

HOUSE BILL NO. 807

INTRODUCED BY R. JOHNSON, DRISCOLL

IN THE HOUSE

FEBRUARY 13, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

 FIRST READING.

FEBRUARY 22, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

 POSTED ON ALTERNATIVE CONSENT CALENDAR.

 PRINTING REPORT.

FEBRUARY 27, 1991 THIRD READING, PASSED.
AYES, 99; NOES, 0.

 TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

 FIRST READING.

APRIL 1, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

APRIL 4, 1991 SECOND READING, CONCURRED IN.

APRIL 5, 1991 THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

 RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 9, 1991 RECEIVED FROM SENATE.

 SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 10, 1991 THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 507
2 INTRODUCED BY John Paul

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE CONSISTENT THE
5 EXCLUSIONS FROM THE DEFINITIONS OF EMPLOYMENT IN THE
6 UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION ACTS;
7 AMENDING SECTIONS 39-51-204 AND 39-71-401, MCA; AND
8 PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Section 39-51-204, MCA, is amended to read:

12 **"39-51-204. Exclusions from definition of employment.**

13 (1) The term "employment" does not include:

14 (a) agricultural labor, except as provided in
15 39-51-203(8);

16 (b) household and domestic service in a private home,
17 local college club, or local chapter of a college fraternity
18 or sorority, except as provided in 39-51-203(9);

19 (c) service performed as an officer or member of the
20 crew of a vessel on the navigable waters of the United
21 States;

22 (d) service performed by an individual in the employ of
23 that individual's son, daughter, or spouse and service
24 performed by a child under the age of 21 in the employ of
25 the child's father or mother;

1 (e) service performed in the employ of any other state
2 or its political subdivisions or of the United States
3 government or of an instrumentality of any other state or
4 states or their political subdivisions or of the United
5 States, except that national banks organized under the
6 national banking law shall not be entitled to exemption
7 under this subsection and shall be subject to this chapter
8 the same as state banks, provided that such service is
9 excluded from employment as defined in the Federal
10 Unemployment Tax Act by section 3306(c)(7) of that act;

11 (f) service with respect to which unemployment
12 insurance is payable under an unemployment insurance system
13 established by an act of congress, provided that the
14 department must enter into agreements with the proper
15 agencies under such act of congress, which agreements shall
16 become effective in the manner prescribed in the Montana
17 Administrative Procedure Act for the adoption of rules, to
18 provide reciprocal treatment to individuals who have, after
19 acquiring potential rights to benefits under this chapter,
20 acquired rights to unemployment insurance under such act of
21 congress or who have, after acquiring potential rights to
22 unemployment insurance under such act of congress, acquired
23 rights to benefits under this chapter;

24 (g) services performed in the delivery and distribution
25 of newspapers or shopping news from house to house and



1 business establishments by an individual under the age of 18
2 years, but not including the delivery or distribution to any
3 point or points for subsequent delivery or distribution;

4 (h) services performed by real estate, securities, and
5 insurance salespeople paid solely by commissions and without
6 guarantee of minimum earnings;

7 (i) service performed in the employ of a school,
8 college, or university if such service is performed by a
9 student who is enrolled and is regularly attending classes
10 at such school, college, or university or by the spouse of
11 such a student if such spouse is advised, at the time such
12 spouse commences to perform such service, that the
13 employment of such spouse to perform such service is
14 provided under a program to provide financial assistance to
15 such student by such school, college, or university and such
16 employment will not be covered by any program of
17 unemployment insurance;

18 (j) service performed by an individual who is enrolled
19 at a nonprofit or public educational institution, which
20 normally maintains a regular faculty and curriculum and
21 normally has a regularly organized body of students in
22 attendance at the place where its educational activities are
23 carried on, as a student in a full-time program taken for
24 credit at such institution which combines academic
25 instruction with work experience if such service is an

1 integral part of such program and such institution has so
2 certified to the employer, except that this subsection shall
3 not apply to service performed in a program established for
4 or on behalf of an employer or group of employers;

5 (k) service performed in the employ of a hospital if
6 such service is performed by a patient of the hospital;

7 (l) services performed by a cosmetologist who is
8 licensed under Title 37, chapter 31, or a barber who is
9 licensed under Title 37, chapter 30, and who has
10 acknowledged in writing that he is not covered by
11 unemployment insurance and workers' compensation and who
12 contracts with a cosmetological establishment as defined in
13 37-31-101 or a barbershop as defined in 37-30-101, which
14 contract shall show the cosmetologist or barber is free from
15 all control and direction of the owner in the contract and
16 in fact; receives payment for services from his or her
17 individual clientele; leases, rents, or furnishes all of his
18 or her own equipment, skills, or knowledge; and whose
19 contract gives rise to an action for breach of contract in
20 the event of contract termination (the existence of a single
21 license for the cosmetological establishment or barbershop
22 shall not be construed as a lack of freedom from control or
23 direction under this subsection);

24 (m) casual labor not in the course of an employer's
25 trade or business performed in any calendar quarter, unless

1 the cash remuneration paid for such service is \$50 or more
 2 and such service is performed by an individual who is
 3 regularly employed by such employer to perform such service.
 4 "Regularly employed" means the services are performed during
 5 at least 24 days in the same quarter.

6 (n) services performed for the installation of floor
 7 coverings if the installer:

8 (i) bids or negotiates a contract price based upon work
 9 performed by the yard or by the job;

10 (ii) is paid upon completion of an agreed upon portion
 11 of the job or after the job is completed;

12 (iii) may perform services for anyone without
 13 limitation;

14 (iv) may accept or reject any job;

15 (v) furnishes substantially all tools and equipment
 16 necessary to provide the services; and

17 (vi) works under a written contract that:

18 (A) gives rise to a breach of contract action if the
 19 installer or any other party fails to perform the contract
 20 obligations;

21 (B) states the installer is not covered by unemployment
 22 insurance; and

23 (C) requires the installer to provide a current
 24 workers' compensation policy or to obtain an exemption from
 25 workers' compensation requirements;

1 (o) employment of sole proprietors or working members
 2 of a partnership, except as provided in subsection (1)(l);

3 (p) employment of a direct seller engaged in the sale
 4 of consumer products, primarily in the customer's home;

5 (q) employment for which a rule of liability for
 6 injury, occupational disease, or death is provided under the
 7 laws of the United States;

8 (r) employment of a person performing services in
 9 return for aid or sustenance only, except employment of a
 10 volunteer under 67-2-105;

11 (s) employment with a railroad engaged in interstate
 12 commerce, except that railroad construction work is included
 13 in and subject to the provisions of this chapter; and

14 (t) employment as an official, including a timer,
 15 referee, or judge, at a school amateur athletic event unless
 16 the person is otherwise employed by a school district.

