

1 SENATE BILL NO. 108

2 INTRODUCED BY LEWIS

3 BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REQUIREMENTS FOR CERTIFICATION OF
 6 INDEPENDENT CONTRACTORS; PROVIDING A CONCLUSIVE PRESUMPTION THAT AN INDEPENDENT
 7 CONTRACTOR EXEMPTION CERTIFICATE VERIFIES AN INDEPENDENT CONTRACTOR'S STATUS FOR
 8 PURPOSES OF WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING
 9 AUTHORITY TO SUSPEND OR REVOKE CERTIFICATION; SPECIFYING VIOLATIONS AND A PENALTY;
 10 CLARIFYING THE DEFINITION OF "INDEPENDENT CONTRACTOR"; DECLARING LEGISLATIVE INTENT
 11 FOR A CONCLUSIVE PRESUMPTION REGARDING AN INDEPENDENT CONTRACTOR EXEMPTION
 12 CERTIFICATE; ALLOWING AN INDEPENDENT CONTRACTOR TO OPT OUT OF WORKERS'
 13 COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING AN EXEMPTION TO THE GENERAL
 14 PROHIBITION AGAINST A WAIVER OF STATUTES; REVISING THE DISPUTE APPEAL PERIOD AND
 15 PROCESS; REPEALING A REQUIREMENT TO REPORT TO THE STATE COMPENSATION INSURANCE
 16 FUND; AMENDING SECTIONS ~~15-30-201~~, 39-8-102, 39-51-201, 39-51-204, 39-71-105, 39-71-117, 39-71-401,
 17 39-71-409, 39-71-415, AND 39-72-102, MCA; REPEALING SECTIONS 39-51-604 AND 39-71-120, MCA; AND
 18 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

19

20 WHEREAS, the Montana Supreme Court ruled in Wild v. Fregein Construction, 2003 MT 115, 315 Mont.
 21 425, 68 P.3d 855, that the independent contractor exemption certificate does not raise a conclusive presumption
 22 as to the status of a person as an independent contractor AND THAT AN EMPLOYER HAS AN OBLIGATION TO
 23 DETERMINE WHETHER AN INDIVIDUAL IS TREATED AS AN INDEPENDENT CONTRACTOR OR AS AN EMPLOYEE; and

24 WHEREAS, the Montana Supreme Court in the Wild decision ruled that it is against the public policy
 25 of the state for an employer TO COERCE A WORKER TO WORK AS AN INDEPENDENT CONTRACTOR BY OFFERING to pay
 26 an independent contractor at a rate higher than the employer pays employees; and

27 WHEREAS, the Montana Supreme Court in the Wild decision ~~identified that a person does not have an~~
 28 ~~independent business if the person performs work for only one entity~~ AFFIRMED THE TWIN DETERMINANTS OF
 29 INDEPENDENT CONTRACTOR STATUS AS BEING "A" ISSUES OF CONTROL AND "B" WHETHER THE INDIVIDUAL IS IN AN
 30 INDEPENDENT BUSINESS, COMMONLY KNOWN AS THE "A-B" TEST, AND EMPHASIZED THE NECESSITY OF BOTH FACTORS

1 BEING PRESENT, WITH PERFORMING WORK FOR OTHER PERSONS BEING AN INDICATION OF AN INDEPENDENT BUSINESS;

2 and

3 WHEREAS, THE CONCURRING OPINION IN THE WILD DECISION FURTHER SUGGESTED THAT THE DEPARTMENT

4 OF LABOR AND INDUSTRY STRENGTHEN THE CERTIFICATION PROCESS TO PROVIDE A CONCLUSIVE DETERMINATION OF

5 INDEPENDENT CONTRACTOR STATUS; AND

6 WHEREAS, the Wild decision created a great deal of uncertainty in matters involving independent

7 contractors and employees in the business community, WITH EMPLOYERS AND INDEPENDENT CONTRACTORS COMING

8 TOGETHER TO PROPOSE A CONSENSUS SOLUTION AFTER PARTICIPATING IN A STUDY REQUIRED BY SENATE BILL 270,

9 PASSED BY THE 58TH LEGISLATURE; and

10 WHEREAS, the Montana Legislature considers enacting legislation appropriate to effectively reverse

11 the Wild decision and to restore the conclusive presumption of an independent contractor exemption certificate

12 as well as to allow employers to pay persons with the independent contractor exemption certificate at a rate

13 higher than the rate paid to employees and additionally to allow a person with an independent contractor

14 exemption certificate to work for only one employing unit without becoming an employee as well as to waive the

15 benefits of the workers' compensation and occupational disease laws.

16

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

18

19 NEW SECTION. Section 1. Independent contractor certification. (1) (a) A person who regularly AND

20 CUSTOMARILY performs services at a location other than the person's own fixed business location shall apply to

21 the department for an independent contractor exemption certificate UNLESS THE PERSON HAS ELECTED TO BE BOUND

22 PERSONALLY AND INDIVIDUALLY BY THE PROVISIONS OF COMPENSATION PLAN NO. 1, 2, OR 3.

23 (b) A person who meets the requirements of this section and receives an independent contractor

24 exemption certificate is not required to obtain a personal workers' compensation insurance policy.

