

1 HOUSE BILL NO. 283

2 INTRODUCED BY F. ANDERSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING WORKERS' COMPENSATION INSURANCE
5 COVERAGE FOR VOLUNTEERS ENROLLED IN AN ELEMENTARY, SECONDARY, OR POSTSECONDARY
6 EDUCATIONAL INSTITUTION; AND AMENDING SECTION 39-71-118, MCA."

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

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10 **Section 1.** Section 39-71-118, MCA, is amended to read:

11 **"39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency care
12 provider defined -- election of coverage.** (1) As used in this chapter, the term "employee" or "worker" means:

13 (a) each person in this state, including a contractor other than an independent contractor, who is in
14 the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or
15 implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of
16 the elected and appointed paid public officers and officers and members of boards of directors of quasi-public
17 or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the
18 corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not
19 otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of
20 the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic
21 employment is excluded.

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

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

1 community college.

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

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

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

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

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

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

17 (h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is
18 considered an employee for workers' compensation purposes only. The department of public health and human
19 services shall provide workers' compensation coverage for recipients of cash assistance, as defined in 53-4-
20 201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private
21 worksites through an endorsement to the department of public health and human services' workers'
22 compensation policy naming the public or private worksite entities as named insureds under the policy. The
23 endorsement may cover only the entity's public assistance participants and may be only for the duration of each
24 participant's training while receiving cash assistance or while participating in the food stamp program under a
25 written agreement between the department of public health and human services and each public or private
26 entity. The department of public health and human services may not provide workers' compensation coverage
27 for individuals who are covered for workers' compensation purposes by another state or federal employment
28 training program. Premiums and benefits must be based upon the wage that a probationary employee is paid

1 for work of a similar nature at the assigned worksite.

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

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

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

8 (b) performing services as a volunteer, except for a person who is otherwise entitled to coverage
9 under the laws of this state. As used in this subsection (2)(b), "volunteer" means a person who performs
10 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-
11 71-123.

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

17 (d) performing temporary agricultural work for an employer if the person performing the work is
18 otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with
19 respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-
20 401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417
21 because the person does not regularly perform agricultural work away from the person's own fixed business
22 location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-
23 101(1)(a).

24 (3) With the approval of the insurer, an employer may elect to include as an employee under the
25 provisions of this chapter a volunteer as defined in subsection (2)(b) or a volunteer firefighter as defined in 7-
26 33-4510.

27 (4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-
28 managed limited liability company, the employer may elect to include as an employee within the provisions of

1 this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship,
2 or any member of the limited liability company devoting full time to the partnership, limited liability partnership,
3 proprietorship, or limited liability company business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (i) nonresident employees are hired in Montana;

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

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

23 (iv) business records are maintained in Montana.

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

27 (10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer
28 nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as

1 an employee within the provisions of this chapter a volunteer emergency care provider who serves public safety
2 through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer
3 nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers'
4 compensation coverage from any entity authorized to provide workers' compensation coverage under plan No.
5 1, 2, or 3 as provided in this chapter.

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

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

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

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

26 (f) (i) The term "volunteer emergency care provider" means a person who is licensed by the board of
27 medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance
28 service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as

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

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

4 (g) The term "volunteer hours" means the time spent by a volunteer emergency care provider in the
5 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."

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