17 (2) "Employment" does not include elected public
 18 officials.

19 (3) For the purposes of 39-51-203(6), the term
 20 "employment" does not apply to service performed:

21 (a) in the employ of a church or convention or
 22 association of churches or an organization which is operated
 23 primarily for religious purposes and which is operated,
 24 supervised, controlled, or principally supported by a church
 25 or convention or association of churches;

1 (b) by a duly ordained, commissioned, or licensed
2 minister of a church in the exercise of the church's
3 ministry or by a member of a religious order in the exercise
4 of duties required by such order;

5 (c) in a facility conducted for the purpose of carrying
6 out a program of rehabilitation for individuals whose
7 earning capacity is impaired by age or physical or mental
8 deficiency or injury or providing remunerative work for
9 individuals who, because of their impaired physical or
10 mental capacity, cannot be readily absorbed in the
11 competitive labor market by an individual receiving such
12 rehabilitation or remunerative work;

13 (d) as part of an unemployment work-relief or
14 work-training program assisted or financed in whole or in
15 part by a federal agency or any agency of a state or
16 political subdivision thereof by an individual receiving
17 such work relief or work training; or

18 (e) for a state prison or other state correctional or
19 custodial institution by an inmate of that institution."

20 **Section 2.** Section 39-71-401, MCA, is amended to read:

21 **"39-71-401. Employments covered and employments**
22 **exempted.** (1) Except as provided in subsection (2) of this
23 section, the Workers' Compensation Act applies to all
24 employers as defined in 39-71-117 and to all employees as
25 defined in 39-71-118. An employer who has any employee in

1 service under any appointment or contract of hire, expressed
2 or implied, oral or written, shall elect to be bound by the
3 provisions of compensation plan No. 1, 2, or 3. Every
4 employee whose employer is bound by the Workers'
5 Compensation Act is subject to and bound by the compensation
6 plan that has been elected by the employer.

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

11 (a) household and domestic employment service in a
12 private home, local college club, or local chapter of a
13 college fraternity or sorority, except as provided in
14 39-51-203(9);

15 (b) casual employment as defined in 39-71-116,
16 performed in any calendar quarter, unless the case
17 remuneration paid for the service is \$50 or more and the
18 service is performed by an individual who is regularly
19 employed by the employer to perform the service. "Regularly
20 employed" means the services are performed during at least
21 24 days in the same calendar quarter;

22 (c) employment of a dependent member of an employer's
23 family for whom an exemption may be claimed by the employer
24 under the federal Internal Revenue Code an individual's son,
25 daughter, or spouse and service performed by a child under

1 21 years of age in the employ of the child's father or
2 mother;

3 (d) employment of sole proprietors or working members
4 of a partnership, except as provided in subsection (3);

5 (e) employment of ~~a broker or salesman performing under~~
6 ~~a license issued by the board of realty regulation real~~
7 ~~estate, securities, and insurance salespeople paid solely by~~
8 ~~commission and without guarantee of minimum earnings;~~

9 (f) employment of a direct seller engaged in the sale
10 of consumer products, primarily in the customer's home;

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

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

17 (i) employment with any railroad engaged in interstate
18 commerce, except that railroad construction work is included
19 in and subject to the provisions of this chapter;

20 (j) employment as an official, including a timer,
21 referee, or judge, at a school amateur athletic event,
22 unless the person is otherwise employed by a school
23 district;

24 (k) any person performing services as a newspaper
25 carrier or free-lance correspondent if the person performing

1 the services or a parent or guardian of the person
2 performing the services in the case of a minor has
3 acknowledged in writing that the person performing the
4 services and the services are not covered. As used in this
5 subsection "free-lance correspondent" is a person who
6 submits articles or photographs for publication and is paid
7 by the article or by the photograph. As used in this
8 subsection "newspaper carrier":

9 (i) is a person who provides a newspaper with the
10 service of delivering newspapers singly or in bundles; but

11 (ii) does not include an employee of the paper who,
12 incidentally to his main duties, carries or delivers papers.

13 (l) agricultural labor, except as provided in
14 39-51-203(8);

15 (m) service performed as an officer or member of the
16 crew of a vessel on the navigable waters of the United
17 States;

18 (n) service performed in the employ of any other state
19 or its political subdivisions or of the United States
20 government or of an instrumentality of any other state or
21 states or their political subdivisions or of the United
22 States, except that national banks organized under the
23 national banking law are not entitled to exemption under
24 this subsection and are subject to this chapter the same as
25 state banks, provided that the service is excluded from

1 employment as defined in the Federal Unemployment Tax Act by
 2 section 3306(c)(7) of that act;

3 (o) service performed in the employ of a school,
 4 college, or university if the service is performed by a
 5 student who is enrolled and is regularly attending classes
 6 at the school, college, or university or by the spouse of
 7 the student if the spouse is advised, at the time the spouse
 8 commences to perform the service, that the employment of the
 9 spouse to perform the service is provided under a program to
 10 provide financial assistance to the student by the school,
 11 college, or university and the employment will not be
 12 covered by any program of workers' compensation;

13 (p) service performed by an individual who is enrolled
 14 at a nonprofit or public educational institution, which
 15 normally maintains a regular faculty and curriculum and
 16 normally has a regularly organized body of students in
 17 attendance at the place where its educational activities are
 18 carried on, as a student in a full-time program taken for
 19 credit at the institution that combines academic instruction
 20 with work experience if the service is an integral part of
 21 the program and the institution has so certified to the
 22 employer, except that this subsection does not apply to
 23 service performed in a program established for or on behalf
 24 of an employer or group of employers;

