

SENATE BILL NO. 258

INTRODUCED BY B. HOVEN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "EMPLOYER" WITH REGARD TO CERTAIN RELIGIOUS ORGANIZATIONS IN WORKERS' COMPENSATION INSURANCE LAWS; AND AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA."

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

Section 1. Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. (1) "Employer" means:

(a) the state and each county, city and county, city school district, and irrigation district; all other districts established by law; all public corporations and quasi-public corporations and public agencies; each person; each prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and private corporation, including any public service corporation and including an independent contractor who has a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased employer;

(b) any association, corporation, limited liability company, limited liability partnership, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter;

(c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local government entities; and

(d) subject to subsection (5), a religious corporation, religious organization, or religious trust receiving remuneration from nonmembers for agricultural production, manufacturing; or a construction project conducted by its members on or off the property of the religious corporation, religious organization, or religious trust.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the

1 services of a worker furnished by another person, association, contractor, firm, limited liability company, limited
 2 liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer
 3 for workers' compensation premium and loss experience purposes for work performed by the worker. The
 4 presumption may be rebutted by substantial credible evidence of the following:

5 (a) the person, association, contractor, firm, limited liability company, limited liability partnership, or
 6 corporation, other than a temporary service contractor, furnishing the services of a worker to another retains
 7 control over all aspects of the work performed by the worker, both at the inception of employment and during all
 8 phases of the work; and

9 (b) the person, association, contractor, firm, limited liability company, limited liability partnership, or
 10 corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained
 11 workers' compensation insurance for the worker in Montana both at the inception of employment and during all
 12 phases of the work performed.

13 (4) An interstate or intrastate common or contract motor carrier that maintains a place of business in this
 14 state and uses an employee or worker in this state is considered the employer of that employee, is liable for
 15 workers' compensation premiums, and is subject to loss experience rating in this state unless:

16 (a) the worker in this state is certified as an independent contractor as provided in 39-71-417; or

17 (b) the person, association, contractor, firm, limited liability company, limited liability partnership, or
 18 corporation furnishing employees or workers in this state to a motor carrier has obtained Montana workers'
 19 compensation insurance on the employees or workers in Montana both at the inception of employment and during
 20 all phases of the work performed.

21 (5) The definition of "employer" in subsection (1)(d) is limited to implementing the administrative
 22 purposes of this chapter and may not be interpreted or construed to create an employment relationship in any
 23 other context."

24

25 **Section 2.** Section 39-71-118, MCA, is amended to read:

26 **"39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical**
 27 **technician defined.** (1) As used in this chapter, the term "employee" or "worker" means:

28 (a) each person in this state, including a contractor other than an independent contractor, who is in the
 29 service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied,
 30 oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the

1 elected and appointed paid public officers and officers and members of boards of directors of quasi-public or
2 private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the
3 corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not
4 otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of
5 the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic
6 employment is excluded.

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

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

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

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

21 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment
22 award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part
23 4, for a full-time employee at the time of the injury; and

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

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

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

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

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

13 (i) subject to subsection (11), a member of a religious corporation, religious organization, or religious
14 trust while performing services for the religious corporation, religious organization, or religious trust, as described
15 in 39-71-117(1)(d).

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

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

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

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

27 (d) performing temporary agricultural work for an employer if the person performing the work is otherwise
28 exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to
29 a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is
30 not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person

1 does not regularly perform agricultural work away from the person's own fixed business location. For the
2 purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

3 (3) With the approval of the insurer, an employer may elect to include as an employee under the
4 provisions of this chapter a volunteer as defined in subsection (2)(b), a volunteer emergency medical technician
5 as defined in subsection (10), or a volunteer firefighter as defined in 7-33-4510. An ambulance service not
6 otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in
7 50-6-302, in service to a town, city, or county may elect to include as an employee under the provisions of this
8 chapter a volunteer emergency medical technician.

9 (4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed
10 limited liability company, the employer may elect to include as an employee within the provisions of this chapter
11 any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member
12 of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or
13 limited liability company business.

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

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

20 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the
21 minimum and maximum limitations of this subsection (4)(d). For premium ratemaking and for the determination
22 of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than
23 \$900 a month and not more than 1 1/2 times the state's average weekly wage.

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

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

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

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

8 (6) Except as provided in Title 39, chapter 8, an employee or worker in this state whose services are
9 furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or
10 corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to
11 be under the control and employment of the employer. This presumption may be rebutted as provided in
12 39-71-117(3).

13 (7) A student currently enrolled in an elementary, secondary, or postsecondary educational institution
14 who is participating in work-based learning activities and who is paid wages by the educational institution or
15 business partner is the employee of the entity that pays the student's wages for all purposes under this chapter.
16 A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject
17 to the provisions of this chapter.

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

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

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

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

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

27 (i) nonresident employees are hired in Montana;

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

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

30 (iv) business records are maintained in Montana.

1 (9) An insurer may require coverage for all nonresident employees of a Montana employer who do not
2 meet the requirements of subsection (8)(b) or (8)(d) as a condition of approving the election under subsection
3 (8)(d).

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

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

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

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

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

29 (ii) The term does not include a volunteer emergency medical technician who serves an employer as
30 defined in 7-33-4510.

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

4 (11) The definition of "employee" "EMPLOYEE" OR "WORKER" in subsection (1)(i) is limited to implementing
5 the administrative purposes of this chapter and may not be interpreted or construed to create an employment
6 relationship in any other context."

7 - END -