

HOUSE BILL NO. 552

INTRODUCED BY A. HALE, SKEES, ROBERTS, BRODEHL, READ

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKERS' COMPENSATION LAWS RELATED TO  
5 CERTAIN PUBLIC SAFETY VOLUNTEERS; ALLOWING LEVIES USED TO FUND PUBLIC SAFETY  
6 VOLUNTEERS' DISABILITY INCOME INSURANCE TO BE USED ALTERNATIVELY FOR WORKERS'  
7 COMPENSATION COVERAGE; ~~REVISING PUBLIC POLICY TO RECOGNIZE EQUITY AMONG VOLUNTEER~~  
8 ~~PUBLIC SAFETY WORKERS; REVISING CALCULATIONS FOR PREMIUMS AND BENEFITS FOR~~  
9 ~~VOLUNTEER FIREFIGHTERS; PROVIDING COVERAGE FOR VOLUNTEER EMERGENCY MEDICAL~~  
10 SERVICE PROVIDERS UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 7-6-621, 7-33-2109,  
11 7-33-2209, 7-33-2403, 7-33-4109, 7-33-4111, 7-34-102, ~~39-71-105~~, 39-71-118, AND 39-71-123, MCA; AND  
12 PROVIDING AN EFFECTIVE DATE."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15  
16 **Section 1.** Section 7-6-621, MCA, is amended to read:

17 **"7-6-621. Volunteer firefighters' disability income insurance authorized -- voted levy -- fund. (1)**

18 Disability income insurance, as defined in 33-1-235, purchased for volunteer firefighters must provide that:

- 19 (a) payments or benefits are paid only for an injury received as a volunteer firefighter; and
- 20 (b) the duration of payments or benefits may not exceed the lesser of 1 year or until the treating
- 21 physician determines that the beneficiary is no longer disabled.

22 (2) If the voters have approved a levy for the purchase of volunteer firefighters' disability income  
23 insurance or workers' compensation coverage, the governing body of a local government entity may establish  
24 a volunteer firefighters' disability income insurance account. The governing body may hold money in the account  
25 for any time period considered appropriate by the governing body. Money held in the account may not be  
26 considered as cash balance for the purpose of reducing mill levies.

27 (3) Money may be expended from the account to purchase disability income insurance coverage meeting  
28 the provisions of subsection (1) or for workers' compensation coverage for volunteer firefighters organized or  
29 deployed pursuant to any of the provisions of Title 7, chapter 33, parts 21 through 24 or 41.

30 (4) Money in the account must be invested as provided by law. Interest and income from the investment

1 of money in the account must be credited to the account."  
2

3 **Section 2.** Section 7-33-2109, MCA, is amended to read:

4 **"7-33-2109. Tax levy, debt incurrence, and bonds authorized -- voted levy for volunteer**  
5 **firefighters' disability income or workers' compensation coverage.** (1) At the time of the annual levy of taxes,  
6 the board of county commissioners may, subject to 15-10-420, levy a tax upon all property within a rural fire  
7 district for the purpose of buying or maintaining fire protection facilities, including real property, and apparatus,  
8 including emergency response apparatus, for the district or for the purpose of paying to a city, town, or private  
9 fire service the consideration provided for in any contract with the council of the city, town, or private fire service  
10 for furnishing fire protection service to property within the district. The tax must be collected as are other taxes.

11 (2) Subject to 15-10-425, the board of county commissioners may levy a tax upon all taxable property  
12 within a rural fire district for the purpose of purchasing disability income insurance coverage or workers'  
13 compensation coverage for the volunteer firefighters of the district as provided in 7-6-621.

14 (3) The board of county commissioners or the trustees, if the district is governed by trustees, may pledge  
15 the income of the district, subject to the requirements and limitations of 7-33-2105(1)(d), to secure financing  
16 necessary to procure equipment and buildings, including real property, to house the equipment.

17 (4) In addition to the levy authorized in subsection (1), a district may borrow money by the issuance of  
18 bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities,  
19 including real property, and apparatus, including emergency response apparatus, for the district.

