

1 SENATE BILL NO. 386

2 INTRODUCED BY FACEY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING BENEFITS FOR VOLUNTEER
5 FIREFIGHTERS; ALLOWING CERTAIN LOCAL GOVERNMENTAL FIRE AGENCIES TO PROVIDE WORKERS'
6 COMPENSATION COVERAGE FOR VOLUNTEER FIREFIGHTERS; REVISING PREMIUM AND BENEFIT
7 PROVISIONS FOR VOLUNTEER FIREFIGHTERS AND CERTAIN VOLUNTEER EMERGENCY MEDICAL
8 TECHNICIANS; AMENDING SECTIONS 7-6-621, 39-71-118, 39-71-123, AND 39-71-401, MCA; AND
9 PROVIDING AN EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 NEW SECTION. **Section 1. Workers' compensation for volunteer firefighters -- definitions.** (1) An
14 employer may provide workers' compensation coverage as provided in Title 39, chapter 71, to any volunteer
15 firefighter who is listed on a roster of service.

16 (2) An employer may purchase workers' compensation coverage from any entity authorized to provide
17 workers' compensation coverage under plan No. 1, 2, or 3 as provided in Title 39, chapter 71.

18 (3) If an employer provides workers' compensation coverage as provided in this section, the employer
19 may, upon payment of the filing fee provided for in 7-4-2631(1)(a), file a roster of service with the clerk and
20 recorder in the county in which the employer is located and update the roster of service monthly if necessary to
21 report changes in the number of volunteers on the roster of service. The clerk and recorder shall file the original
22 and replace it with updates whenever necessary. The employer shall maintain the roster of service with the
23 effective date of membership for each volunteer firefighter.

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

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

28 (ii) The term does not mean a governing body of a city of the first class or second class, including a city
29 to which 7-33-4109 applies, that provides workers' compensation coverage to employees as defined in
30 39-71-118.

1 (b) "Roster of service" means the list of volunteer firefighters who have filled out a membership card prior
2 to performing services as a volunteer firefighter.

3 (c) (i) "Volunteer firefighter" means a volunteer who is on the employer's roster of service. A volunteer
4 firefighter includes a volunteer emergency medical technician as defined in 50-6-202 who is on the roster of
5 service. A volunteer firefighter is not required to be an active member as defined in 19-17-102.

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

8

9 **Section 2.** Section 7-6-621, MCA, is amended to read:

10 **"7-6-621. Volunteer firefighters' disability income insurance authorized -- voted levy -- fund.** (1)
11 Disability income insurance, as defined in 33-1-235, may be purchased for volunteer firefighters, ~~must provide~~
12 ~~that:~~

13 ~~—— (a) payments or benefits are paid only for an injury received as a volunteer firefighter; and~~

14 ~~—— (b) the duration of payments or benefits may not exceed the lesser of 1 year or until the treating~~
15 ~~physician determines that the beneficiary is no longer disabled~~ Disability income insurance purchased under this
16 section is not the same as workers' compensation coverage provided for under [section 1].

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

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

25 (4) Money in the account must be invested as provided by law. Interest and income from the investment
26 of money in the account must be credited to the account."

27

28 **Section 3.** Section 39-71-118, MCA, is amended to read:

29 **"39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical**
30 **technician defined.** (1) As used in this chapter, the term "employee" or "worker" means:

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

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

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

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

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

24 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment
25 award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part
26 4, for a full-time employee at the time of the injury; and

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

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

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

3 (h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is
4 considered an employee for workers' compensation purposes only. The department of public health and human
5 services shall provide workers' compensation coverage for recipients of financial assistance, as defined in
6 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or
7 private worksites through an endorsement to the department of public health and human services' workers'
8 compensation policy naming the public or private worksite entities as named insureds under the policy. The
9 endorsement may cover only the entity's public assistance participants and may be only for the duration of each
10 participant's training while receiving financial assistance or while participating in the food stamp program under
11 a written agreement between the department of public health and human services and each public or private
12 entity. The department of public health and human services may not provide workers' compensation coverage
13 for individuals who are covered for workers' compensation purposes by another state or federal employment
14 training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for
15 work of a similar nature at the assigned worksite.

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

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

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

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

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

29 (d) performing temporary agricultural work for an employer if the person performing the work is otherwise
30 exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to

1 a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is
 2 not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person
 3 does not regularly perform agricultural work away from the person's own fixed business location. For the
 4 purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

5 (3) ~~(a)~~ With the approval of the insurer, an employer may elect to include as an employee under the
 6 provisions of this chapter ~~any a~~ volunteer as defined in subsection (2)(b), a volunteer emergency medical
 7 technician as defined in subsection (10), or a volunteer firefighter as defined in [section 1].

