

HOUSE BILL NO. 538

INTRODUCED BY M. MILLER

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A MONTANA EMPLOYER TO BE SUBJECT TO OBTAIN WORKERS' COMPENSATION LAWS OF COVERAGE FROM ANOTHER STATE UNDER CERTAIN CONDITIONS FOR THEIR ITS MONTANA WORKERS SOLELY WORKING IN THE OTHER STATE; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

~~NEW SECTION. Section 1. Employer option for extraterritorial coverage. (1) In the absence of an agreement under 39-71-402, an employer from this state that employs residents of this state for work solely in another state may obtain coverage for the employees working in that other state from that state but shall retain coverage under the provisions of this chapter until able to show proof of coverage in the other state to the insurer providing coverage under this chapter. On obtaining proof of coverage for the employees working in the other state, the insurer in this state shall, at the request of the employer, cancel coverage in this state for that employer for those employees.~~

~~(2) An employer that has employees operating concurrently in both Montana and another state must have coverage under this chapter, unless covered by an agreement under 39-71-402.~~

~~(3) Under this section, the employer is responsible for providing evidence that the employee's course and scope of employment is solely in the state in which the employee is insured.~~

NEW SECTION. SECTION 1. EMPLOYER OPTION FOR EXTRATERRITORIAL COVERAGE. (1) NOTWITHSTANDING 39-71-118(8)(A), AN EMPLOYEE OF AN EMPLOYER IN THIS STATE WHO IS EMPLOYED BY THE EMPLOYER TO WORK SOLELY IN ANOTHER STATE, AND WHO IS REQUIRED BY THE LAWS OF THAT STATE TO BE COVERED FOR WORKERS' COMPENSATION PURPOSES WHILE WORKING IN THAT STATE, IS NOT CONSIDERED TO BE AN EMPLOYEE IN THIS STATE COVERED UNDER TITLE 39, CHAPTER 71, DURING ANY TIME THAT THE EMPLOYER MAINTAINS WORKERS' COMPENSATION COVERAGE FOR THE EMPLOYEE IN THE OTHER STATE.

(2) A PLAN NO. 1, 2, OR 3 INSURER PROVIDING COVERAGE TO THE EMPLOYER UNDER THIS CHAPTER MAY REQUIRE PROOF OF COVERAGE IN THE OTHER STATE AND RECORDS OF WORK IN THE OTHER STATE.

1 (3) THIS SECTION DOES NOT APPLY TO AN EMPLOYEE WHOSE USUAL WORKDAY BEGINS IN THIS STATE AND WHO
2 IS COVERED UNDER 39-71-407(4)(A).

3

4 **Section 2.** Section 39-71-401, MCA, is amended to read:

5 **"39-71-401. Employments covered and exemptions -- elections -- notice.** (1) Except as provided
6 in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer
7 who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written,
8 shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3, unless the provisions of [section
9 1] apply. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound
10 by the compensation plan that has been elected by the employer.

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

13 (a) household or domestic employment;

14 (b) casual employment;

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

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

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

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

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

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

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

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

30 (k) employment of a person performing services as a newspaper carrier or freelance correspondent if

1 the person performing the services or a parent or guardian of the person performing the services in the case of
2 a minor has acknowledged in writing that the person performing the services and the services are not covered.

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

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

6 (ii) "newspaper carrier":

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

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

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

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

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

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

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

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

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

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

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

30 (r) an officer of a quasi-public or a private corporation or, except as provided in subsection (3), a

1 manager of a manager-managed limited liability company who qualifies under one or more of the following
2 provisions:

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

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

8 (iii) the officer or manager either:

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

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

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

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

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

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

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

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

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

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

1 (z) a musician performing under a written contract.

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

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

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

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

12 (i) a sole proprietor;

13 (ii) a working member of a partnership;

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

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

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

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

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

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

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

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

5 (6) Each employer shall post a sign in the workplace at the locations where notices to employees are
6 normally posted, informing employees about the employer's current provision of workers' compensation
7 insurance. A workplace is any location where an employee performs any work-related act in the course of
8 employment, regardless of whether the location is temporary or permanent, and includes the place of business
9 or property of a third person while the employer has access to or control over the place of business or property
10 for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided
11 by the department, distributed through insurers or directly by the department, and posted by employers in
12 accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign
13 as provided in this subsection is subject to a \$50 fine for each citation."
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15 NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an
16 integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [section 1].
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18 NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2015.
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