25 (c) For the purposes of this section, "person" means a sole proprietor, a working member of a

26 partnership, a working member of a limited liability partnership, or a working member of a member-managed

27 limited liability company.

28 (2) The department shall adopt rules relating to an original application for or renewal of an independent

29 contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or

30 certificate renewal. The application or renewal must be accompanied by the fee.

1 (3) The department shall deposit the application or renewal fee in an account in the state special
2 revenue fund to pay the costs of administering the program.

3 (4) (A) To obtain an independent contractor exemption certificate, the applicant shall swear to and
4 acknowledge the following:

5 ~~(a)~~(i) that the applicant has been and will continue to be free from control or direction over the
6 performance of the person's own services, both under contract and in fact; and

7 ~~(b)~~(ii) that the applicant is engaged in an independently established trade, occupation, profession, or
8 business and will provide sufficient documentation of that fact to the department.

9 (B) FOR THE PURPOSES OF SUBSECTION (4)(A)(I), AN ENDORSEMENT REQUIRED FOR LICENSURE, AS PROVIDED
10 IN 37-47-303, DOES NOT IMPLY OR CONSTITUTE CONTROL.

11 (5) An applicant for an independent contractor exemption certificate shall submit an application under
12 oath on a form prescribed by the department and containing the following:

13 (a) the applicant's name and address;

14 (b) the applicant's social security number;

15 (c) each occupation for which the applicant is seeking independent contractor certification; and

16 (d) other documentation as provided by department rule to assist in determining if the applicant has an
17 independently established business.

18 (6) The department shall issue an independent contractor exemption certificate to an applicant if the
19 department determines that an applicant meets the requirements of this section.

20 ~~(7) (a) A conclusive presumption of independent contractor status requires department approval of an~~
21 ~~application and requires the person to be working under an independent contractor exemption certificate~~ WHEN
22 THE DEPARTMENT APPROVES AN APPLICATION FOR AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE AND THE
23 PERSON IS WORKING UNDER THE INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE, THE PERSON'S STATUS IS
24 CONCLUSIVELY PRESUMED TO BE THAT OF AN INDEPENDENT CONTRACTOR.

25 ~~(b) If both conditions in subsection (7)(a) exist, it is conclusive that the~~ A person working under an
26 approved independent contractor exemption certificate has waived all rights and benefits under the Workers'
27 Compensation Act and the Occupational Disease Act of Montana, ~~precluding the person~~ AND IS PRECLUDED from
28 obtaining benefits under either of those acts unless the person has elected ~~coverage pursuant to 39-71-401(3)~~
29 TO BE BOUND PERSONALLY AND INDIVIDUALLY BY THE PROVISIONS OF COMPENSATION PLAN NO. 1, 2, OR 3.

30 (C) FOR THE PURPOSES OF THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT OF

1 MONTANA, A PERSON IS WORKING UNDER AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE IF:

2 (I) THE PERSON IS PERFORMING WORK IN THE TRADE, BUSINESS, OCCUPATION, OR PROFESSION LISTED ON THE
3 PERSON'S INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE; AND

4 (II) THE HIRING AGENT AND THE PERSON HOLDING THE INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE DO
5 NOT HAVE A WRITTEN OR AN ORAL AGREEMENT THAT THE INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE HOLDER'S
6 STATUS WITH RESPECT TO THAT HIRING AGENT IS THAT OF AN EMPLOYEE.

7 (8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

8 (a) suspended or revoked pursuant to [section 2]; or

9 (b) canceled by the independent contractor.

10 (9) If the department denies an application for an independent contractor exemption certificate, the
11 applicant may contest the denial by petitioning the workers' compensation court within 30 days of the mailing
12 of the denial.

13
14 NEW SECTION. Section 2. Suspension or revocation of independent contractor exemption
15 certificate. (1) The department may suspend an independent contractor exemption certificate for a specific
16 business relationship if the department determines that the employing unit exerts or retains a right of control to
17 a degree that causes a certificate holder to violate the provisions of [section 1(4)].

18 (2) The department may revoke an independent contractor exemption certificate after determining that
19 the certificate holder:

20 (a) provided misrepresentations in the application affidavit or certificate renewal form;

21 (b) altered or amended the application form, the renewal application form, other supporting
22 documentation required by the department, or the independent contractor exemption certificate; or

23 (c) failed to cooperate with the department in providing information relevant to the continued validity of
24 the holder's certificate.

25 (3) A decision by the department to suspend or revoke an independent contractor exemption certificate
26 takes effect upon issuance of the decision. Suspension or revocation of the independent contractor exemption
27 certificate does not invalidate the certificate holder's waiver of the rights and benefits of the Workers'
28 Compensation Act and Occupational Disease Act of Montana for the period prior to notice to the hiring agent
29 by the department of the department's decision to suspend or revoke the independent contractor exemption
30 certificate.

1 (4) A decision by the department to suspend or revoke an independent contractor exemption certificate
 2 may be appealed in the same manner as provided in [section 1(9)] for denial of an application for an
 3 independent contractor exemption certificate.

