

SENATE BILL NO. 142

INTRODUCED BY T. FACEY

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN LOCAL GOVERNMENTAL FIRE AGENCIES AND EMERGENCY SERVICE PROVIDERS TO NOTIFY THE AGENCIES' AND PROVIDERS' VOLUNTEERS IF WORKERS' COMPENSATION COVERAGE IS NOT PROVIDED; REQUIRING NOTIFICATION TO OCCUR ON AN ANNUAL BASIS; AND AMENDING SECTIONS 7-33-4510, 7-34-103, AND 39-71-118, MCA."

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

**Section 1.** Section 7-33-4510, MCA, is amended to read:

**"7-33-4510. Workers' compensation for volunteer firefighters -- notification if coverage not provided -- definitions.** (1) An employer may provide workers' compensation coverage as provided in Title 39, chapter 71, to any volunteer firefighter who is listed on a roster of service.

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

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

(4) If an employer does not provide workers' compensation coverage, the employer shall annually notify the employer's volunteer firefighters that coverage is not provided.

~~(4)~~(5) For the purposes of this section, the following definitions apply:

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

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

1 39-71-118.

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

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

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

9

10 **Section 2.** Section 7-34-103, MCA, is amended to read:

11 **"7-34-103. Manner of providing ambulance service.** (1) If a county, city, or town establishes or  
12 maintains ambulance service, ~~it may~~, acting through its governing board, ~~it~~:

13 (a) may operate the ambulance service itself or contract for ambulance service;

14 (b) may buy, rent, lease, or otherwise contract for vehicles, equipment, facilities, operators, or attendants;

15 (c) may sell ambulance service insurance or contract with a third-party entity to sell ambulance service  
16 insurance to persons who use the ambulance service that covers the cost of the ambulance service that is not  
17 otherwise covered;

18 (d) may adopt rules and establish fees or charges for the furnishing of an ambulance service; and

19 (e) shall, if the service does not provide workers' compensation coverage, annually notify the service's  
20 volunteer emergency medical technicians that coverage is not provided.

21 (2) A county, city, or town that directly sells ambulance service insurance or that remains liable for the  
22 financial risk pursuant to insurance sold by a third party under contract with the county, city, or town is exempt  
23 from Title 33, except for the provisions provided in 33-18-201 and 33-18-242."

24

25 **Section 3.** 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 -- election of coverage.** (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) or a volunteer firefighter as defined in  
5 7-33-4510.

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

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

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

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

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

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

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

30 (d) For the purposes of an election under this subsection (5), all weekly compensation benefits must be

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

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

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

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

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

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

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

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

24 (i) nonresident employees are hired in Montana;

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

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

27 (iv) business records are maintained in Montana.

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

1 (10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer  
2 nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as  
3 an employee within the provisions of this chapter a volunteer emergency medical technician who serves public  
4 safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer  
5 nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers'  
6 compensation coverage from any entity authorized to provide workers' compensation coverage under plan No.  
7 1, 2, or 3 as provided in this chapter.

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

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

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

24 (e) An ambulance service not otherwise covered by subsection (1)(g) or a nontransporting medical unit,  
25 as defined in 50-6-302, that does not elect to purchase workers' compensation coverage for its volunteer  
26 emergency medical technicians under the provisions of this section shall annually notify its volunteer emergency  
27 medical technicians that coverage is not provided.

28 ~~(e)~~(f) (i) The term "volunteer emergency medical technician" means a person who has received a  
29 certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves  
30 the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer

1 nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.

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

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

7 (11) The definition of "employee" or "worker" in subsection (1)(i) is limited to implementing the  
8 administrative purposes of this chapter and may not be interpreted or construed to create an employment  
9 relationship in any other context."

10 - END -