25 (q) service performed in the employ of a hospital if

1 the service is performed by a patient of the hospital;

2 (r) services performed for the installation of floor
 3 coverings if the installer:

4 (i) bids or negotiates a contract price based upon work
 5 performed by the yard or by the job;

6 (ii) is paid upon completion of an agreed-upon portion
 7 of the job or after the job is completed;

8 (iii) may perform services for anyone without
 9 limitation;

10 (iv) may accept or reject any job;

11 (v) furnishes substantially all tools and equipment
 12 necessary to provide the services; and

13 (vi) works under a written contract that:

14 (A) gives rise to a breach of contract action if the
 15 installer or any other party fails to perform the contract
 16 obligations;

17 (B) states the installer is not covered by unemployment
 18 insurance; and

19 (C) requires the installer to provide a current
 20 workers' compensation policy or to obtain an exemption from
 21 workers' compensation requirements;

22 (s) elected public officials.

23 (3) (a) A sole proprietor or a working member of a
 24 partnership who holds himself out or considers himself an
 25 independent contractor [and who is not contracting] for

1 cosmetologist's services or barber's services as defined in
 2 39-51-204(1)(1) must elect to be bound personally and
 3 individually by the provisions of compensation plan No. 1,
 4 2, or 3, but he may apply to the department for an exemption
 5 from the Workers' Compensation Act for himself.

6 (b) The application must be made in accordance with the
 7 rules adopted by the department. The department may deny the
 8 application only if it determines that the applicant is not
 9 an independent contractor.

10 (c) When an application is approved by the department,
 11 it is conclusive as to the status of an independent
 12 contractor and precludes the applicant from obtaining
 13 benefits under this chapter.

14 (d) When an election of an exemption is approved by the
 15 department, the election remains effective and the
 16 independent contractor retains his status as an independent
 17 contractor until he notifies the department of any change in
 18 his status and provides a description of his present work
 19 status.

20 (e) If the department denies the application for
 21 exemption, the applicant may contest the denial by
 22 petitioning for review of the decision by an appeals referee
 23 in the manner provided for in 39-51-1109. An applicant
 24 dissatisfied with the decision of the appeals referee may
 25 appeal the decision in accordance with the procedure

1 established in 39-51-2403 and 39-51-2404.

2 (4) (a) A private corporation shall provide coverage
 3 for its officers and other employees under the provisions of
 4 compensation plan No. 1, 2, or 3. However, pursuant to such
 5 rules as the department promulgates and subject in all cases
 6 to approval by the department, an officer of a private
 7 corporation may elect not to be bound as an employee under
 8 this chapter by giving a written notice, on a form provided
 9 by the department, served in the following manner:

10 (i) if the employer has elected to be bound by the
 11 provisions of compensation plan No. 1, by delivering the
 12 notice to the board of directors of the employer and the
 13 department; or

14 (ii) if the employer has elected to be bound by the
 15 provisions of compensation plan No. 2 or 3, by delivering
 16 the notice to the board of directors of the employer, the
 17 department, and the insurer.

18 (b) If the employer changes plans or insurers, the
 19 officer's previous election is not effective and the officer
 20 shall again serve notice as provided if he elects not to be
 21 bound.

22 (c) The appointment or election of an employee as an
 23 officer of a corporation for the purpose of excluding the
 24 employee from coverage under this chapter does not entitle
 25 the officer to elect not to be bound as an employee under

1 this chapter. In any case, the officer must sign the notice
2 required by subsection (4)(a) under oath or affirmation, and
3 he is subject to the penalties for false swearing under
4 45-7-202 if he falsifies the notice.

5 (5) Each employer shall post a sign in the workplace at
6 the locations where notices to employees are normally
7 posted, informing employees about the employer's current
8 provision of compensation insurance. A workplace is any
9 location where an employee performs any work-related act in
10 the course of employment, regardless of whether the location
11 is temporary or permanent, and includes the place of
12 business or property of a third person while the employer
13 has access to or control over such place of business or
14 property for the purpose of carrying on his usual trade,
15 business, or occupation. The sign will be provided by the
16 department, distributed through insurers or directly by the
17 department, and posted by employers in accordance with rules
18 adopted by the department. An employer who purposely or
19 knowingly fails to post a sign as provided in this
20 subsection is subject to a \$50 fine for each citation."

21 NEW SECTION. **Section 3.** Applicability date. [This act]
22 applies to all claims filed on or after [the effective date
23 of this act].

24 NEW SECTION. **Section 4.** Effective date. [This act] is
25 effective July 1, 1991.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0807, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to make consistent the exclusions from the definitions of employment in the unemployment insurance and workers' compensation acts; amending sections 39-51-204 and 39-71-401, MCA; and providing an effective date.

ASSUMPTIONS:

Dept. of Labor & Industry:

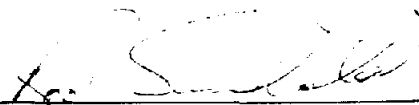
1. Section 1 of the proposed legislation amends the definition of employment to exclude several occupational groups. The nature and/or magnitude of affected wages and salaries is not readily available.
2. A reduction in covered wages will reduce unemployment insurance tax receipts by an unknown amount.
3. Wages excluded from unemployment insurance coverage will not be available for use in determining unemployment insurance benefits. Consequently, expenditures for unemployment insurance benefits should decrease.

State Fund:

4. Section 2 excludes several additional occupation groups from workers' compensation insurance coverage unless the employer elects coverage.
5. The proposed legislation would exclude agricultural employment from workers' compensation coverage. The State Fund currently has approximately 7,000 active policies in the agricultural industry. Approximately 90% or 6,300 active policies will probably terminate workers' compensation coverage under the proposed legislation.
6. FY90 premiums from employers with agricultural occupation groups was approximately \$5.2 million. A 90% reduction in active policies would result in a \$4.95 million reduction in premium payments.
7. FY90 benefit payments for agricultural occupation groups was approximately \$5.2 million. A 90% reduction in benefit payments is \$4.68 million.
8. The impact that other new and changed groups will have upon current workers' compensation coverage is unknown, but is expected to affect a relatively small number of insureds.
9. Computer modifications to track coverage and implement the revisions contained in the proposed legislation will be necessary during FY92.
10. Current law is represented by the executive budget recommendation for the State Fund.