20 (5) The amount of debt incurred pursuant to subsection (3) and the amount of bonds issued pursuant  
21 to subsection (4) and outstanding at any time may not exceed 1.1% of the total assessed value of taxable  
22 property, determined as provided in 15-8-111, within the district, as ascertained by the most recent assessment  
23 for state and county taxes prior to the incurrence of debt or the issuance of the bonds.

24 (6) The bonds must be authorized, sold, and issued and provisions must be made for their payment in  
25 the manner and subject to the conditions and limitations prescribed for the issuance of bonds by counties under  
26 Title 7, chapter 7, part 22."  
27

28 **Section 3.** Section 7-33-2209, MCA, is amended to read:

29 **"7-33-2209. Finance of fire control activities -- voted levy for volunteer firefighters' disability**  
30 **income insurance or workers' compensation coverage.** (1) The county governing body may appropriate funds

1 for the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention,  
2 detection, and suppression of fires.

3 (2) Subject to 15-10-420, if the general fund is budgeted to the full limit, the county governing body may,  
4 at any time fixed by law for levy and assessment of taxes, levy a tax for the purposes of subsection (1).

5 (3) Subject to 15-10-425, the county governing body may levy a tax for the purpose of purchasing  
6 disability income insurance coverage or workers' compensation coverage for volunteer firefighters of volunteer  
7 rural fire control crews and county volunteer fire companies as provided in 7-6-621."

8

9 **Section 4.** Section 7-33-2403, MCA, is amended to read:

10 **"7-33-2403. Operation of fire service area -- voted levy for volunteer firefighters' disability income**  
11 **insurance or workers' compensation coverage.** (1) Whenever the board of county commissioners has  
12 established a fire service area, the commissioners may:

13 (a) govern and manage the affairs of the area;

14 (b) appoint five qualified trustees to govern and manage the affairs of the area; or

15 (c) authorize the election of five qualified trustees to govern and manage the affairs of the area. The term  
16 of office and procedures for nomination and election are the same as those provided for election of rural fire  
17 district trustees in 7-33-2106.

18 (2) Subject to 15-10-425, the commissioners may levy a tax upon all property within the county for the  
19 purpose of buying disability income insurance coverage or workers' compensation coverage for volunteer  
20 firefighters deployed within the fire service area as provided in 7-6-621.

21 (3) If the commissioners appoint trustees under subsection (1), the provisions of 7-33-2105 apply and  
22 7-33-2106 applies whether the trustees are elected or appointed, except that the trustees shall prepare annual  
23 budgets and request a schedule of rates for the budget."

24

25 **Section 5.** Section 7-33-4109, MCA, is amended to read:

26 **"7-33-4109. Supplementary volunteer fire department authorized for cities of second class --**  
27 **voted levy for volunteer firefighters' disability income insurance or workers' compensation coverage.** (1)  
28 In addition to a paid department, the city council, city commission, or other governing body in cities of the second  
29 class may make provision for a volunteer fire department.

30 (2) The city commission or governing department is exempted from compliance with 7-33-4128 to the

1 extent that section applies to the volunteer fire department by way of penalties and infringements.

2 (3) A volunteer is an enrolled member of the volunteer fire department, assists the paid fire department,  
3 and is eligible to serve only on the board of trustees of the fire department relief association of the city. However,  
4 not more than three volunteer members may be on the board of trustees. A person who is a volunteer for the  
5 purposes of this section is not entitled to receive a service pension.

6 (4) The governing body of the city may:

7 (a) pay an enrolled volunteer firefighter a minimum of \$1 for attending a fire and a minimum of \$1 for  
8 each hour or fraction of an hour after the first hour in active service at a fire or returning equipment to its proper  
9 place;

10 (b) subject to 15-10-425, levy a tax upon all property within a fire district for the purpose of buying  
11 disability income insurance coverage or workers' compensation coverage for the volunteer firefighters of the  
12 volunteer fire department as provided in 7-6-621.