4
 5 **NEW SECTION. Section 3. Independent contractor violations -- penalty.** (1) A person may not:

6 (a) perform work as an independent contractor without first:
 7 (i) obtaining from the department an independent contractor exemption certificate UNLESS THE INDIVIDUAL
 8 IS NOT REQUIRED TO OBTAIN AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE PURSUANT TO [SECTION 1(1)(A)];

9 OR

10 (ii) ELECTING TO BE BOUND PERSONALLY AND INDIVIDUALLY BY THE PROVISIONS OF COMPENSATION PLAN NO.
 11 1, 2, OR 3;

12 (b) perform work as an independent contractor when the department has revoked or denied the
 13 independent contractor's exemption certificate;

14 (c) transfer to another person or allow another person to use an independent contractor exemption
 15 certificate that was not issued to that person;

16 (d) alter or falsify an independent contractor exemption certificate; or

17 (e) misrepresent the person's status as an independent contractor.

18 (2) An employer may not:

19 (a) require an employee through coercion, misrepresentation, or fraudulent means to adopt independent
 20 contractor status to avoid the employer's obligations to provide workers' compensation coverage; or

21 (b) exert control to a degree that causes the independent contractor to violate the provisions of [section
 22 1(4)].

23 (3) In addition to any other penalty or sanction provided in this chapter, a person or employer who
 24 violates a provision of this section is subject to a fine to be assessed by the department of up to \$1,000 for each
 25 violation. The department shall deposit the fines in the uninsured employers' fund. The lien provisions of
 26 39-71-506 apply to any assessed fines.

27 (4) A person or employer who disputes a fine assessed by the department pursuant to this section may
 28 file an appeal with the department within 30 days of the date on which the fine was assessed. If, after mediation,
 29 the issue is not resolved, the issue must be transferred to the workers' compensation court for resolution.

30

1 ~~Section 4.~~ Section 15-30-201, MCA, is amended to read:

2 ~~"15-30-201. Definitions.~~ When used in 15-30-201 through 15-30-209, the following definitions apply:

3 ~~(1) "Agricultural labor" means all services performed on a farm or ranch in connection with cultivating~~
 4 ~~the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the~~
 5 ~~raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing~~
 6 ~~animals and wildlife.~~

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

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

12 ~~(3) "Employee" means:~~

13 ~~(a) an officer, employee, or elected public official of the United States, the state of Montana, or any~~
 14 ~~political subdivision of the United States or Montana or any agency or instrumentality of the United States, the~~
 15 ~~state of Montana, or a political subdivision of the United States or Montana;~~

16 ~~(b) an officer of a corporation;~~

17 ~~(c) any individual who performs services for another individual or organization having the right to control~~
 18 ~~the employee as to the services to be performed and as to the manner of performance;~~

19 ~~(d) all classes, grades, or types of employees including minors and aliens, superintendents, managers,~~
 20 ~~and other supervisory personnel.~~

21 ~~(4) "Employer" means:~~

22 ~~(a) the person for whom an individual performs or performed any service, of whatever nature, as an~~
 23 ~~employee of the person;~~

24 ~~(b) a person who pays \$1,000 or more in wages within the current calendar year;~~

25 ~~(c) a person who pays \$1,000 or more in cash for domestic or household service in any quarter during~~
 26 ~~the current calendar year;~~

27 ~~(d) any individual or organization, including state government and any of its political subdivisions or~~
 28 ~~instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited liability~~
 29 ~~company or a limited liability partnership that has filed with the secretary of state, or domestic or foreign~~
 30 ~~corporation or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of~~

1 a deceased person who has or had in its employ one or more individuals performing services for it within this
2 state; or
3 ~~—— (e) any person found to be an employer under Title 39, chapter 51, for unemployment insurance~~
4 ~~purposes is considered an employer for state income tax withholding purposes.~~
5 ~~—— (5) "Independent contractor" means an individual who renders service in the course of an occupation~~
6 ~~and:~~
7 ~~—— (a) has been and will continue to be free from control or direction over the performance of the services,~~
8 ~~both under contract and in fact; and~~
9 ~~—— (b) is engaged in an independently established trade, occupation, profession, or business working under~~
10 ~~an independent contractor exemption certificate provided for in [section 1].~~
11 ~~—— (6) "Lookback period" means the 12-month period ending the preceding June 30.~~
12 ~~—— (7) (a) "Wages", unless specifically exempted under subsection (7)(b), means all remuneration for~~
13 ~~services performed by an employee for the employer, including the cash value of all remuneration paid in any~~
14 ~~medium other than cash, and includes but is not limited to the following:~~
15 ~~—— (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness~~
16 ~~periods;~~
17 ~~—— (ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous~~
18 ~~service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and~~
19 ~~—— (iii) except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by the~~
20 ~~employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax~~
21 ~~purposes.~~
22 ~~—— (b) The term "wages" does not include:~~
23 ~~—— (i) the amount of any payment made by the employer for employees, if the payment was made for:~~
24 ~~—— (A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal~~
25 ~~Revenue Code;~~
26 ~~—— (B) sickness or accident disability under a workers' compensation policy;~~
27 ~~—— (C) medical or hospitalization expenses in connection with sickness or accident disability, including~~
28 ~~health insurance for the employee or the employee's immediate family; or~~
29 ~~—— (D) death, including life insurance for the employee or the employee's immediate family;~~
30 ~~—— (ii) compensation in the form of meals and lodging, provided the compensation is not includable in gross~~