FISCAL NOTE:

see next page



ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



ROYAL C. JOHNSON, PRIMARY SPONSOR DATE
2-21-91

Fiscal Note for HB0807, as introduced. **HB807**

Fiscal Note Request, HB0807, as introduced.

Form BD-15

Page 2

FISCAL IMPACT:

Dept. of Labor & Industry:

Unable to determine expenditures or revenue impact.

State Fund:

	<u>FY 92</u>			<u>FY 93</u>		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Personal Services	5,536,182	5,536,182	0	5,506,944	5,506,944	0
Operating Costs	3,802,378	3,817,878	15,500	3,748,677	3,748,677	0
Equipment	188,893	188,893	0	127,138	127,138	0
Benefits and Claims	110,953,000	106,273,000	(4,680,000)	118,060,000	113,380,000	(4,680,000)
Transfers	<u>2,941,701</u>	<u>2,941,701</u>	<u>0</u>	<u>2,959,054</u>	<u>2,959,054</u>	<u>0</u>
Total	123,422,154	118,757,654	4,664,500	130,401,813	125,721,813	4,680,000
<u>Funding:</u>						
State Special Revenues:	26,570	26,570	0	0	0	0
Proprietary Fund	<u>123,395,584</u>	<u>118,731,084</u>	<u>(4,664,500)</u>	<u>130,401,813</u>	<u>125,721,813</u>	<u>(4,680,000)</u>
Total	123,422,154	118,757,654	(4,664,500)	130,401,813	125,721,813	(4,680,000)
<u>Revenues:</u>						
Premiums	121,359,000	116,409,000	(4,950,000)	134,916,000	129,966,000	(4,950,000)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Premium rates are based, among other factors, on the amortization of potential claims and liabilities among the insured occupational groups. Claims and liabilities which occur prior to the effective date of the proposed legislation will remain a potential liability that will be amortized among the remaining occupational groups. The removal of approximately 6,300 policy holders and \$4.95 million in premium receipts will adversely affect premium rates. The premium rates of the remaining, non-excluded groups will likely increase.
2. Workers' compensation coverage cannot be purchased retroactively. The compensation and rehabilitation of injured workers in excluded occupation groups could adversely impact other social service agencies.

TECHNICAL NOTES:

1. Section 3309(b) of the Internal Revenue Code requires coverage of employment for any service provided to a governmental entity that is not specifically excluded from FUTA. The proposed legislation would place Montana in nonconformance with federal statutes, thereby jeopardizing the loss of federal funds and the 5.4% FUTA tax credit to employers.
2. The proposed amendment 39-51-204(1)(r) may conflict with 39-51-201(18)(a) which defines wages.

HB 807

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0807, second reading.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to make consistent the exclusions from the definitions of employment in the unemployment insurance and workers' compensation acts; to require that an individual found to be an independent contractor under Title 39, Chapter 71, part 4, MCA, is an independent contractor for purposes of Title 39, Chapter 71, MCA; to require the Department of Labor and Industry to report independent contractor and employment exemptions to the State Compensation Mutual Insurance Fund.

ASSUMPTIONS:

Dept. of Labor & Industry:

1. Section 1 of the proposed legislation amends the definition of employment to exclude several occupational groups. The nature and/or magnitude of affected wages and salaries is not readily available.
2. A reduction in covered wages will reduce unemployment insurance tax receipts by an unknown amount.
3. Wages excluded from unemployment insurance coverage will not be available for use in determining unemployment insurance benefits. Consequently, expenditures for unemployment insurance benefits should decrease.
4. Costs associated with sharing exemption information with the State Fund will be relatively insignificant and will not fiscally impact either the department or the state fund.

State Fund:

5. There is no fiscal impact to the State Compensation Mutual Insurance Fund.


FISCAL IMPACT:

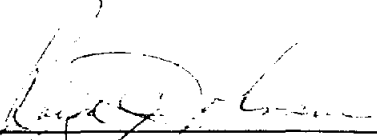
Dept. of Labor & Industry:

Unable to determine expenditures or revenue impact.

TECHNICAL NOTES:

The bill title refers to Title 39, Chapter 71, MCA, (Workers' Compensation) twice instead of referencing Title 39, Chapter 51, MCA, (Unemployment Insurance). The second reference in the title on line 9 of the bill should be changed to Title 39, Chapter 51, MCA.


ROD SUNDSTED, BUDGET DIRECTOR 226-91 DATE
Office of Budget and Program Planning


ROYAL C. JOHNSON, PRIMARY SPONSOR 2-27-91 DATE

Fiscal Note for HB0807, second reading

HB 807

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

HOUSE BILL NO. 807

INTRODUCED BY R. JOHNSON, DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE CONSISTENT THE EXCLUSIONS FROM THE DEFINITIONS OF EMPLOYMENT IN THE UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION ACTS; TO REQUIRE THAT AN INDIVIDUAL FOUND TO BE AN INDEPENDENT CONTRACTOR UNDER TITLE 39, CHAPTER 71, PART 4, MCA, IS AN INDEPENDENT CONTRACTOR FOR PURPOSES OF TITLE 39, CHAPTER 71, MCA; TO REQUIRE THE DEPARTMENT OF LABOR AND INDUSTRY TO REPORT INDEPENDENT CONTRACTOR AND EMPLOYMENT EXEMPTIONS TO THE STATE COMPENSATION MUTUAL INSURANCE FUND; AMENDING SECTIONS 39-51-204 AND 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment.