13 (5) In attending fires, any volunteer shall act and serve under the supervision of the chief of the paid fire  
14 department."

15

16 **Section 6.** Section 7-33-4111, MCA, is amended to read:

17 **"7-33-4111. Tax levy for volunteer fire departments -- voted levy for volunteer firefighters'**  
18 **disability income insurance or workers' compensation coverage.** (1) For the purpose of supporting volunteer  
19 fire departments in any city or town that does not have a paid fire department and for the purpose of purchasing  
20 the necessary equipment for them, the council in any city or town may, subject to 15-10-420, levy, in addition to  
21 other levies permitted by law, a tax on the taxable value of all taxable property in the city or town.

22 (2) Subject to 15-10-425, a city or town may levy a tax on the taxable value of all taxable property in the  
23 city or town for the purpose of purchasing disability income insurance coverage or workers' compensation  
24 coverage for volunteer firefighters of volunteer fire departments as provided in 7-6-621."

25

26 **Section 7.** Section 7-34-102, MCA, is amended to read:

27 **"7-34-102. Ambulance service mill levy permitted.** Subject to 15-10-420 and in addition to all other  
28 levies authorized by law, each county, city, or town may levy an annual tax on the taxable value of all taxable  
29 property within the county, city, or town to defray the costs incurred in providing ambulance service. These costs  
30 may include workers' compensation coverage for emergency medical technicians on volunteer duty with the

1 ambulance service or members of a paid or volunteer nontransporting medical unit defined in 50-6-302."

2

3 ~~Section 8.~~ Section 39-71-105, MCA, is amended to read:

4 ~~"39-71-105. Declaration of public policy.~~ For the purposes of interpreting and applying this chapter,  
5 the following is the public policy of this state:

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

11 ~~(2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that~~  
12 ~~a holder of a current, valid independent contractor exemption certificate issued by the department is an~~  
13 ~~independent contractor if the person is working under the independent contractor exemption certificate. The~~  
14 ~~holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this~~  
15 ~~chapter unless the person has elected to be bound personally and individually by the provisions of compensation~~  
16 ~~plan No. 1, 2, or 3.~~

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

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

25 ~~(5) This chapter must be construed according to its terms and not liberally in favor of any party.~~

26 ~~(6) It is the intent of the legislature that:~~

27 ~~(a) stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not~~  
28 ~~compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes~~  
29 ~~that these claims are difficult to objectively verify and that the claims have a potential to place an economic~~  
30 ~~burden on the workers' compensation and occupational disease system. The legislature also recognizes that~~

1 ~~there are other states that do not provide compensation for various categories of stress claims and that stress~~  
 2 ~~claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are~~  
 3 ~~compensable under the present system, and it is within the legislature's authority to define the limits of the~~  
 4 ~~workers' compensation and occupational disease system.~~

5 ~~\_\_\_\_\_ (b) for occupational disease claims, because of the nature of exposure, workers should not be required~~  
 6 ~~to provide notice to employers of the disease as required of injuries and that the requirements for filing of claims~~  
 7 ~~reflect consideration of when the worker knew or should have known that the worker's condition resulted from~~  
 8 ~~an occupational disease. The legislature recognizes that occupational diseases in the workplace are caused by~~  
 9 ~~events occurring on more than a single day or work shift and that it is within the legislature's authority to define~~  
 10 ~~an occupational disease and establish the causal connection to the workplace.~~

11 ~~\_\_\_\_\_ (7) The legislature recognizes the value of voluntary public safety workers who put their lives at risk to~~  
 12 ~~serve others. The legislature also recognizes the need to avoid inequity in indemnity benefits for those voluntary~~  
 13 ~~public safety workers eligible for workers' compensation coverage who have jobs and those voluntary public~~  
 14 ~~safety workers eligible for workers' compensation coverage who are temporarily unemployed or otherwise not~~  
 15 ~~paid wages and because of a compensable injury cannot handle child care or household work and have to hire~~  
 16 ~~a substitute."~~

17  
 18 **Section 8.** Section 39-71-118, MCA, is amended to read:

19 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter, and volunteer emergency**  
 20 **medical technician defined.** (1) As used in this chapter, the term "employee" or "worker" means:

21 (a) each person in this state, including a contractor other than an independent contractor, who is in the  
 22 service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied,  
 23 oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the  
 24 elected and appointed paid public officers and officers and members of boards of directors of quasi-public or  
 25 private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the  
 26 corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not  
 27 otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of  
 28 the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic  
 29 employment is excluded.