1 ~~income for state individual income tax purposes;~~
 2 ~~—— (iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002(40)(A),~~
 3 ~~to a qualified individual employee;~~
 4 ~~—— (iv) payments made by an employee to any group plan or program to the extent that the payments are~~
 5 ~~not taxable for state income tax purposes;~~
 6 ~~—— (v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are covered~~
 7 ~~by 26 U.S.C. 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983,~~
 8 ~~received by persons for services rendered by them to patrons of premises licensed to provide food, beverage,~~
 9 ~~or lodging; or~~
 10 ~~—— (vi) payments that may not be taxed under federal law. (Subsection (7)(b)(v) terminates on occurrence~~
 11 ~~of contingency—sec. 3, Ch. 634, L. 1983.)"~~

12

13 **Section 4.** Section 39-8-102, MCA, is amended to read:

14 **"39-8-102. Definitions.** As used in this chapter, unless the context indicates otherwise, the following
 15 definitions apply:

16 (1) "Applicant" means a person that seeks to be licensed under this chapter.

17 (2) "Client" means a person that obtains all or part of its workforce from another person through a
 18 professional employer arrangement.

19 (3) "Controlling person" means an individual who possesses the right to direct the management or
 20 policies of a professional employer organization or group through ownership of voting securities, by contract or
 21 otherwise.

22 (4) "Department" means the department of labor and industry.

23 (5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which a
 24 professional employer organization hires its own employees and assigns the employees to work for another
 25 person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on
 26 an ongoing basis.

27 (6) "Licensee" means a person licensed as a professional employer organization or group under this
 28 chapter.

29 (7) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability
 30 company.

- 1 (8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under
2 which:
- 3 (i) a professional employer organization or group assigns employees to perform services for a client;
4 (ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and
5 (iii) the employer responsibilities are shared by the professional employer organization or group and the
6 client.
- 7 (b) The term does not include:
- 8 (i) services performed by a temporary service contractor;
9 (ii) arrangements under which a person shares employees with a commonly owned company within the
10 meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:
11 (A) that person's principal business activity is not entering into professional employer arrangements;
12 and
13 (B) that person does not represent to the public that the person is a professional employer organization
14 or group;
- 15 (iii) arrangements existing for employment of an independent contractor, ~~as defined in 39-71-120~~
16 working under an independent contractor exemption certificate provided for in [section 1]; and
17 (iv) arrangements by a health care facility, as defined in 50-5-101, to provide its own employees to
18 perform services at and on behalf of another health care facility or at and on behalf of a private office of
19 physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.
- 20 (9) "Professional employer group" or "group" means at least two but not more than five professional
21 employer organizations, each of which is majority-owned by the same person.
- 22 (10) (a) "Professional employer organization" means:
- 23 (i) a person that provides services of employees pursuant to one or more professional employer
24 arrangements or to one or more employee leasing arrangements; or
25 (ii) a person that represents to the public that the person provides services pursuant to a professional
26 employer arrangement.
- 27 (b) The term does not include a health care facility, as defined in 50-5-101, that provides its own
28 employees to perform services at and on behalf of another health care facility or at and on behalf of a private
29 office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title
30 37.

1 (11) "Temporary service contractor" means a person conducting a business that hires its own employees
2 and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the
3 client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and
4 special assignments and projects."

5

6 **Section 5.** Section 39-51-201, MCA, is amended to read:

7 **"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise,
8 the following definitions apply:

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

11 (2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the
12 first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the
13 arrangement approved by the secretary of labor of the United States, the base period is the period applicable
14 under the unemployment law of the paying state. For an individual who fails to meet the qualifications of
15 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116,
16 or a similar statute of another state or the United States, the base period means the first 4 quarters of the last
17 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24
18 months of the date on which the individual's disability was incurred.

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

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

28 (5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

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

1 (7) "Contributions" means the money payments to the state unemployment insurance fund required by
2 this chapter but does not include assessments under 39-51-404(4).

3 (8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part
4 17.

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

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

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

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

27 (12) "Fund" means the unemployment insurance fund established by this chapter to which all
28 contributions and payments in lieu of contributions ~~are required to~~ must be paid and from which all benefits
29 provided under this chapter must be paid.

30 (13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for

1 which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a
2 flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

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

5 (15) "Independent contractor" means an individual ~~who renders service in the course of an occupation~~
6 ~~and:~~

7 ~~—— (a) has been and will continue to be free from control or direction over the performance of the services,~~
8 ~~both under a contract and in fact; and~~

9 ~~—— (b) is engaged in an independently established trade, occupation, profession, or business working under~~
10 ~~an independent contractor exemption certificate provided for in [section 1].~~

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

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

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

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

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

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

23 (b) Notwithstanding subsection (17)(a), all universities in this state are institutions of higher education
24 for purposes of this part.

