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As of: August 2, 2012 (11:39am)

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act requiring mandatory workers' compensation coverage for volunteer firefighters; requiring each county governing body to establish a trust fund for paying volunteer firefighters' workers' compensation premiums; providing county governing bodies with a permissive levy for payment of premiums for volunteer firefighters; excluding certain cities from the property tax permissive levy for volunteer firefighters' workers' compensation; revising premium and benefit provisions for volunteer firefighters; superseding the unfunded mandate laws; amending sections 7-33-2209, 15-10-420, 39-71-118, 39-71-123, and 39-71-401, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Workers' compensation for volunteer firefighters -- definitions.** (1) As of Jan. 1, 2014, it is the duty of an employer to provide workers' compensation coverage as provided in Title 39, chapter 71, to any volunteer firefighter who is listed on a roster of service.

(2) An employer may purchase workers' compensation coverage from any entity authorized to write workers' compensation coverage under plan No. 1, 2, or 3 of Title 39, chapter 71.

(3) (a) Except as provided in subsection (3) (b), an employer

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shall annually by the first Tuesday in September certify to the county governing body the dollar amount of workers' compensation premiums paid or expected to be paid for the employer's volunteer firefighters' annual policy period.

(b) By Sept. 3, 2013, an employer shall provide the county governing body with an estimate of the dollar amount anticipated as necessary to provide annual workers' compensation coverage, starting no later than Jan. 1, 2014, for volunteer firefighters as provided in [this section]. If an employer provides volunteer firefighters with workers' compensation coverage prior to Jan. 1, 2014, the Sept. 3, 2013, notification must be based on actual coverage costs.

(4) The county governing body shall reimburse employers the actual costs as certified in subsection (3) for the workers' compensation coverage for volunteer firefighters from the fund established in [section 2].

(5) For the purposes of this section, the following definitions apply:

(a) (i) "Employer" means the governing body of a fire agency organized under Title 7, chapter 33, including a rural fire district, a fire service area, a volunteer fire department, a volunteer fire company, or a volunteer rural fire control crew.

(ii) For the purposes of this section, the term does not mean a governing body of a city of the first class or second class, including a city to which 7-33-4109 applies, that as of Jan 1, 2014, provides workers' compensation coverage to employees as defined in 39-71-118.

(b) "Roster of service" means the list of volunteer firefighters who have filled out a membership card as required under the volunteer firefighters' compensation act in Title 19, chapter 17.

(c) (i) "Volunteer firefighter" means a volunteer who serves an employer and is on the employer's roster of service. A volunteer firefighter does not have to be an active member as defined in 19-17-102.

(ii) The term does not mean a true volunteer who is not listed on a roster of service.

NEW SECTION. **Section 2. Fund for volunteer firefighters' workers' compensation.** (1) Each county governing body shall establish a special revenue fund, known as the volunteer firefighter workers' compensation fund.

(2) Levies imposed pursuant to [section 3] must be placed into the fund established in subsection (1).

(3) Expenditures from the fund may be made only to provide reimbursements to employers for workers' compensation premiums required by [section 1].

(4) Money in the fund must be invested as provided by 7-13-1319, 7-3-1322, 7-6-202, 7-6-2701, or 7-6-4603, as applicable. Interest and income from the investment of money in the fund must be credited to the fund.

NEW SECTION. **Section 3. County tax levy to pay volunteer firefighter workers' compensation coverage.** (1) Subject to

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subsection (6), the county governing body shall levy an annual property tax in the amount necessary to:

(a) fund premiums for workers' compensation for volunteer firefighters as provided in [section 1]; and

(b) establish a contingency fund of 10% above the premium amounts projected in [section 1]. The contingency amount is to be used only for contingencies related to workers' compensation premium payments.

(2) The amount determined in subsection (1) is not subject to the mill levy calculation limitation provided for in 15-10-420. Levies implemented under this section must be calculated separately from the mill levies calculated under 15-10-420 and are not subject to the inflation factor described in 15-10-420(1)(a).

(3) Subject to subsection (6), volunteer firefighters' workers' compensation premiums that are paid wholly or in part from user charges generated by proprietary funds, as defined by generally accepted accounting principles, are included in the amount exempted from the mill levy calculation limitation provided for in 15-10-420.