30 (b) any juvenile who is performing work under authorization of a district court judge in a delinquency

1 prevention or rehabilitation program;

2 (c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training  
3 under a state or federal vocational training program, whether or not under an appointment or contract of hire with  
4 an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving  
5 payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational  
6 training programs, as outlined in this subsection, while they are on the premises of a public school or community  
7 college.

8 (d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

9 (e) a person, other than a juvenile as described in subsection (1)(b), who is performing community  
10 service for a nonprofit organization or association or for a federal, state, or local government entity under a court  
11 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under  
12 appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment  
13 from a third party. For a person covered by the definition in this subsection (1)(e):

14 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment  
15 award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part  
16 4, for a full-time employee at the time of the injury; and

17 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the  
18 minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service  
19 required under the order from the court or hearings officer.

20 (f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

21 (g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under  
22 Title 7, chapter 34, part 1;

23 (h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is  
24 considered an employee for workers' compensation purposes only. The department of public health and human  
25 services shall provide workers' compensation coverage for recipients of financial assistance, as defined in  
26 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or  
27 private worksites through an endorsement to the department of public health and human services' workers'  
28 compensation policy naming the public or private worksite entities as named insureds under the policy. The  
29 endorsement may cover only the entity's public assistance participants and may be only for the duration of each  
30 participant's training while receiving financial assistance or while participating in the food stamp program under

1 a written agreement between the department of public health and human services and each public or private  
 2 entity. The department of public health and human services may not provide workers' compensation coverage  
 3 for individuals who are covered for workers' compensation purposes by another state or federal employment  
 4 training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for  
 5 work of a similar nature at the assigned worksite.

6 (i) a member of a religious corporation, religious organization, or religious trust while performing services  
 7 for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

8 (2) The terms defined in subsection (1) do not include a person who is:

9 (a) participating in recreational activity and who at the time is relieved of and is not performing prescribed  
 10 duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other  
 11 emolument of employment;

12 (b) performing voluntary service at a recreational facility and who receives no compensation for those  
 13 services other than meals, lodging, or the use of the recreational facilities;

14 (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under  
 15 the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on  
 16 behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

17 (d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and  
 18 providing care without wage compensation to no more than six foster children in the provider's own residence.  
 19 The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure  
 20 and recreational activities, and providing for other needs and activities arising in the provision of in-home foster  
 21 care.

22 (3) (a) With the approval of the insurer, an employer may elect to include as an employee under the  
 23 provisions of this chapter any volunteer as defined in subsection (2)(c).

24 (b) A fire district, fire service area, or volunteer fire department formed under Title 7, chapter 33, a  
 25 not-for-profit AN ambulance service NOT OTHERWISE COVERED BY SUBSECTION (1)(G), or a paid or volunteer  
 26 nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as  
 27 an employee under the provisions of this chapter a volunteer firefighter or a volunteer emergency medical  
 28 technician.

29 (4) (a) The term "volunteer emergency medical technician" means a person who has received a  
 30 certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves



1 the public through a not-for-profit ambulance service or a paid or volunteer nontransporting medical unit, as  
2 defined in 50-6-302, in service to a town, city, or county.

3 (b) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a  
4 governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

5 ~~(b)~~(c) The term "volunteer hours" means all the time spent by a volunteer firefighter or a volunteer  
6 emergency medical technician in the service of an employer or as a volunteer for a town, city, or county, including  
7 but not limited to training time, response time, and time spent at the employer's premises.