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

27 (19) "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 (20) "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 (21) "Tribal unit" means an Indian tribe and any subdivision, subsidiary, or business enterprise that is
2 wholly owned by that tribe.

3 (22) "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 (23) (a) "Wages", unless specifically exempted under subsection (23)(b), means all remuneration
6 payable for personal services, including the cash value of all remuneration paid in any medium other than cash.
7 The 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
12 service 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; or

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

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

27 (25) An individual's "weekly Weekly benefit amount" means the amount of benefits that ~~the~~ an individual
28 would be entitled to receive for 1 week of total unemployment."
29

30 **Section 6.** Section 39-51-204, MCA, is amended to read:

- 1 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:
- 2 (a) domestic or household service in a private home, local college club, or local chapter of a college
- 3 fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and
- 4 has domestic or household service employment, all employees engaged in domestic or household service must
- 5 be excluded from coverage under this chapter if the employer:
- 6 (i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the
- 7 subject wages attributable to domestic or household service; and
- 8 (ii) keeps separate books and records to account for the employment of persons in domestic or
- 9 household service.
- 10 (b) service performed by a dependent member of a sole proprietor for whom an exemption may be
- 11 claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based
- 12 on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;
- 13 (c) service performed as a freelance correspondent or newspaper carrier if the person performing the
- 14 service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged
- 15 in writing that the person performing the service and the service are not covered. As used in this subsection:
- 16 (i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid
- 17 by the article or by the photograph; and
- 18 (ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering
- 19 newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the
- 20 employee's main duties, carries or delivers papers.
- 21 (d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance
- 22 salespeople paid solely by commission and without a guarantee of minimum earnings;
- 23 (e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:
- 24 (i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment
- 25 insurance and workers' compensation;
- 26 (ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the
- 27 cosmetologist or barber:
- 28 (A) is free from all control and direction of the owner in the contract;
- 29 (B) receives payment for service from individual clientele; and
- 30 (C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge;

1 and

2 (iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The
3 existence of a single license for the salon or shop may not be construed as a lack of freedom from control or
4 direction under this subsection.

5 (f) casual labor not in the course of an employer's trade or business performed in any calendar quarter,
6 unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual
7 who is regularly employed by the employer to perform the service. "Regularly employed" means that the service
8 is performed during at least 24 days in the same quarter.

9 (g) service performed by sole proprietors, working members of a partnership, members of a
10 member-managed limited liability company that has filed with the secretary of state, or partners in a limited
11 liability partnership that has filed with the secretary of state;

12 (h) service performed for the installation of floor coverings if the installer:

13 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;

14 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

15 (iii) may perform service for anyone without limitation;

16 (iv) may accept or reject any job;

17 (v) furnishes substantially all tools and equipment necessary to provide the service; and

18 (vi) works under a written contract that:

19 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract
20 obligations;

21 (B) states that the installer is not covered by unemployment insurance; and

22 (C) requires the installer to provide a current workers' compensation policy or to obtain an exemption
23 from workers' compensation requirements;

24 (i) service performed as a direct seller as defined by 26 U.S.C. 3508;

25 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land
26 professional" means a person who:

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

29 (ii) is paid for service that is directly related to the completion of a contracted specific task rather than
30 on an hourly wage basis; and

- 1 (iii) performs all services as an independent contractor pursuant to a written contract.
- 2 (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
3 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 4 (l) service performed by an individual receiving rehabilitation or remunerative work in a facility
5 conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is
6 impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who,
7 because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;
- 8 (m) service performed as part of an unemployment work-relief or work-training program assisted or
9 financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an
10 Indian tribe by an individual receiving work relief or work training;
- 11 (n) service performed for a state prison or other state correctional or custodial institution by an inmate
12 of that institution;
- 13 (o) service performed by an individual who is sentenced to perform court-ordered community service
14 or similar work;
- 15 (p) service performed by elected public officials;
- 16 (q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject
17 to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded
18 from coverage under this chapter if the employer:
- 19 (i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the
20 monetary amount or number of employees and days worked for the subject wages attributable to agricultural
21 labor; and
- 22 (ii) keeps separate books and records to account for the employment of persons in agricultural labor.
- 23 (r) service performed in the employ of any other state or its political subdivisions or of the United States
24 government or of an instrumentality of any other state or states or their political subdivisions or of the United
25 States, except that national banks organized under the national banking law are not entitled to exemption under
26 this subsection and are subject to this chapter the same as state banks, if the service is excluded from
27 employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;
- 28 (s) service in which unemployment insurance is payable under an unemployment insurance system
29 established by an act of congress if the department enters into agreements with the proper agencies under an
30 act of congress and those agreements become effective in the manner prescribed in the Montana Administrative

1 Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring
2 potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of
3 congress or who have, after acquiring potential rights to unemployment insurance under the act of congress,
4 acquired rights to benefits under this chapter;

5 (t) service performed in the employ of a school or university if the service is performed by a student who
6 is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse
7 is advised, at the time that the spouse commences to perform the service, that the employment of the spouse
8 to perform the service is provided under a program to provide financial assistance to the student by the school
9 or university and that the employment is not covered by any program of unemployment insurance;