(1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the

crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter,



1 acquired rights to unemployment insurance under such act of
 2 congress or who have, after acquiring potential rights to
 3 unemployment insurance under such act of congress, acquired
 4 rights to benefits under this chapter;

5 (g) ~~services performed in the delivery and distribution~~
 6 ~~of newspapers or shopping news from house to house and~~
 7 ~~business establishments by an individual under the age of 18~~
 8 ~~years, but not including the delivery or distribution to any~~
 9 ~~point or points for subsequent delivery or distribution;~~ AS
 10 A NEWSPAPER CARRIER OR FREE-LANCE CORRESPONDENT IF THE
 11 PERSON PERFORMING THE SERVICES OR A PARENT OR GUARDIAN OF
 12 THE PERSON PERFORMING THE SERVICES IN THE CASE OF A MINOR
 13 HAS ACKNOWLEDGED IN WRITING THAT THE PERSON PERFORMING THE
 14 SERVICES AND THE SERVICES ARE NOT COVERED. AS USED IN THIS
 15 SUBSECTION:

16 (I) "FREE-LANCE CORRESPONDENT" IS A PERSON WHO SUBMITS
 17 ARTICLES OR PHOTOGRAPHS FOR PUBLICATION AND IS PAID BY THE
 18 ARTICLE OR BY THE PHOTOGRAPH; AND

19 (II) "NEWSPAPER CARRIER" MEANS A PERSON WHO PROVIDES A
 20 NEWSPAPER WITH THE SERVICE OF DELIVERING NEWSPAPERS SINGLY
 21 OR IN BUNDLES. THE TERM DOES NOT INCLUDE AN EMPLOYEE OF THE
 22 PAPER WHO, INCIDENTALLY TO HIS MAIN DUTIES, CARRIES OR
 23 DELIVERS PAPERS.

24 (h) services performed by real estate, securities, and
 25 insurance salespeople paid solely by commissions and without

1 guarantee of minimum earnings;

2 (i) service performed in the employ of a school,
 3 college, or university if such service is performed by a
 4 student who is enrolled and is regularly attending classes
 5 at such school, college, or university or by the spouse of
 6 such a student if such spouse is advised, at the time such
 7 spouse commences to perform such service, that the
 8 employment of such spouse to perform such service is
 9 provided under a program to provide financial assistance to
 10 such student by such school, college, or university and such
 11 employment will not be covered by any program of
 12 unemployment insurance;

13 (j) service performed by an individual who is enrolled
 14 at a nonprofit or public educational institution, which
 15 normally maintains a regular faculty and curriculum and
 16 normally has a regularly organized body of students in
 17 attendance at the place where its educational activities are
 18 carried on, as a student in a full-time program taken for
 19 credit at such institution which combines academic
 20 instruction with work experience if such service is an
 21 integral part of such program and such institution has so
 22 certified to the employer, except that this subsection shall
 23 not apply to service performed in a program established for
 24 or on behalf of an employer or group of employers;

25 (k) service performed in the employ of a hospital if

1 such service is performed by a patient of the hospital;

2 (l) services performed by a cosmetologist who is
 3 licensed under Title 37, chapter 31, or a barber who is
 4 licensed under Title 37, chapter 30, and who has
 5 acknowledged in writing that he is not covered by
 6 unemployment insurance and workers' compensation and who
 7 contracts with a cosmetological establishment as defined in
 8 37-31-101 or a barbershop as defined in 37-30-101, which
 9 contract shall show the cosmetologist or barber is free from
 10 all control and direction of the owner in the contract and
 11 in fact; receives payment for services from his or her
 12 individual clientele; leases, rents, or furnishes all of his
 13 or her own equipment, skills, or knowledge; and whose
 14 contract gives rise to an action for breach of contract in
 15 the event of contract termination (the existence of a single
 16 license for the cosmetological establishment or barbershop
 17 shall not be construed as a lack of freedom from control or
 18 direction under this subsection);

19 (m) casual labor not in the course of an employer's
 20 trade or business performed in any calendar quarter, unless
 21 the cash remuneration paid for such service is \$50 or more
 22 and such service is performed by an individual who is
 23 regularly employed by such employer to perform such service.
 24 "Regularly employed" means the services are performed during
 25 at least 24 days in the same quarter.

1 (N) EMPLOYMENT OF SOLE PROPRIETORS OR WORKING MEMBERS
 2 OF A PARTNERSHIP;

3 ~~(n)~~(O) services performed for the installation of floor
 4 coverings if the installer:

5 (i) bids or negotiates a contract price based upon work
 6 performed by the yard or by the job;

7 (ii) is paid upon completion of an agreed upon portion
 8 of the job or after the job is completed;

9 (iii) may perform services for anyone without
 10 limitation;

11 (iv) may accept or reject any job;

12 (v) furnishes substantially all tools and equipment
 13 necessary to provide the services; and

14 (vi) works under a written contract that:

15 (A) gives rise to a breach of contract action if the
 16 installer or any other party fails to perform the contract
 17 obligations;

18 (B) states the installer is not covered by unemployment
 19 insurance; and

20 (C) requires the installer to provide a current
 21 workers' compensation policy or to obtain an exemption from
 22 workers' compensation requirements;

23 ~~(n) employment of sole proprietors or working members~~
 24 ~~of a partnership, except as provided in subsection (i)(i);~~

25 ~~(p) employment of a direct seller engaged in the sale~~

1 ~~of consumer products, primarily in the customer's home;~~
 2 ~~(g) employment for which a rule of liability for~~
 3 ~~injury, occupational disease, or death is provided under the~~
 4 ~~laws of the United States;~~
 5 ~~(r) employment of a person performing services in~~
 6 ~~return for aid or sustenance only, except employment of a~~
 7 ~~volunteer under 67-2-105;~~
 8 ~~(s) employment with a railroad engaged in interstate~~
 9 ~~commerce, except that railroad construction work is included~~
 10 ~~in and subject to the provisions of this chapter; and~~
 11 ~~(t) employment as an official, including a timer,~~
 12 ~~referee, or judge, at a school amateur athletic event unless~~
 13 ~~the person is otherwise employed by a school district;~~

14 (2) "Employment" does not include elected public
 15 officials.

