

HOUSE BILL NO. 636

INTRODUCED BY J. KASSMIER, L. BREWSTER, B. LER, T. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKERS' COMPENSATION LAWS RELATED TO EXEMPTIONS FROM THE WORKERS' COMPENSATION ACT; REVISING OWNERSHIP INTEREST REQUIREMENTS RELATING TO A CORPORATION OR A LIMITED LIABILITY COMPANY; AND AMENDING SECTION 39-71-401, MCA."

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

**Section 1.** Section 39-71-401, MCA, is amended to read:

**"39-71-401. Employments covered and exemptions -- elections -- notice.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3 unless the provisions of 39-71-442 apply. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

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

- (a) household or domestic employment;
- (b) casual employment;
- (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
- (d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);
- (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

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

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

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

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

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

10 (k) employment of a person performing services as a newspaper carrier or freelance  
11 correspondent if the person performing the services or a parent or guardian of the person performing the  
12 services in the case of a minor has acknowledged in writing that the person performing the services and the  
13 services are not covered. As used in this subsection (2)(k):

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

16 (ii) "newspaper carrier":

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

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

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

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

25 (n) employment of a jockey who is performing under a license issued by the board of horseracing  
26 from the time that the jockey reports to the scale room prior to a race through the time that the jockey is  
27 weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of  
28 horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as

1 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  
9 negotiating 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  
11 than 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  
17 the limited liability company and does not receive any pay from the corporation or the limited liability company  
18 for performance of the duties;

19 (ii) the officer or manager is engaged primarily in household employment for the corporation or the  
20 limited liability company;

21 (iii) the officer or manager either:

22 (A) owns ~~20%~~ 10% or more of the number of shares of stock in the corporation or owns ~~20%~~ 10%  
23 or more of the limited liability company; or

24 (B) owns less than ~~20%~~ 10% of the number of shares of stock in the corporation or limited liability  
25 company if the officer's or manager's shares when aggregated with the shares owned by a person or persons  
26 listed in subsection (2)(r)(iv) total ~~20%~~ 10% or more of the number of shares in the corporation or limited liability  
27 company; or

28 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,

1 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of  
2 subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);

3 (s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

4 (t) service performed by an ordained, commissioned, or licensed minister of a church in the  
5 exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the  
6 order;

7 (u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite  
8 care for individuals who, because of age or infirmity, are unable to care for themselves when the person  
9 providing the service is employed directly by a family member or an individual who is a legal guardian;

10 (v) employment of a person performing the services of an intrastate or interstate common or  
11 contract motor carrier when hired by an individual or entity who meets the definition of a broker or freight  
12 forwarder, as provided in 49 U.S.C. 13102;

13 (w) employment of a person who is not an employee or worker in this state as defined in 39-71-  
14 118(8);

15 (x) employment of a person who is working under an independent contractor exemption certificate;

16 (y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in  
17 this subsection, "contact sport" means a sport that includes significant physical contact between the athletes  
18 involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling,  
19 and boxing.

20 (z) a musician performing under a written contract.

21 (3) (a) (i) A person who regularly and customarily performs services at locations other than the  
22 person's own fixed business location shall elect to be bound personally and individually by the provisions of  
23 compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers'  
24 Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant  
25 to 39-71-417.

26 (ii) Application fees or renewal fees for independent contractor exemption certificates must be  
27 deposited in the state special revenue account established in 39-9-206 and must be used to offset the  
28 certification administration costs.

1 (b) A person who holds an independent contractor exemption certificate may purchase a workers'  
2 compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

3 (c) For the purposes of this subsection (3), "person" means:

4 (i) a sole proprietor;

5 (ii) a working member of a partnership;

6 (iii) a working member of a limited liability partnership;

7 (iv) a working member of a member-managed limited liability company; or

8 (v) a manager of a manager-managed limited liability company that is engaged in the work of the  
9 construction industry as defined in 39-71-116.

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

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

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

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

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

27 (6) Each employer shall post a sign in the workplace at the locations where notices to employees  
28 are normally posted, informing employees about the employer's current provision of workers' compensation

1 insurance. A workplace is any location where an employee performs any work-related act in the course of  
2 employment, regardless of whether the location is temporary or permanent, and includes the place of business  
3 or property of a third person while the employer has access to or control over the place of business or property  
4 for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided  
5 by the department, distributed through insurers or directly by the department, and posted by employers in  
6 accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign  
7 as provided in this subsection is subject to a \$50 fine for each citation."

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