10 (u) service performed by an individual who is enrolled at a nonprofit or public educational institution that
11 normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in
12 attendance at the place where its educational activities are carried on, as a student in a full-time program taken
13 for credit at an institution that combines academic instruction with work experience if the service is an integral
14 part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u)
15 does not apply to service performed in a program established for or on behalf of an employer or group of
16 employers;

17 (v) service performed as an officer or member of the crew of a vessel on the navigable waters of the
18 United States;

19 (w) service performed by an alien admitted to the United States to perform agricultural labor pursuant
20 to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act;

21 (x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for
22 another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

23 (y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care
24 for individuals who, because of age or infirmity, are unable to care for themselves when the person providing
25 the service is employed directly by a family member or an individual who is a legal guardian; or

26 (z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an
27 amateur athletic event.

28 (2) An individual found to be an independent contractor by the department under the terms of
29 ~~39-71-401(3)~~ [section 1] is considered an independent contractor for the purposes of this chapter. An
30 independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant

1 to 39-51-2402.

2 (3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or
3 a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is
4 excluded from employment for purposes of the Federal Unemployment Tax Act."

5

6 **Section 7.** Section 39-71-105, MCA, is amended to read:

7 **"39-71-105. Declaration of public policy.** For the purposes of interpreting and applying Title 39,
8 chapters 71 and 72, the following is the public policy of this state:

9 (1) ~~It is an~~ An objective of the Montana workers' compensation system is to provide, without regard to
10 fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease.
11 Wage-loss benefits are not intended to make an injured worker whole; ~~they~~ but are intended to assist a worker
12 at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable
13 relationship to actual wages lost as a result of a work-related injury or disease.

14 (2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that
15 a holder of a current, valid independent contractor exemption certificate issued by the department is an
16 independent contractor if the person is working under the independent contractor exemption certificate. The
17 holder of an independent contractor exemption certificate may waive WAIVES the rights, benefits, and obligations
18 of Title 39, chapters 71 and 72, UNLESS THE PERSON HAS ELECTED TO BE BOUND PERSONALLY AND INDIVIDUALLY BY
19 THE PROVISIONS OF COMPENSATION PLAN NO. 1, 2, OR 3.

20 ~~(2)(3)~~ (3) A worker's removal from the ~~work force due to~~ workforce because of a work-related injury or
21 disease has a negative impact on the worker, the worker's family, the employer, and the general public.
22 Therefore, ~~it is~~ an objective of the workers' compensation system is to return a worker to work as soon as
23 possible after the worker has suffered a work-related injury or disease.

24 ~~(3)(4)~~ (4) Montana's workers' compensation and occupational disease insurance systems are intended to
25 be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be
26 able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed
27 to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

28 ~~(4)(5)~~ (5) Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor
29 of any party.

30 ~~(5)(6)~~ (6) It is the intent of the legislature that stress claims, often referred to as "mental-mental claims" and

1 "mental-physical claims", are not compensable under Montana's workers' compensation and occupational
2 disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims
3 have a potential to place an economic burden on the workers' compensation and occupational disease system.
4 The legislature also recognizes that there are other states that do not provide compensation for various
5 categories of stress claims and that stress claims have presented economic problems for certain other
6 jurisdictions. In addition, not all injuries are compensable under the present system, as is the case with repetitive
7 injury claims, and it is within the legislature's authority to define the limits of the workers' compensation and
8 occupational disease system."

9

10 **Section 8.** Section 39-71-117, MCA, is amended to read:

11 **"39-71-117. Employer defined.** (1) "Employer" means:

12 (a) the state and each county, city and county, city school district, and irrigation district; all other districts
13 established by law; all public corporations and quasi-public corporations and public agencies; each person; each
14 prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and
15 private corporation, including any public service corporation and including an independent contractor who has
16 a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal
17 representative of any deceased employer or the receiver or trustee of the deceased employer;

18 (b) any association, corporation, limited liability company, limited liability partnership, or organization
19 that seeks permission and meets the requirements set by the department by rule for a group of individual
20 employers to operate as self-insured under plan No. 1 of this chapter; and

21 (c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other
22 entity funded in whole or in part by federal, state, or local government funds that places community service
23 participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or
24 local government entities.

25 (2) A temporary service contractor is the employer of a temporary worker for premium and loss
26 experience purposes.

27 (3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the
28 services of a worker furnished by another person, association, contractor, firm, limited liability company, limited
29 liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer
30 for workers' compensation premium and loss experience purposes for work performed by the worker. The

1 presumption may be rebutted by substantial credible evidence of the following:

2 (a) the person, association, contractor, firm, limited liability company, limited liability partnership, or
3 corporation, other than a temporary service contractor, furnishing the services of a worker to another retains
4 control over all aspects of the work performed by the worker, both at the inception of employment and during
5 all phases of the work; and

6 (b) the person, association, contractor, firm, limited liability company, limited liability partnership, or
7 corporation, other than a temporary service contractor, furnishing the services of a worker to another has
8 obtained workers' compensation insurance for the worker in Montana both at the inception of employment and
9 during all phases of the work performed.