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

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

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

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

21 ~~———— (5)(4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a~~
 22 ~~member-managed limited liability company, the employer may elect to include as an employee within the~~
 23 ~~provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole~~
 24 ~~proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability~~
 25 ~~partnership, proprietorship, or limited liability company business.~~

26 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
 27 naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage
 28 desired by electing the amount of wages to be reported, subject to the limitations in subsection ~~(5)(d)~~ (4)(d). A
 29 partner, sole proprietor, or member 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 weekly compensation benefits must be based on the amount of elected wages, subject to the
3 minimum and maximum limitations of this subsection ~~(5)(d)~~ (4)(d). For premium ratemaking and for the
4 determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount
5 of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

6 ~~(6)(5)~~ (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability
7 company, the employer may elect to include as an employee within the provisions of this chapter any corporate
8 officer or manager exempted under 39-71-401(2).

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

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

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

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

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

27 ~~———— (c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but~~
28 ~~who is covered as a volunteer firefighter pursuant to subsection (7)(a), and when injured in the course and scope~~
29 ~~of employment as a volunteer firefighter may in addition to the benefits described in subsection (7)(b) be eligible~~
30 ~~for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080~~

1 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the
 2 county commissioners or trustees for a fire service area may make an election for benefits. If an election is made,
 3 payrolls must be reported and premiums must be assessed on the assumed wage.

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

9 ~~(9)~~(7) 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 the business partner or the educational institution is a volunteer and is subject
 13 to the provisions of this chapter.

14 ~~(10)~~(8) For purposes of this section, an "employee or worker in this state" means:

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

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

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

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

23 (i) nonresident employees are hired in Montana;

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

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

26 (iv) business records are maintained in Montana.

27 ~~(11)~~(9) An insurer may require coverage for all nonresident employees of a Montana employer who do
 28 not meet the requirements of subsection ~~(10)(b)~~ (8)(b) or ~~(10)(d)~~ (8)(d) as a condition of approving the election
 29 under subsection ~~(10)(d)~~ (8)(d).

30 ~~(12)~~(10) (a) ~~An~~ With the approval of the insurer, an ambulance service not otherwise covered by

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

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

9 (c) ~~A~~ An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer
 10 nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as
 11 described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has
 12 elected not to be covered under this chapter, but who is covered as a volunteer emergency medical technician
 13 pursuant to subsection ~~(12)(a)~~ (10)(a), and when, When injured in the course and scope of employment as a
 14 volunteer emergency medical technician, a member may in addition to instead of the benefits described in
 15 subsection ~~(12)(b)~~ (10)(b) be eligible for benefits at an assumed wage of the minimum wage established under
 16 Title 39, chapter 3, part 4, for 2,080 hours a year. If an the separate election is made as provided in this
 17 subsection ~~(12)(a)~~, payrolls (10), payroll information for those self-employed sole proprietors or partners must
 18 be reported and premiums must be assessed on the assumed weekly wage.

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

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

26 (ii) The term does not include a volunteer emergency medical technician who serves an employer as
 27 defined in [section 1].

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

1

2 **Section 4.** Section 39-71-123, MCA, is amended to read:

3 **"39-71-123. Wages defined.** (1) "Wages" means all remuneration paid for services performed by an
4 employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all
5 remuneration paid in any medium other than cash. The term includes but is not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (d) special rewards for individual invention or discovery; or

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

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

6 (b) For good cause shown, if the use of the last four pay periods does not accurately reflect the
7 claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for
8 an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period,
9 including periods of idleness or seasonal fluctuations.

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

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

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

23 (5) For the purposes of calculating compensation benefits for an employee working for an employer, as
24 provided in 39-71-117(1)(d), and for calculating premiums to be paid by that employer, the wages must be based
25 upon all hours worked multiplied by the mean hourly wage by area, as published by the department in the edition
26 of Montana Informational Wage Rates by Occupation, adopted annually by the department, that is in effect as
27 of the date of injury or for the period in which the premium is due."

28

29 **Section 5.** Section 39-71-401, MCA, is amended to read:

30 **"39-71-401. Employments covered and exemptions -- elections -- notice.** (1) Except as provided

1 in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer
2 who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written,
3 shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer
4 is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been
5 elected by the employer.

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

8 (a) household or domestic employment;

9 (b) casual employment;

10 (c) employment of a dependent member of an employer's family for whom an exemption may be claimed
11 by the employer under the federal Internal Revenue Code;

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

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

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

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

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

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

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

25 (k) employment of a person performing services as a newspaper carrier or freelance correspondent if
26 the person performing the services or a parent or guardian of the person performing the services in the case of
27 a minor has acknowledged in writing that the person performing the services and the services are not covered.

28 As used in this subsection (2)(k):

29 (i) "freelance correspondent" means a person who submits articles or photographs for publication and
30 is paid by the article or by the photograph; and

