

HOUSE BILL NO. 346

INTRODUCED BY W. CURDY, D. BARRETT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKERS' COMPENSATION LAWS TO RECOGNIZE CERTAIN FISCAL AGENTS AS EMPLOYERS; AND AMENDING SECTION 39-71-117, 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:

(i) manufacturing or construction activities conducted by its members on or off the property owned or leased by the religious corporation, religious organization, or religious trust; or

(ii) agricultural labor and services performed off the property owned or leased by the religious corporation, religious organization, or religious trust; and

(e) an approved and authorized fiduciary, agent, or other person acting as fiscal agent under section

1 3504 of the Internal Revenue Code, 26 U.S.C. 3504, and 26 CFR 31.3504-1.

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

4 (3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the
5 services of a worker furnished by another person, association, contractor, firm, limited liability company, limited
6 liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer
7 for workers' compensation premium and loss experience purposes for work performed by the worker. The
8 presumption may be rebutted by substantial credible evidence of the following:

9 (a) 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 retains
11 control over all aspects of the work performed by the worker, both at the inception of employment and during all
12 phases of the work; and

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

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

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

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

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

28 (6) (A) A FISCAL AGENT THAT QUALIFIES UNDER SUBSECTION (1)(E) AND THAT IS DESIGNATED AS A PAYOR, USING
29 FEDERAL, STATE, OR LOCAL GOVERNMENT FUNDS, UNDER 26 CFR 31.3504-1 IS CONSIDERED TO BE THE EMPLOYER FOR
30 THE PURPOSES OF THE WORKERS' COMPENSATION ACT OF THOSE WORKERS FOR WHOM THE FISCAL AGENT IS MAKING

1 PAYMENTS.

2 (B) THE CLIENT OF THE FISCAL AGENT, DESPITE EXERCISING CONTROL OVER THE HIRING, SCHEDULING, AND
3 DIRECTION OF THE WORK TASKS PERFORMED BY THE WORKER, IS NOT THE EMPLOYER OF THAT WORKER FOR THE
4 PURPOSES OF THE WORKERS' COMPENSATION ACT."

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