16 (3) For the purposes of 39-51-203(6), the term
 17 "employment" does not apply to service performed:

18 (a) in the employ of a church or convention or
 19 association of churches or an organization which is operated
 20 primarily for religious purposes and which is operated,
 21 supervised, controlled, or principally supported by a church
 22 or convention or association of churches;

23 (b) by a duly ordained, commissioned, or licensed
 24 minister of a church in the exercise of the church's
 25 ministry or by a member of a religious order in the exercise

1 of duties required by such order;

2 (c) in a facility conducted for the purpose of carrying
 3 out a program of rehabilitation for individuals whose
 4 earning capacity is impaired by age or physical or mental
 5 deficiency or injury or providing remunerative work for
 6 individuals who, because of their impaired physical or
 7 mental capacity, cannot be readily absorbed in the
 8 competitive labor market by an individual receiving such
 9 rehabilitation or remunerative work;

10 (d) as part of an unemployment work-relief or
 11 work-training program assisted or financed in whole or in
 12 part by a federal agency or any agency of a state or
 13 political subdivision thereof by an individual receiving
 14 such work relief or work training; or

15 (e) for a state prison or other state correctional or
 16 custodial institution by an inmate of that institution.

17 (4) AN INDIVIDUAL FOUND TO BE AN INDEPENDENT CONTRACTOR
 18 BY THE DEPARTMENT UNDER THE TERMS OF 39-71-401(3) IS
 19 CONSIDERED AN INDEPENDENT CONTRACTOR FOR THE PURPOSES OF
 20 THIS CHAPTER."

21 **Section 2.** Section 39-71-401, MCA, is amended to read:

22 **"39-71-401. Employments covered and employments**
 23 **exempted.** (1) Except as provided in subsection (2) of this
 24 section, the Workers' Compensation Act applies to all
 25 employers as defined in 39-71-117 and to all employees as

1 defined in 39-71-118. An employer who has any employee in
2 service under any appointment or contract of hire, expressed
3 or implied, oral or written, shall elect to be bound by the
4 provisions of compensation plan No. 1, 2, or 3. Every
5 employee whose employer is bound by the Workers'
6 Compensation Act is subject to and bound by the compensation
7 plan that has been elected by the employer.

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

12 (a) household and domestic employment ~~service--in-a~~
13 ~~private-home, local college club, or local chapter of a~~
14 ~~college--fraternity--or--sorority, except as provided in~~
15 ~~39-51-203(9) EMPLOYMENT;~~

16 (b) casual employment as defined in 39-71-116,
17 ~~performed in any calendar quarter, unless the case~~
18 ~~remuneration paid for the service is \$50 or more and the~~
19 ~~service is performed by an individual who is regularly~~
20 ~~employed by the employer to perform the service. "Regularly~~
21 ~~employed" means the services are performed during at least~~
22 ~~24 days in the same calendar quarter;~~

23 (c) employment of ~~a dependent member of an employer's~~
24 ~~family for whom an exemption may be claimed by the employer~~
25 ~~under the federal internal Revenue Code an individual's son,~~

1 ~~daughter, or spouse and service performed by a child under~~
2 ~~21 years of age in the employ of the child's father or~~
3 ~~mother. A DEPENDENT MEMBER OF AN EMPLOYER'S FAMILY FOR WHOM~~
4 ~~AN EXEMPTION MAY BE CLAIMED BY THE EMPLOYER UNDER THE~~
5 ~~FEDERAL INTERNAL REVENUE CODE;~~

6 (d) employment of sole proprietors or working members
7 of a partnership, except as provided in subsection (3);

8 (e) employment of ~~a broker or salesman performing under~~
9 ~~a license issued by the board of realty regulation real~~
10 ~~estate, securities, and insurance salespeople paid solely by~~
11 ~~commission and without guarantee of minimum earnings. A~~
12 ~~BROKER OR SALESMAN PERFORMING UNDER A LICENSE ISSUED BY THE~~
13 ~~BOARD OF REALTY REGULATION;~~

14 (f) employment of a direct seller engaged in the sale
15 of consumer products, primarily in the customer's home;

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

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

22 (i) employment with any railroad engaged in interstate
23 commerce, except that railroad construction work is included
24 in and subject to the provisions of this chapter;

25 (j) employment as an official, including a timer,

1 referee, or judge, at a school amateur athletic event,
2 unless the person is otherwise employed by a school
3 district;

4 (k) any person performing services as a newspaper
5 carrier or free-lance correspondent if the person performing
6 the services or a parent or guardian of the person
7 performing the services in the case of a minor has
8 acknowledged in writing that the person performing the
9 services and the services are not covered. As used in this
10 subsection "free-lance correspondent" is a person who
11 submits articles or photographs for publication and is paid
12 by the article or by the photograph. As used in this
13 subsection "newspaper carrier":

14 (i) is a person who provides a newspaper with the
15 service of delivering newspapers singly or in bundles; but

16 (ii) does not include an employee of the paper who,
17 incidentally to his main duties, carries or delivers papers.

18 ~~(j) agricultural labor, except as provided in~~
19 ~~39-51-203(8);~~

20 ~~(m) service performed as an officer or member of the~~
21 ~~crew of a vessel on the navigable waters of the United~~
22 ~~States;~~

23 ~~(n) service performed in the employ of any other state~~
24 ~~or its political subdivisions or of the United States~~
25 ~~government or of an instrumentality of any other state or~~

1 ~~states or their political subdivisions or of the United~~
2 ~~States, except that national banks organized under the~~
3 ~~national banking law are not entitled to exemption under~~
4 ~~this subsection and are subject to this chapter the same as~~
5 ~~state banks, provided that the service is excluded from~~
6 ~~employment as defined in the Federal Unemployment Tax Act by~~
7 ~~section 3306(e)(7) of that act;~~

8 ~~(o) service performed in the employ of a school,~~
9 ~~college, or university if the service is performed by a~~
10 ~~student who is enrolled and is regularly attending classes~~
11 ~~at the school, college, or university or by the spouse of~~
12 ~~the student if the spouse is advised, at the time the spouse~~
13 ~~commences to perform the service, that the employment of the~~
14 ~~spouse to perform the service is provided under a program to~~
15 ~~provide financial assistance to the student by the school,~~
16 ~~college, or university and the employment will not be~~
17 ~~covered by any program of workers' compensation;~~