8 (5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed  
9 limited liability company, the employer may elect to include as an employee within the provisions of this chapter  
10 any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member  
11 of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or  
12 limited liability company business.

13 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice  
14 naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage  
15 desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner,  
16 sole proprietor, or member is not considered an employee within this chapter until notice has been given.

17 (c) A change in elected wages must be in writing and is effective at the start of the next quarter following  
18 notification.

19 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the  
20 minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination  
21 of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than  
22 \$900 a month and not more than 1 1/2 times the state's average weekly wage.

23 (6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability  
24 company, the employer may elect to include as an employee within the provisions of this chapter any corporate  
25 officer or manager exempted under 39-71-401(2).

26 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice  
27 naming the corporate officer or manager to be covered and stating the level of compensation coverage desired  
28 by electing the amount of wages to be reported, subject to the limitations in subsection ~~(5)(d)~~ (6)(d). A corporate  
29 officer or manager is not considered an employee within this chapter until notice has been given.

30 (c) A change in elected wages must be in writing and is effective at the start of the next quarter following

1 notification.

2 (d) ~~All~~ For the purposes of an election under this subsection (6), all weekly compensation benefits must  
 3 be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection  
 4 (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits,  
 5 the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the  
 6 state's average weekly wage.

7 (7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the  
 8 county commissioners or trustees for a fire service area may elect to include as an employee within the provisions  
 9 of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage  
 10 under this section may not receive disability benefits under Title 19, chapter 17.

11 (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium  
 12 ~~and weekly benefit~~ AND WEEKLY BENEFIT purposes based on the number of volunteer hours of each firefighter, but  
 13 no more than 60 hours, times the state's average weekly wage divided by 40 hours, ~~subject to a maximum of~~  
 14 ~~1 1/2 times the state's average weekly wage.~~

15 ~~———— (c) Benefits for a volunteer firefighter who is injured during volunteer hours while in the course and scope~~  
 16 ~~of employment are based:~~

17 ~~———— (i) for a volunteer firefighter with concurrent employment, on 66 2/3 of the average actual wages in the~~  
 18 ~~volunteer firefighter's regular employment up to the state's average weekly wage; or~~

19 ~~———— (ii) for a volunteer firefighter who is not employed or is a~~

20 ~~———— (c) A (C) A self-employed sole proprietor or partner who has elected not to be covered under this~~  
 21 ~~chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course~~  
 22 ~~and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b)~~  
 23 ~~be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4,~~  
 24 ~~for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection,~~  
 25 ~~or the county commissioners or trustees for a fire service area may make an election for benefits. If an election~~  
 26 ~~is made, payrolls must be reported and premiums must be assessed on the assumed on 66 2/3 of the state's~~  
 27 ~~average weekly~~ BUT WHO IS COVERED AS A VOLUNTEER FIREFIGHTER PURSUANT TO SUBSECTION (7)(A), AND WHEN  
 28 INJURED IN THE COURSE AND SCOPE OF EMPLOYMENT AS A VOLUNTEER FIREFIGHTER MAY IN ADDITION TO THE BENEFITS  
 29 DESCRIBED IN SUBSECTION (7)(B) BE ELIGIBLE FOR BENEFITS AT AN ASSUMED WAGE OF THE MINIMUM WAGE ESTABLISHED  
 30 UNDER TITLE 39, CHAPTER 3, PART 4, FOR 2,080 HOURS A YEAR. THE TRUSTEES OF A RURAL FIRE DISTRICT, A COUNTY

1 GOVERNING BODY PROVIDING RURAL FIRE PROTECTION, OR THE COUNTY COMMISSIONERS OR TRUSTEES FOR A FIRE  
2 SERVICE AREA MAY MAKE AN ELECTION FOR BENEFITS. IF AN ELECTION IS MADE, PAYROLLS MUST BE REPORTED AND  
3 PREMIUMS MUST BE ASSESSED ON THE ASSUMED wage.