(4) If tax-billing software is capable, the county treasurer shall list separately the cumulative mill levy or dollar amount on the tax notice sent to each taxpayer under 15-16-101(2). The amount must also be reported to the department of administration pursuant to 7-6-4003.

(5) The mill levy must be described as the permissive volunteer firefighters' workers' compensation levy.

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(6) Property within the boundaries of a city of the first class or second class, including a city to which 7-33-4109 applies, is not subject to the levy provided for in this section.

NEW SECTION. **Section 4. Public hearing requirement.** Each year prior to implementing a levy as provided in [section 3] and after giving notice of a hearing as provided in 7-1-2121, the county governing body shall hold a public hearing regarding implementation of the levy allowed under [section 3].

Section 5. Section 7-33-2209, MCA, is amended to read:

"7-33-2209. Finance of fire control activities --voted ~~levy for volunteer firefighters' disability income insurance or workers' compensation coverage.~~ (1) The county governing body may appropriate funds for the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention, detection, and suppression of fires.

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

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

{Internal References to 7-33-2209:

7-6-2527x 7-33-2202x }

Section 6. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States

department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior

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to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

(d) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property under 15-6-134 or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

- (a) school district levies established in Title 20; or
- (b) a mill levy imposed for a newly created regional resource authority.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity:

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(a) may increase the number of mills to account for a decrease in reimbursements; and

(b) may not increase the number of mills to account for a loss of tax base because of legislative action that is reimbursed under the provisions of 15-1-121(7).

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-108, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402;

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;

(iv) a levy for the support of a study commission under 7-3-184;

(v) a levy for the support of a newly established regional resource authority;

(vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or

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2-18-703; ~~or~~

(vii) a levy for reimbursing a county for costs incurred in transferring property records to an adjoining county under 7-2-2807 upon relocation of a county boundary; or

(viii) a levy to pay the amounts authorized in [section 3] to obtain workers' compensation coverage for volunteer firefighters.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

{Internal References to 15-10-420:

2-9-212	2-9-212	2-9-212	2-9-212
2-9-212	2-9-212	2-9-212	2-18-703
7-1-112	7-1-114	7-1-2103	7-1-4123
7-2-2730	7-2-2730	7-2-2746	7-2-2807
7-2-4111	7-2-4918	7-2-4918	7-3-1104
7-3-1310	7-3-1310	7-3-1311	7-3-1311
7-3-1313	7-3-1313	7-3-4312	7-6-502
7-6-2501	7-6-2511	7-6-2512	7-6-2513

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7-6-2522	7-6-4035	7-6-4036	7-6-4401
7-6-4406	7-6-4421	7-6-4431	7-6-4431
7-6-4438	7-6-4438	7-6-4453	7-10-115
7-11-1112	7-11-1112	7-13-144	7-13-3027
7-14-111	7-14-232	7-14-1111	7-14-1131
7-14-2101	7-14-2101	7-14-2101	7-14-2501
7-14-2502	7-14-2503	7-14-2801	7-14-2801
7-14-2807	7-14-4404	7-14-4644	7-14-4703
7-14-4713	7-14-4734	7-15-4281	7-16-101
7-16-2102	7-16-2108	7-16-2109	7-16-4105
7-16-4113	7-16-4114	7-21-3203	7-22-2142
7-22-2142	7-22-2306	7-22-2512	7-32-235
7-32-4117	7-33-2109	7-33-2209	7-33-4111
7-33-4130	7-34-102	7-34-2122	7-34-2133
7-34-2417	7-35-2205	13-13-230	15-7-403
15-10-202	15-10-401	15-10-402	15-10-425
15-10-425	15-16-203	15-23-214	15-24-1402
15-24-1402	15-24-1501	15-24-1603	15-24-2102
19-7-404	19-9-209	19-13-214	19-18-504
19-19-301	20-7-714	20-9-331	20-9-333
20-9-360	20-9-404	20-9-533	20-15-305
20-15-311	20-15-311	20-15-313	20-15-314
20-15-314	20-25-439	22-1-304	22-1-316
22-1-702	22-1-707	22-1-708	22-1-711
22-1-711	23-4-303	39-71-403	41-5-1804
50-2-111	50-2-111	53-20-208	53-21-1010
67-10-402	67-11-201	67-11-301	67-11-301
67-11-302	67-11-303	67-11-303	75-10-112
76-1-111	76-1-403	76-1-404	76-1-406
76-2-102	76-5-1116	76-5-1116	76-6-109
76-15-501	76-15-505	76-15-515	76-15-516
76-15-516	76-15-516	76-15-518	76-15-623
81-8-504	85-3-412	85-3-422	85-7-307
85-8-601	85-8-615	85-8-618	85-20-1001
85-20-1001	90-5-112	90-6-403	90-6-403
90-6-403 }			

Section 7. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined.