- 1 (ii) "newspaper carrier":
- 2 (A) means a person who provides a newspaper with the service of delivering newspapers singly or in
3 bundles; and
- 4 (B) does not include an employee of the paper who, incidentally to the employee's main duties, carries
5 or delivers papers.
- 6 (l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);
- 7 (m) a person who is employed by an enrolled tribal member or an association, business, corporation,
8 or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted
9 solely within the exterior boundaries of an Indian reservation;
- 10 (n) employment of a jockey who is performing under a license issued by the board of horseracing from
11 the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out
12 after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that
13 the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;
- 14 (o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing
15 services under a license issued by the board of horseracing while on the grounds of a licensed race meet;
- 16 (p) employment of an employer's spouse for whom an exemption based on marital status may be
17 claimed by the employer under 26 U.S.C. 7703;
- 18 (q) a person who performs services as a petroleum land professional. As used in this subsection, a
19 "petroleum land professional" is a person who:
- 20 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating
21 a business agreement for the exploration or development of minerals;
- 22 (ii) is paid for services that are directly related to the completion of a contracted specific task rather than
23 on an hourly wage basis; and
- 24 (iii) performs all services as an independent contractor pursuant to a written contract.
- 25 (r) an officer of a quasi-public or a private corporation or, except as provided in subsection (3), a
26 manager of a manager-managed limited liability company who qualifies under one or more of the following
27 provisions:
- 28 (i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the
29 limited liability company and does not receive any pay from the corporation or the limited liability company for
30 performance of the duties;

- 1 (ii) the officer or manager is engaged primarily in household employment for the corporation or the limited
2 liability company;
- 3 (iii) the officer or manager either:
- 4 (A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the
5 limited liability company; or
- 6 (B) owns less than 20% of the number of shares of stock in the corporation or limited liability company
7 if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in
8 subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or
- 9 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
10 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection
11 (2)(r)(iii)(A) or (2)(r)(iii)(B);
- 12 (s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;
- 13 (t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of
14 the church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 15 (u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care
16 for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the
17 service is employed directly by a family member or an individual who is a legal guardian;
- 18 (v) employment of a person performing the services of an intrastate or interstate common or contract
19 motor carrier when hired by an individual or entity who meets the definition of a broker or freight forwarder, as
20 provided in 49 U.S.C. 13102;
- 21 (w) employment of a person who is not an employee or worker in this state as defined in ~~39-71-118(10)~~
22 39-71-118(8);
- 23 (x) employment of a person who is working under an independent contractor exemption certificate;
- 24 (y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this
25 subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved.
26 Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.
- 27 (z) a musician performing under a written contract.
- 28 (3) (a) (i) A person who regularly and customarily performs services at locations other than the person's
29 own fixed business location shall elect to be bound personally and individually by the provisions of compensation
30 plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by

1 obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

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

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

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

8 (i) a sole proprietor;

9 (ii) a working member of a partnership;

10 (iii) a working member of a limited liability partnership;

11 (iv) a working member of a member-managed limited liability company; or

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

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

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

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

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

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

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

10
 11 **NEW SECTION. Section 6. Calculation of volunteer firefighter benefits and premiums --**
 12 **definitions.** (1) (a) A plan No. 1 or plan No. 2 insurer shall designate whether an employer, as defined in [section
 13 1], is to use actual volunteer hours or a flat assumed payroll amount for each volunteer firefighter for calculating
 14 premiums. The coverage option must be the same for all fire agencies organized under Title 7, chapter 33, that
 15 are covered by that insurer and meet the definition of employer in [section 1]. A plan No. 3 insurer shall use a flat
 16 assumed payroll amount for each volunteer firefighter for calculating premiums.

17 (b) If a plan No. 1 or plan No. 2 insurer uses actual volunteer hours, the payroll calculation is the number
 18 of actual volunteer hours of each volunteer firefighter, not to exceed 60 hours a week, times the state's average
 19 weekly wage divided by 40 hours.

20 (c) When a plan No. 1, plan No. 2, or plan No. 3 insurer uses a flat assumed payroll amount, the
 21 assumed payroll for each volunteer firefighter must be reported as a full month for any month in which the
 22 volunteer firefighter is on the roster of service AS DEFINED IN [SECTION 1]. THE EMPLOYER SHALL MAINTAIN THE ROSTER
 23 OF SERVICE WITH THE EFFECTIVE DATE OF MEMBERSHIP FOR EACH VOLUNTEER FIREFIGHTER.

24 (2) For benefit purposes, if concurrent employment under 39-71-123 does not apply, a volunteer
 25 firefighter injured in the course and scope of employment as a volunteer firefighter is eligible for medical and
 26 compensation benefits provided in Title 39, chapter 71. Any weekly compensation benefit must be based on
 27 either the actual volunteer hours if chosen as provided in subsection (1)(b) or the flat assumed payroll amount
 28 on which premiums are based, whichever is applicable.

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

30 (a) "Volunteer firefighter" has the meaning provided in [section 1].

1 (b) "Volunteer hours" means the time spent by a volunteer firefighter in the service of a fire agency
2 organized under Title 7, chapter 33, that meets the definition of employer in [section 1], including but not limited
3 to training time, response time, and time spent at the premises of the fire agency.

4
5 **NEW SECTION. Section 7. Codification instruction.** (1) [Section 1] is intended to be codified as an
6 integral part of Title 7, chapter 33, part 45, and the provisions of Title 7, chapter 33, part 45, apply to [section 1].

7 (2) [Section 6] is intended to be codified as an integral part of Title 39, chapter 71, part 7, and the
8 provisions of Title 39, chapter 71, part 7, apply to [section 6].

9

10 **NEW SECTION. Section 8. Effective date.** [This act] is effective July 1, 2013.

11

- END -