18 ~~(p) service performed by an individual who is enrolled~~
19 ~~at a nonprofit or public educational institution, which~~
20 ~~normally maintains a regular faculty and curriculum and~~
21 ~~normally has a regularly organized body of students in~~
22 ~~attendance at the place where its educational activities are~~
23 ~~carried on, as a student in a full-time program taken for~~
24 ~~credit at the institution that combines academic instruction~~
25 ~~with work experience if the service is an integral part of~~

1 ~~the program and the institution has so certified to the~~
 2 ~~employer, except that this subsection does not apply to~~
 3 ~~service performed in a program established for or on behalf~~
 4 ~~of an employer or group of employers;~~
 5 ~~(g) service performed in the employ of a hospital, if~~
 6 ~~the service is performed by a patient of the hospital;~~
 7 ~~(r) services performed for the installation of floor~~
 8 ~~coverings if the installer;~~
 9 ~~(i) bids or negotiates a contract price based upon work~~
 10 ~~performed by the yard or by the job;~~
 11 ~~(ii) is paid upon completion of an agreed upon portion~~
 12 ~~of the job or after the job is completed;~~
 13 ~~(iii) may perform services for anyone without~~
 14 ~~limitation;~~
 15 ~~(iv) may accept or reject any job;~~
 16 ~~(v) furnishes substantially all tools and equipment~~
 17 ~~necessary to provide the services; and~~
 18 ~~(vi) works under a written contract that:~~
 19 ~~(A) gives rise to a breach of contract action if the~~
 20 ~~installer or any other party fails to perform the contract~~
 21 ~~obligations;~~
 22 ~~(B) states the installer is not covered by unemployment~~
 23 ~~insurance; and~~
 24 ~~(C) requires the installer to provide current~~
 25 ~~workers' compensation policy or to obtain an exemption from~~

1 ~~workers' compensation requirements;~~
 2 ~~(s) elected public officials;~~
 3 ~~(L) COSMETOLOGIST'S SERVICES AND BARBER'S SERVICES AS~~
 4 ~~DEFINED IN 39-51-204(1)(L).~~
 5 (3) (a) A sole proprietor or a working member of a
 6 partnership who holds himself out or considers himself an
 7 independent contractor ~~(and who is not contracting) for~~
 8 ~~cosmetologist's services or barber's services as defined in~~
 9 ~~39-51-204(1)(i) must elect to be bound personally and~~
 10 ~~individually by the provisions of compensation plan No. 1,~~
 11 ~~2, or 3, but he may apply to the department for an exemption~~
 12 ~~from the Workers' Compensation Act for himself.~~
 13 (b) The application must be made in accordance with the
 14 rules adopted by the department. The department may deny the
 15 application only if it determines that the applicant is not
 16 an independent contractor.
 17 (c) When an application is approved by the department,
 18 it is conclusive as to the status of an independent
 19 contractor and precludes the applicant from obtaining
 20 benefits under this chapter.
 21 (d) When an election of an exemption is approved by the
 22 department, the election remains effective and the
 23 independent contractor retains his status as an independent
 24 contractor until he notifies the department of any change in
 25 his status and provides a description of his present work

1 status.

2 (e) If the department denies the application for
3 exemption, the applicant may contest the denial by
4 petitioning for review of the decision by an appeals referee
5 in the manner provided for in 39-51-1109. An applicant
6 dissatisfied with the decision of the appeals referee may
7 appeal the decision in accordance with the procedure
8 established in 39-51-2403 and 39-51-2404.

9 (4) (a) A private corporation shall provide coverage
10 for its officers and other employees under the provisions of
11 compensation plan No. 1, 2, or 3. However, pursuant to such
12 rules as the department promulgates and subject in all cases
13 to approval by the department, an officer of a private
14 corporation may elect not to be bound as an employee under
15 this chapter by giving a written notice, on a form provided
16 by the department, served in the following manner:

17 (i) if the employer has elected to be bound by the
18 provisions of compensation plan No. 1, by delivering the
19 notice to the board of directors of the employer and the
20 department; or

21 (ii) if the employer has elected to be bound by the
22 provisions of compensation plan No. 2 or 3, by delivering
23 the notice to the board of directors of the employer, the
24 department, and the insurer.

25 (b) If the employer changes plans or insurers, the

1 officer's previous election is not effective and the officer
2 shall again serve notice as provided if he elects not to be
3 bound.

4 (c) The appointment or election of an employee as an
5 officer of a corporation for the purpose of excluding the
6 employee from coverage under this chapter does not entitle
7 the officer to elect not to be bound as an employee under
8 this chapter. In any case, the officer must sign the notice
9 required by subsection (4)(a) under oath or affirmation, and
10 he is subject to the penalties for false swearing under
11 45-7-202 if he falsifies the notice.

12 (5) Each employer shall post a sign in the workplace at
13 the locations where notices to employees are normally
14 posted, informing employees about the employer's current
15 provision of compensation insurance. A workplace is any
16 location where an employee performs any work-related act in
17 the course of employment, regardless of whether the location
18 is temporary or permanent, and includes the place of
19 business or property of a third person while the employer
20 has access to or control over such place of business or
21 property for the purpose of carrying on his usual trade,
22 business, or occupation. The sign will be provided by the
23 department, distributed through insurers or directly by the
24 department, and posted by employers in accordance with rules
25 adopted by the department. An employer who purposely or

1 knowingly fails to post a sign as provided in this
2 subsection is subject to a \$50 fine for each citation."

3 NEW SECTION. SECTION 3. EXEMPTION. AN EXEMPTION
4 GRANTED UNDER 39-71-401(3) BY THE DEPARTMENT THAT A
5 PARTICULAR EMPLOYEE IS AN INDEPENDENT CONTRACTOR OR THAT A
6 PARTICULAR EMPLOYMENT IS EXEMPT FROM THE PROVISIONS OF THIS
7 CHAPTER MUST BE REPORTED TO THE STATE COMPENSATION MUTUAL
8 INSURANCE FUND.