4 (8) Except as provided in Title 39, chapter 8 of this title, an employee or worker in this state whose  
5 services are furnished by a person, association, contractor, firm, limited liability company, limited liability  
6 partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117,  
7 is presumed to be under the control and employment of the employer. This presumption may be rebutted as  
8 provided in 39-71-117(3).

9 (9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution  
10 who is participating in work-based learning activities and who is paid wages by the educational institution or  
11 business partner is the employee of the entity that pays the student's wages for all purposes under this chapter.  
12 A student who is not paid wages by  
13 the business partner or the educational institution is a  
14 volunteer and is subject to the provisions of this chapter.

15 (10) For purposes of this section, an "employee or worker in this state" means:

16 (a) a resident of Montana who is employed by an employer and whose employment duties are primarily  
17 carried out or controlled within this state;

18 (b) a nonresident of Montana whose principal employment duties are conducted within this state on a  
19 regular basis for an employer;

20 (c) a nonresident employee of an employer from another state engaged in the construction industry, as  
21 defined in 39-71-116, within this state; or

22 (d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose  
23 employer elects coverage with an insurer that allows an election for an employer whose:

24 (i) nonresident employees are hired in Montana;

25 (ii) nonresident employees' wages are paid in Montana;

26 (iii) nonresident employees are supervised in Montana; and

27 (iv) business records are maintained in Montana.

28 (11) An insurer may require coverage for all nonresident employees of a Montana employer who do not  
29 meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection  
30 (10)(d).

1 (12) (a) A not-for-profit AN ambulance service NOT OTHERWISE COVERED BY SUBSECTION (1)(G) or a paid  
 2 or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect  
 3 to include as an employee within the provisions of this chapter a volunteer emergency medical technician who  
 4 serves public safety through the not-for-profit ambulance service NOT OTHERWISE COVERED BY SUBSECTION (1)(G)  
 5 or the paid or volunteer nontransporting medical unit.

6 (b) In the event of an election under subsection (12)(a), the employer shall report payroll for all volunteer  
 7 emergency medical technicians for premium AND WEEKLY BENEFIT purposes based on the number of volunteer  
 8 hours of each emergency medical technician, but no more than 60 hours, times the state's average weekly wage  
 9 divided by 40 hours.

10 ~~\_\_\_\_\_ (c) Benefits for a volunteer emergency medical technician who is injured during volunteer hours while~~  
 11 ~~in the course and scope of employment are based:~~

12 ~~\_\_\_\_\_ (i) for a volunteer emergency medical technician who has concurrent employment, on 66 2/3 of the~~  
 13 ~~average actual wages in the volunteer emergency medical technician's regular employment, up to the state's~~  
 14 ~~average weekly wage;~~

15 ~~\_\_\_\_\_ (ii) for a volunteer emergency medical technician who is not employed or is a self-employed sole~~  
 16 ~~proprietor or partner who has elected not to be covered under this chapter, on 66 2/3 of the state's average~~  
 17 ~~weekly wage.~~

18 (C) A SELF-EMPLOYED SOLE PROPRIETOR OR PARTNER WHO HAS ELECTED NOT TO BE COVERED UNDER THIS  
 19 CHAPTER, BUT WHO IS COVERED AS A VOLUNTEER FIREFIGHTER PURSUANT TO SUBSECTION (12)(A), AND WHEN INJURED  
 20 IN THE COURSE AND SCOPE OF EMPLOYMENT AS A VOLUNTEER FIREFIGHTER MAY IN ADDITION TO THE BENEFITS DESCRIBED  
 21 IN SUBSECTION (12)(B) BE ELIGIBLE FOR BENEFITS AT AN ASSUMED WAGE OF THE MINIMUM WAGE ESTABLISHED UNDER  
 22 TITLE 39, CHAPTER 3, PART 4, FOR 2,080 HOURS A YEAR. THE TRUSTEES OF A RURAL FIRE DISTRICT, A COUNTY  
 23 GOVERNING BODY PROVIDING RURAL FIRE PROTECTION, OR THE COUNTY COMMISSIONERS OR TRUSTEES FOR A FIRE  
 24 SERVICE AREA MAY MAKE AN ELECTION FOR BENEFITS. IF AN ELECTION IS MADE, PAYROLLS MUST BE REPORTED AND  
 25 PREMIUMS MUST BE ASSESSED ON THE ASSUMED WEEKLY WAGE.