10 (4) An interstate or intrastate common or contract motor carrier that maintains a place of business in
11 this state and uses an employee or worker in this state is considered the employer of that employee, is liable
12 for workers' compensation premiums, and is subject to loss experience rating in this state unless:

13 (a) the worker in this state is certified as an independent contractor as provided in ~~39-71-401(3)~~ [section
14 1]; or

15 (b) the person, association, contractor, firm, limited liability company, limited liability partnership, or
16 corporation furnishing employees or workers in this state to a motor carrier has obtained Montana workers'
17 compensation insurance on the employees or workers in Montana both at the inception of employment and
18 during all phases of the work performed."

19

20 **Section 9.** Section 39-71-401, MCA, is amended to read:

21 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
22 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all
23 employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or
24 contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation
25 plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to
26 and bound by the compensation plan that has been elected by the employer.

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

29 (a) household and domestic employment;

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

- 1 (c) employment of a dependent member of an employer's family for whom an exemption may be
2 claimed by the employer under the federal Internal Revenue Code;
- 3 (d) employment of sole proprietors, working members of a partnership, working members of a limited
4 liability partnership, or working members of a member-managed limited liability company, except as provided
5 in subsection (3);
- 6 (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and
7 without a guarantee of minimum earnings;
- 8 (f) employment as a direct seller as defined by 26 U.S.C. 3508;
- 9 (g) employment for which a rule of liability for injury, occupational disease, or death is provided under
10 the laws of the United States;
- 11 (h) employment of a person performing services in return for aid or sustenance only, except
12 employment of a volunteer under 67-2-105;
- 13 (i) employment with a railroad engaged in interstate commerce, except that railroad construction work
14 is included in and subject to the provisions of this chapter;
- 15 (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;
- 16 (k) employment of a person performing services as a newspaper carrier or freelance correspondent if
17 the person performing the services or a parent or guardian of the person performing the services in the case of
18 a minor has acknowledged in writing that the person performing the services and the services are not covered.
19 As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for
20 publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":
21 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles;
22 but
23 (ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries
24 or delivers papers.
- 25 (l) cosmetologist's services and barber's services as ~~defined~~ referred to in 39-51-204(1)(e);
- 26 (m) a person who is employed by an enrolled tribal member or an association, business, corporation,
27 or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is
28 conducted solely within the exterior boundaries of an Indian reservation;
- 29 (n) employment of a jockey who is performing under a license issued by the board of horseracing from
30 the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out

1 after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
2 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

3 (o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing
4 services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

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

7 (q) a person who performs services as a petroleum land professional. As used in this subsection, a
8 "petroleum land professional" is a person who:

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

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

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

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

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

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

21 (iii) the officer or manager either:

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

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

27 or

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

- 1 (s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;
- 2 (t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
3 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 4 (u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care
5 for individuals who, because of age or infirmity, are unable to care for themselves when the person providing
6 the service is employed directly by a family member or an individual who is a legal guardian;
- 7 (v) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10);
- 8 (w) employment of a person who is working under an independent contractor exemption certificate.
- 9 (3) ~~(a) A sole proprietor, a working member of a partnership, a working member of a limited liability~~
10 ~~partnership, or a working member of a member-managed limited liability company who represents to the public~~
11 ~~that the person is an independent contractor~~ A person who regularly AND CUSTOMARILY performs services at
12 locations other than the person's own fixed business location shall elect to be bound personally and individually
13 by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from
14 the Workers' Compensation Act unless the person has waived the rights and benefits of the Workers'
15 Compensation Act and Occupational Disease Act of Montana by obtaining an independent contractor exemption
16 certificate from the department pursuant to [section 1].
- 17 (b) A person who holds an independent contractor exemption certificate may purchase a workers'
18 compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.
- 19 ~~(b) The application must be made in accordance with the rules adopted by the department. There is a~~
20 ~~\$17 fee for the initial application. Any subsequent application renewal must be accompanied by a \$17 application~~
21 ~~fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs~~
22 ~~of administering the program.~~
- 23 ~~————(c) When an application is approved by the department, it is conclusive as to the status of an~~
24 ~~independent contractor and precludes the applicant from obtaining benefits under this chapter.~~
- 25 ~~————(d) The exemption, if approved, remains in effect for 2 years following the date of the department's~~
26 ~~approval. To maintain the independent contractor status, an independent contractor shall submit a renewal~~
27 ~~application every 2 years. The renewal application and the \$17 renewal application fee must be received by the~~
28 ~~department at least 30 days before the anniversary date of the previously approved exemption.~~
- 29 ~~————(e) A person who makes a false statement or misrepresentation concerning that person's status as an~~
30 ~~exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty~~

1 ~~for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The~~
2 ~~lien provisions of 39-71-506 apply to the penalty imposed by this section.~~

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

5 (c) For the purposes of this subsection (3), "person" means a sole proprietor, a working member of a
6 partnership, a working member of a limited liability partnership, or a working member of a member-managed
7 limited liability company.

