning that person's status
16 as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose
17 the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured
18 employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

19 (f) If the department denies the application for exemption, the applicant may, after mediation
20 pursuant to department rules, contest the denial by petitioning the workers' compensation court.

21 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for
22 its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a
23 private corporation, or a manager-managed limited liability company may elect coverage for its corporate
24 officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the
25 following manner:

26 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
27 delivering the notice to the board of directors of the corporation or to the management organization of the
28 manager-managed limited liability company; or

29 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
30 delivering the notice to the board of directors of the corporation or to the management organization of the

1 manager-managed limited liability company and to the insurer.

2 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
3 the employer shall again serve notice to its insurer and to its board of directors or the management
4 organization of the manager-managed limited liability company if the employer elects to be bound.

5 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
6 partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability
7 company for the purpose of exempting the employee from coverage under this chapter does not entitle
8 the officer, partner, member, or manager to exemption from coverage.

9 (6) Each employer shall post a sign in the workplace at the locations where notices to employees
10 are normally posted, informing employees about the employer's current provision of workers'
11 compensation insurance. A workplace is any location where an employee performs any work-related act
12 in the course of employment, regardless of whether the location is temporary or permanent, and includes
13 the place of business or property of a third person while the employer has access to or control over the
14 place of business or property for the purpose of carrying on the employer's usual trade, business, or
15 occupation. The sign must be provided by the department, distributed through insurers or directly by the
16 department, and posted by employers in accordance with rules adopted by the department. An employer
17 who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for
18 each citation."

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20 NEW SECTION. **Section 2. Effective date.** [This act] is effective ~~July 1, 2001~~ ON PASSAGE AND
21 APPROVAL.

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