

HOUSE BILL NO. 538

INTRODUCED BY M. MILLER

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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 NORTH DAKOTA UNDER CERTAIN CONDITIONS FOR THEIR ITS MONTANA WORKERS SOLELY WORKING IN THE OTHER STATE NORTH DAKOTA; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION 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 NORTH DAKOTA, 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. NORTH DAKOTA. FOR PURPOSES OF THIS SECTION, "WORK SOLELY IN NORTH DAKOTA" MEANS THE EMPLOYEE DOES NOT PERFORM JOB DUTIES IN MONTANA AND COVERAGE IS REQUIRED**



1 BY THE STATE OF NORTH DAKOTA. TRAVEL THAT IS COMMUTING TO AND FROM A JOB SITE IN NORTH DAKOTA FROM A  
 2 LOCATION IN MONTANA DOES NOT CONSTITUTE PERFORMING JOB DUTIES IN MONTANA EVEN IF THE EMPLOYER PAYS FOR  
 3 ALL OR A PORTION OF THE COSTS OF TRAVEL OR IF THE WORKER IS PAID FOR THE TRAVEL TIME.

4 (2) A PLAN NO. 1, 2, OR 3 INSURER PROVIDING COVERAGE TO THE EMPLOYER UNDER THIS CHAPTER MAY  
 5 REQUIRE PROOF OF COVERAGE IN THE OTHER STATE AND RECORDS OF WORK IN THE OTHER STATE. NORTH DAKOTA AND  
 6 RECORDS OF WORK IN NORTH DAKOTA. AN INSURER MAY USE A VERIFICATION OF EMPLOYMENT FORM, DEVELOPED BY  
 7 THE DEPARTMENT, TO REQUEST AN ATTESTATION BY THE EMPLOYER REGARDING THE EMPLOYEES WORKING SOLELY IN  
 8 NORTH DAKOTA.

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

11 (3) (A) THIS SECTION DOES NOT EXEMPT AN EMPLOYEE FROM COVERAGE UNDER THIS CHAPTER WHEN THE  
 12 EMPLOYEE'S USUAL JOB DUTIES BEGIN IN THIS STATE AND THE EMPLOYEE IS OTHERWISE COVERED UNDER  
 13 39-71-407(4)(A).

14 (B) THIS SECTION EXEMPTS AN EMPLOYEE FROM COVERAGE UNDER THIS CHAPTER WHEN THE EMPLOYEE IS  
 15 ENGAGED IN TRAVEL WHILE COMMUTING AS PROVIDED IN SUBSECTION (1).

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

18 **"39-71-401. Employments covered and exemptions -- elections -- notice.** (1) Except as provided  
 19 in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer  
 20 who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written,  
 21 shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3, unless the provisions of [section  
 22 1] apply. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound  
 23 by the compensation plan that has been elected by the employer.

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

26 (a) household or domestic employment;

27 (b) casual employment;

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

30 (d) employment of sole proprietors, working members of a partnership, working members of a limited

1 liability partnership, or working members of a member-managed limited liability company, except as provided in  
2 subsection (3);

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

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

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

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

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

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

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

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

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

19 (ii) "newspaper carrier":

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

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

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

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

28 (n) employment of a jockey who is performing under a license issued by the board of horseracing from  
29 the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out  
30 after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that

- 1 the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;
- 2 (o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing  
3 services under a license issued by the board of horseracing while on the grounds of a licensed race meet;
- 4 (p) employment of an employer's spouse for whom an exemption based on marital status may be  
5 claimed by the employer under 26 U.S.C. 7703;
- 6 (q) a person who performs services as a petroleum land professional. As used in this subsection, a  
7 "petroleum land professional" is a person who:
- 8 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating  
9 a business agreement for the exploration or development of minerals;
- 10 (ii) is paid for services that are directly related to the completion of a contracted specific task rather than  
11 on an hourly wage basis; and
- 12 (iii) performs all services as an independent contractor pursuant to a written contract.
- 13 (r) an officer of a quasi-public or a private corporation or, except as provided in subsection (3), a  
14 manager of a manager-managed limited liability company who qualifies under one or more of the following  
15 provisions:
- 16 (i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the  
17 limited liability company and does not receive any pay from the corporation or the limited liability company for  
18 performance of the duties;
- 19 (ii) the officer or manager is engaged primarily in household employment for the corporation or the limited  
20 liability company;
- 21 (iii) the officer or manager either:
- 22 (A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the  
23 limited liability company; or
- 24 (B) owns less than 20% of the number of shares of stock in the corporation or limited liability company  
25 if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in  
26 subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or
- 27 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,  
28 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection  
29 (2)(r)(iii)(A) or (2)(r)(iii)(B);
- 30 (s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

- 1 (t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of  
2 the church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 3 (u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care  
4 for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the  
5 service is employed directly by a family member or an individual who is a legal guardian;
- 6 (v) employment of a person performing the services of an intrastate or interstate common or contract  
7 motor carrier when hired by an individual or entity who meets the definition of a broker or freight forwarder, as  
8 provided in 49 U.S.C. 13102;
- 9 (w) employment of a person who is not an employee or worker in this state as defined in 39-71-118(8);
- 10 (x) employment of a person who is working under an independent contractor exemption certificate;
- 11 (y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this  
12 subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved.  
13 Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.
- 14 (z) a musician performing under a written contract.
- 15 (3) (a) (i) A person who regularly and customarily performs services at locations other than the person's  
16 own fixed business location shall elect to be bound personally and individually by the provisions of compensation  
17 plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by  
18 obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.
- 19 (ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited  
20 in the state special revenue account established in 39-9-206 and must be used to offset the certification  
21 administration costs.
- 22 (b) A person who holds an independent contractor exemption certificate may purchase a workers'  
23 compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.
- 24 (c) For the purposes of this subsection (3), "person" means:
- 25 (i) a sole proprietor;
- 26 (ii) a working member of a partnership;
- 27 (iii) a working member of a limited liability partnership;
- 28 (iv) a working member of a member-managed limited liability company; or
- 29 (v) a manager of a manager-managed limited liability company that is engaged in the work of the  
30 construction industry as defined in 39-71-116.

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

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

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

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

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

18 (6) Each employer shall post a sign in the workplace at the locations where notices to employees are  
19 normally posted, informing employees about the employer's current provision of workers' compensation  
20 insurance. A workplace is any location where an employee performs any work-related act in the course of  
21 employment, regardless of whether the location is temporary or permanent, and includes the place of business  
22 or property of a third person while the employer has access to or control over the place of business or property  
23 for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided  
24 by the department, distributed through insurers or directly by the department, and posted by employers in  
25 accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign  
26 as provided in this subsection is subject to a \$50 fine for each citation."  
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28 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
29 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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1            NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 2015.

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3            NEW SECTION. SECTION 5. TERMINATION. [THIS ACT] TERMINATES JUNE 30, 2019.

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