(1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an

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

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

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

(d) an aircrew member or other person who is employed as a

volunteer under 67-2-105;

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

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

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

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

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

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an

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employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

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

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

(a) performing voluntary service at a recreational facility

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and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

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

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

(d) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2) (r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2) (d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1) (a).

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

~~(b) A fire district, fire service area, or volunteer fire department formed under Title 7, chapter 33, an An ambulance service not otherwise covered by subsection (1) (g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee under the provisions of this chapter a volunteer firefighter or a volunteer emergency medical technician.~~

~~(4) (a) The term "volunteer emergency medical technician" means a person who has received a certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1) (g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.~~

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

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

~~(5)~~(4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed

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limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection ~~(5)~~ (4) (d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

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

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection ~~(5)~~ (4) (d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

~~(6)~~ (5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the

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provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

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

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

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

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

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~~(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.~~

~~(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a), and when injured in the course and scope of employment as a volunteer firefighter may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.~~

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

~~(9)(7)~~ A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is

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participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

~~(10)~~(8) For purposes of this section, an "employee or worker in this state" means:

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

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

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

(d) a nonresident of Montana who does not meet the requirements of subsection ~~(10)~~ (8)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

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

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

~~(11)~~(9) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements

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of subsection ~~(10)~~ (8)(b) or ~~(10)~~ (8)(d) as a condition of approving the election under subsection ~~(10)~~ (8)(d).

~~(12)~~ ~~(a)~~ (10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer emergency medical technician who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit.

(b) In the event of an election under subsection ~~(12)~~ (10)(a), the employer shall report payroll for all volunteer emergency medical technicians for premium and weekly benefit purposes based on the number of volunteer hours of each emergency medical technician, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer emergency medical technician pursuant to subsection ~~(12)~~ (10)(a), ~~and when~~ may request that the ambulance service or volunteer nontransporting medical unit described in subsection (10)(a) make a separate election to provide additional benefits as described in this subsection. If the separate election is made and approved by the insurer, the self-employed sole proprietor or partner, injured in the course and scope of employment as a volunteer emergency medical technician may in addition to the benefits described in subsection ~~(12)~~ (10)(b) be

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eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If ~~an~~ the separate election is made as provided in this subsection ~~(12)(a)~~, payrolls must be reported and premiums must be assessed on the assumed weekly wage.

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

(e) The term "volunteer emergency medical technician" means a person who has received a certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.

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

{*Internal References to 39-71-118:*

39-71-117 x 39-71-123 a 39-71-401a 39-71-744 x
39-71-4003 x 50-71-112 x 50-71-204 x }

Section 8. Section 39-71-123, MCA, is amended to read:

"39-71-123. Wages defined. (1) "Wages" means all remuneration paid for services performed by an employee for an

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employer, or income provided for in subsection (1) (d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) special rewards for individual invention or discovery;

or

(e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.

(3) (a) Except as provided in subsection (3) (b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to

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exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) Except as provided in ~~39-71-118(7)(c) and (12)(c)~~ 39-71-118(10)(c) and [section 10], the compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) For the purposes of calculating compensation benefits for an employee working for an employer, as provided in 39-71-117(1)(d), and for calculating premiums to be paid by that employer, the wages must be based upon all hours worked

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multiplied by the mean hourly wage by area, as published by the department in the edition of Montana Informational Wage Rates by Occupation, adopted annually by the department, that is in effect as of the date of injury or for the period in which the premium is due."