26 (d) A student who is a volunteer emergency medical technician and on the roster of a not-for-profit AN  
 27 ambulance service NOT OTHERWISE COVERED BY SUBSECTION (1)(G) or a paid or volunteer nontransporting medical  
 28 unit in service to a town, city, or county is eligible for coverage under this subsection (12).

29 (e) A volunteer emergency medical technician who receives workers' compensation coverage under this  
 30 section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer

1 firefighter."

2

3 **Section 9.** Section 39-71-123, MCA, is amended to read:

4 **"39-71-123. Wages defined.** (1) "Wages" means all remuneration paid for services performed by an  
5 employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all  
6 remuneration paid in any medium other than cash. The term includes but is not limited to:

7 (a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays,  
8 vacations, and periods of sickness;

9 (b) backpay or any similar pay made for or in regard to previous service by the employee for the  
10 employer, other than retirement or pension benefits from a qualified plan;

11 (c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented  
12 by the employee to the employer for tax purposes;

13 (d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken  
14 by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or  
15 provided services for that remuneration;

16 (e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based  
17 on its actual value; and

18 (f) payments made to an employee on any basis other than time worked, including but not limited to  
19 piecework, an incentive plan, or profit-sharing arrangement.

20 (2) The term "wages" does not include any of the following:

21 (a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other  
22 expenses, as set forth in department rules;

23 (b) the amount of the payment made by the employer for employees, if the payment was made for:

24 (i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal  
25 Revenue Code;

26 (ii) sickness or accident disability under a workers' compensation policy;

27 (iii) medical or hospitalization expenses in connection with sickness or accident disability, including health  
28 insurance for the employee or the employee's immediate family;

29 (iv) death, including life insurance for the employee or the employee's immediate family;

30 (c) vacation or sick leave benefits accrued but not paid;

- 1 (d) special rewards for individual invention or discovery; or
- 2 (e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.
- 3 (3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual
- 4 earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the
- 5 term of employment for the same employer is less than four pay periods, the employee's wages are the hourly
- 6 rate times the number of hours in a week for which the employee was hired to work.
- 7 (b) For good cause shown, if the use of the last four pay periods does not accurately reflect the
- 8 claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for
- 9 an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period,
- 10 including periods of idleness or seasonal fluctuations.
- 11 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent
- 12 employments, the average actual wages must be calculated as provided in subsection (3). As used in this
- 13 subsection, "concurrent employment" means employment in which the employee was actually employed at the
- 14 time of the injury and would have continued to be employed without a break in the term of employment if not for
- 15 the injury.
- 16 (b) Except as provided in ~~39-71-118(7)(c) 39-71-118(7)(c)(ii) and (12)(c)(ii)~~ 39-71-118(7)(C) AND (12)(C),
- 17 the compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's
- 18 regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from
- 19 which the volunteer is disabled by the injury incurred.
- 20 (c) The compensation benefits for an employee working at two or more concurrent remunerated
- 21 employments must be based on the aggregate of average actual wages of all employments, except for the wages
- 22 earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be
- 23 covered, from which the employee is disabled by the injury incurred.
- 24 (5) For the purposes of calculating compensation benefits for an employee working for an employer, as
- 25 provided in 39-71-117(1)(d), and for calculating premiums to be paid by that employer, the wages must be based
- 26 upon all hours worked multiplied by the mean hourly wage by area, as published by the department in the edition
- 27 of Montana Informational Wage Rates by Occupation, adopted annually by the department, that is in effect as
- 28 of the date of injury or for the period in which the premium is due."

29

30 NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 2011.

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- END -