

HOUSE BILL NO. 393
INTRODUCED BY M. NOENNIG

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE STATUTE RELATING TO RAILROAD COMPANY EMPLOYER LIABILITY; CLARIFYING THE ELIMINATION OF THE "FELLOW SERVANT" RULE AS TO RAILROAD COMPANIES; CLARIFYING THAT THE LIABILITY OF A RAILROAD COMPANY FOR NEGLIGENCE OF EMPLOYEES DOES NOT APPLY WHEN AN EMPLOYEE IS COVERED BY A COLLECTIVE BARGAINING AGREEMENT; AMENDING SECTION 39-2-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, prior to 1903, throughout the United States, under common law, an employer was not liable for physical injuries sustained by an employee that were caused by the negligent act of a fellow employee; and

WHEREAS, this common law defense was called the "fellow servant" defense, and if the defense was successful, the injured worker could not recover from the employer; and

WHEREAS, following a nationwide movement to protect railroad workers, the Montana Legislature in 1903 and 1905 enacted legislation to eliminate the common law "fellow servant" defense as to railroad companies by enacting Chapter 83, Laws of 1903, and Chapter 1, Laws of 1905, now codified as section 39-2-703, MCA; and

WHEREAS, in an attempt to create nationwide uniformity in the handling of injury claims for railroad companies involved in interstate commerce, Congress passed the Federal Employers' Liability Act (FELA); and

WHEREAS, FELA holds railroads involved in interstate commerce liable for worker injuries caused by a railroad's negligence or by a coworker's negligence, and in addition, under FELA, railroad employees are afforded benefits for work-related injuries and access to a dispute resolution process; and

WHEREAS, in 1909 the Montana Supreme Court, on rehearing, recognized that the Legislature did not intend to create causes of action through its passage of the law now codified as section 39-2-703, MCA, and stated in its opinion in *Dillon v. Great Northern Railway*, 38 Mont. 485 100 P. 960 (1909), that "we think there is not any room for doubt that in enacting sections 5251 and 5252, Revised Codes, the Legislature did not intend to create any new right of action, but merely recognized a right of action existing at common law, and sought to make that right available, notwithstanding the negligence of a fellow-servant"; and

WHEREAS, in 1915 the Montana Legislature enacted the Workmen's Compensation Act (now known as the Workers' Compensation Act); and

WHEREAS, in 1926, Congress passed the Railway Labor Act (RLA), establishing a dispute resolution mechanism for actions growing out of grievances between railroads and labor unions or out of disputes related to the interpretation and application of collective bargaining agreements to individual employees or their grievances or claims; and

WHEREAS, the main purpose of the RLA was to create national uniformity in labor practices; and

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

WHEREAS, in Winslow v. Montana Rail Link, Inc., 2000 MT 292, 302 Mont. 289, 16 P.3d 992 (2000), the Montana Supreme Court applied section 39-2-703, MCA, for the first time since its passage to a wrongful discharge action by a railroad employee who was covered by a collective bargaining agreement; and

WHEREAS, it is the Legislature's intent to clarify that elimination of the "fellow servant" rule as to railroad companies did not create causes of action and to clarify that the liability of a railroad company for negligence of employees does not apply to an employee claim that is covered by a collective bargaining agreement.

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

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

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

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

(3) ~~Every~~ Each railway corporation doing business in this state, including electric railway corporations, is liable for damages sustained by an employee ~~thereof~~ of a railway corporation within this state, subject to the

provisions of 27-1-702, when ~~such~~ the damages are caused by the negligence of ~~any~~ a train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, ~~motorman~~ driver, or any other employee who has ~~superintendence of any~~ supervision of a stationary or hand signal.

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

(5) The provisions of this section:

(a) eliminate the defense of the "fellow servant" rule as to railroad companies; and

(b) do not apply to a claim or grievance for alleged negligence, mismanagement, or misconduct made by an employee covered by a collective bargaining agreement that provides a procedure that allows the employee to process the claim or grievance."

NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

- END -