{*Internal References to 39-71-123:*

33-22-2006 33-22-2006 39-71-116 39-71-118a }

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

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

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

- (a) household or domestic employment;
- (b) casual employment;
- (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

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(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

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

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

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

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

(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2) (k):

(i) "freelance correspondent" means a person who submits

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articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier":

(A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and

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

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

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

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

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

(p) employment of an employer's spouse for whom an

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exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

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

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

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

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

(r) an officer of a quasi-public or a private corporation or, except as provided in subsection (3), a manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

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

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

(iii) the officer or manager either:

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

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company; or

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

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

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

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

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

(v) employment of a person performing the services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meets the definition of a broker or freight forwarder, as provided in 49 U.S.C. 13102;

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(w) employment of a person who is not an employee or worker in this state as defined in ~~39-71-118(10)~~ 39-71-118(8);

(x) employment of a person who is working under an independent contractor exemption certificate;

(y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.

(z) a musician performing under a written contract.

(3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

(ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.

(b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

(c) For the purposes of this subsection (3), "person"

means:

- (i) a sole proprietor;
- (ii) a working member of a partnership;
- (iii) a working member of a limited liability partnership;
- (iv) a working member of a member-managed limited liability

company; or

(v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

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

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

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

(b) If the employer changes plans or insurers, the

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employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

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

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

{*Internal References to 39-71-401:*

3-5-601	27-1-520	39-8-207	39-51-204
39-71-118	39-71-118	39-71-118	39-71-118

39-71-118 39-71-123 39-71-201 39-71-409
39-71-417 39-71-501 45-7-501 53-20-221
53-20-222 }

NEW SECTION. **Section 10. Calculation of volunteer**

firefighter benefits, premiums -- definitions. (1) For the purposes of this subsection, the following definitions apply:

(a) (i) The term "volunteer firefighter" means a firefighter who is on the roster of service as defined in [section 1] of a fire agency organized under Title 7, chapter 33, including a rural fire district, a fire service area, a volunteer fire department, a volunteer fire company, or a volunteer rural fire control crew.

(ii) The term does not include a true volunteer who is not listed on a roster of service or a member of a volunteer fire department provided for in 7-33-4109.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer as defined in [section 1] including but not limited to training time, response time, and time spent at the employer's premises. The employer as defined in [section 1] may count as volunteer hours any time spent on an emergency medical service call by a volunteer firefighter who also serves as a volunteer emergency medical technician.

(2) (a) For premium purposes an employer defined in [section 1] shall base payroll for all volunteer firefighters on the roster of service on the number of volunteer hours of each volunteer, but no more than 60 hours, times the state's average

weekly wage divided by 40 hours;

(b) For benefit purposes, if concurrent employment under 39-71-123 does not apply or a separate election was not made for a self-employed proprietor or partner as provided in 39-71-118(10)(c), a volunteer firefighter injured in the course and scope of employment as a volunteer firefighter is eligible for a weekly benefit of \$___ a week in addition to medical benefits. **OR**

(2) (a) For premium purposes an employer defined in [section 1] shall base payroll for all volunteer firefighters on a roster of service on a flat rate established by the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10.

(b) For benefit purposes, if concurrent employment under 39-71-123 does not apply or a separate election was not made for a self-employed proprietor or partner as provided in 39-71-118(10)(c), a volunteer firefighter injured in the course and scope of employment as a volunteer firefighter is eligible for medical benefits but not for a weekly wage-loss benefit.

NEW SECTION. **Section 11. Unfunded mandate laws superseded.**

The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

NEW SECTION. **Section 12. {standard} Codification**

instruction. (1) [Sections 1 and 4] are intended to be codified as an integral part of Title 7, chapter 1, part 21, and the provisions of Title 7, chapter 1, part 21, apply to [sections 1

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and 4].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 6, part 2, and the provisions of Title 7, chapter 6, part 2, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 15, chapter 10, part 4, and the provisions of Title 15, chapter 10, part 4, apply to [section 3].

(4) [Section 10] is intended to be codified as an integral part of Title 39, chapter 71, part 7, and the provisions of Title 39, chapter 71, part 7, apply to [section 10].

NEW SECTION. **Section 13. {standard} Effective date.** [This act] is effective July 1, 2013.

- END -

{Name : Pat Murdo
Title : Legislative Research Analyst
Agency : Legislative Services Division
Phone : 444-3594
E-Mail : pmurdo@mt.gov}