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

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

15 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
16 delivering the notice to the board of directors of the corporation or to the management organization of the
17 manager-managed limited liability company and to the insurer.

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

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

25 (6) Each employer shall post a sign in the workplace at the locations where notices to employees are
26 normally posted, informing employees about the employer's current provision of workers' compensation
27 insurance. A workplace is any location where an employee performs any work-related act in the course of
28 employment, regardless of whether the location is temporary or permanent, and includes the place of business
29 or property of a third person while the employer has access to or control over the place of business or property
30 for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided

1 by the department, distributed through insurers or directly by the department, and posted by employers in
 2 accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign
 3 as provided in this subsection is subject to a \$50 fine for each citation."

4

5 **Section 10.** Section 39-71-409, MCA, is amended to read:

6 **"39-71-409. Waivers by employee invalid.** ~~No~~ (1) An agreement by an employee to waive any rights
 7 under this chapter ~~for any injury to be received shall be~~ is not valid.

8 (2) (a) A person who possesses and is working under a current independent contractor exemption
 9 certificate issued by the department waives all rights and benefits of the Workers' Compensation Act and
 10 Occupational Disease Act of Montana unless the person elects coverage pursuant to 39-71-401(3)(b).

11 (b) A waiver by reason of an independent contractor exemption certificate is an exemption EXCEPTION
 12 to the general prohibition of waiving the advantage of a statute enacted for a public reason as provided for in
 13 1-3-204."

14

15 **Section 11.** Section 39-71-415, MCA, is amended to read:

16 **"39-71-415. Procedure for resolving disputes regarding independent contractor status.** (1) If an
 17 individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an
 18 employee, ~~as defined in this chapter,~~ any party may, after mediation pursuant to department rules, petition the
 19 workers' compensation court for resolution of the dispute.

20 (2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether
 21 the claimant is an independent contractor or employee, ~~as defined in this chapter, and after mediating pursuant~~
 22 ~~to department rule,~~ either party may, after mediation pursuant to department rules, petition the workers'
 23 compensation judge for resolution of the dispute in accordance with 39-71-2905.

24 (3) A dispute between an employer and the department involving the issue of whether a worker is an
 25 independent contractor or an employee, but not involving workers' compensation benefits, must be brought
 26 before the independent contractor central unit of the department for resolution. A decision of the independent
 27 contractor central unit is final unless a party dissatisfied with the decision appeals by filing a petition ~~for~~
 28 ~~mediation within 10 days of service of the decision. A party may petition the workers' compensation court for~~
 29 ~~resolution of the dispute within 45 days of the mailing of the mediator's report~~ with the workers' compensation
 30 court within 30 days of the mailing of the decision by the independent contractor central unit. An appeal from the

1 independent contractor central unit to the workers' compensation court brought pursuant to this part is a new
2 proceeding.

3 ~~(4) Notwithstanding the provisions of subsection (1), an individual may apply to the department for an~~
4 ~~exemption from the Workers' Compensation Act in accordance with 39-71-401."~~

5

6 **Section 12.** Section 39-72-102, MCA, is amended to read:

7 **"39-72-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following
8 definitions apply:

9 (1) "Beneficiary" ~~is as defined~~ has the meaning provided in 39-71-116.

10 (2) "Child" ~~is as defined~~ has the meaning provided in 39-71-116.

11 (3) "Department" means the department of labor and industry.

12 (4) "Disablement" means the event of becoming physically incapacitated by reason of an occupational
13 disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary
14 tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are
15 synonymous with "disablement"; but they have no reference to "permanent partial disability".

16 (5) "Employee" ~~is as defined~~ has the meaning provided in 39-71-118.

17 (6) "Employer" ~~is as defined~~ has the meaning provided in 39-71-117.

18 (7) "Independent contractor" ~~is as defined in 39-71-120~~ means a person who is working under an
19 independent contractor exemption certificate provided for in [section 1].

20 (8) "Insurer" is as defined in 39-71-116.

21 (9) "Invalid" is as defined in 39-71-116.

22 (10) (a) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out
23 of or contracted in the course and scope of employment and caused by events occurring on more than a single
24 day or work shift.

25 (b) The term does not include a physical or mental condition arising from emotional or mental stress or
26 from a nonphysical stimulus or activity.

27 (11) "Order" is as defined in 39-71-116.

28 (12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal
29 mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of ~~such~~
30 employment in coal mines.

1 (13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon
2 dioxide (SiO_2) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout
3 both lungs, causing the characteristic x-ray pattern, and by other variable clinical manifestations.

4 (14) "Wages" is as defined in 39-71-123.

5 (15) "Year" is as defined in 39-71-116."

6

7 NEW SECTION. **Section 13. Repealer.** Sections 39-51-604 and 39-71-120, MCA, are repealed.

8

9 NEW SECTION. **Section 14. Codification instruction.** [Sections 1 through 3] are intended to be
10 codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply
11 to [sections 1 through 3].

12

13 NEW SECTION. **Section 15. Effective date -- applicability.** [This act] is effective on passage and
14 approval and applies to all applications and renewals for the independent contractor exemption certificate
15 submitted to the department after [the effective date of this act].

16

- END -