9 NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION.
10 [SECTION 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART
11 OF TITLE 39, CHAPTER 51, PART 6, AND THE PROVISIONS OF TITLE
12 39, CHAPTER 51, PART 6, APPLY TO [SECTION 3].

13 NEW SECTION. Section 5. Applicability date. [This act]
14 applies to all claims filed on or after [the effective date
15 of this act].

16 NEW SECTION. Section 6. Effective date. [This act] is
17 effective July 1, 1991.

-End-

1 HOUSE BILL NO. 807
 2 INTRODUCED BY R. JOHNSON, DRISCOLL
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE CONSISTENT THE
 5 EXCLUSIONS FROM THE DEFINITIONS OF EMPLOYMENT IN THE
 6 UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION ACTS; TO
 7 REQUIRE THAT AN INDIVIDUAL FOUND TO BE AN INDEPENDENT
 8 CONTRACTOR UNDER TITLE 39, CHAPTER 71, PART 4, MCA, IS AN
 9 INDEPENDENT CONTRACTOR FOR PURPOSES OF TITLE 39, CHAPTER 71,
 10 MCA; TO REQUIRE THE DEPARTMENT OF LABOR AND INDUSTRY TO
 11 REPORT INDEPENDENT CONTRACTOR AND EMPLOYMENT EXEMPTIONS TO
 12 THE STATE COMPENSATION MUTUAL INSURANCE FUND; AMENDING
 13 SECTIONS 39-51-204 AND 39-71-401, MCA; AND PROVIDING AN
 14 EFFECTIVE DATE AND AN APPLICABILITY DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 39-51-204, MCA, is amended to read:

18 "39-51-204. Exclusions from definition of employment.

19 (1) The term "employment" does not include:

20 (a) agricultural labor, except as provided in
21 39-51-203(8);

22 (b) household and domestic service in a private home,
23 local college club, or local chapter of a college fraternity
24 or sorority, except as provided in 39-51-203(9);

25 (c) service performed as an officer or member of the

There are no changes in this bill,
and will not be reprinted. Please
refer to yellow copy for complete
text.



SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 1, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 807 (third reading copy -- blue), respectfully report that House Bill No. 807 be amended and as so amended be concurred in:

1. Title, line 9.
Following: "CHAPTER"
Strike: "71"
Insert: "51"

Signed: _____


Thomas E. Towe, Vice-Chairman

LB 4/1/91
Amd. Coord.

Sec. of Senate

HB 807
SENATE

1 HOUSE BILL NO. 807

2 INTRODUCED BY R. JOHNSON, DRISCOLL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE CONSISTENT THE
5 EXCLUSIONS FROM THE DEFINITIONS OF EMPLOYMENT IN THE
6 UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION ACTS; TO
7 REQUIRE THAT AN INDIVIDUAL FOUND TO BE AN INDEPENDENT
8 CONTRACTOR UNDER TITLE 39, CHAPTER 71, PART 4, MCA, IS AN
9 INDEPENDENT CONTRACTOR FOR PURPOSES OF TITLE 39, CHAPTER 71
10 51, MCA; TO REQUIRE THE DEPARTMENT OF LABOR AND INDUSTRY TO
11 REPORT INDEPENDENT CONTRACTOR AND EMPLOYMENT EXEMPTIONS TO
12 THE STATE COMPENSATION MUTUAL INSURANCE FUND; AMENDING
13 SECTIONS 39-51-204 AND 39-71-401, MCA; AND PROVIDING AN
14 EFFECTIVE DATE AND AN APPLICABILITY DATE."

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:17 **Section 1.** Section 39-51-204, MCA, is amended to read:

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19 (1) The term "employment" does not include:

20 (a) agricultural labor, except as provided in
21 39-51-203(8);22 (b) household and domestic service in a private home,
23 local college club, or local chapter of a college fraternity
24 or sorority, except as provided in 39-51-203(9);

25 (c) service performed as an officer or member of the

1 crew of a vessel on the navigable waters of the United
2 States;3 (d) service performed by an individual in the employ of
4 that individual's son, daughter, or spouse and service
5 performed by a child under the age of 21 in the employ of
6 the child's father or mother;7 (e) service performed in the employ of any other state
8 or its political subdivisions or of the United States
9 government or of an instrumentality of any other state or
10 states or their political subdivisions or of the United
11 States, except that national banks organized under the
12 national banking law shall not be entitled to exemption
13 under this subsection and shall be subject to this chapter
14 the same as state banks, provided that such service is
15 excluded from employment as defined in the Federal
16 Unemployment Tax Act by section 3306(c)(7) of that act;17 (f) service with respect to which unemployment
18 insurance is payable under an unemployment insurance system
19 established by an act of congress, provided that the
20 department must enter into agreements with the proper
21 agencies under such act of congress, which agreements shall
22 become effective in the manner prescribed in the Montana
23 Administrative Procedure Act for the adoption of rules, to
24 provide reciprocal treatment to individuals who have, after
25 acquiring potential rights to benefits under this chapter,

1 acquired rights to unemployment insurance under such act of
2 congress or who have, after acquiring potential rights to
3 unemployment insurance under such act of congress, acquired
4 rights to benefits under this chapter;

5 (g) ~~services performed in-the-delivery-and-distribution~~
6 ~~of-newspapers-or-shopping--news--from--house--to--house--and~~
7 ~~business-establishments-by-an-individual-under-the-age-of-18~~
8 ~~years;-but-not-including-the-delivery-or-distribution-to-any~~
9 ~~point--or-points-for-subsequent-delivery-or-distribution; AS~~
10 A NEWSPAPER CARRIER OR FREE-LANCE CORRESPONDENT IF THE
11 PERSON PERFORMING THE SERVICES OR A PARENT OR GUARDIAN OF
12 THE PERSON PERFORMING THE SERVICES IN THE CASE OF A MINOR
13 HAS ACKNOWLEDGED IN WRITING THAT THE PERSON PERFORMING THE
14 SERVICES AND THE SERVICES ARE NOT COVERED. AS USED IN THIS
15 SUBSECTION;

16 (I) "FREE-LANCE CORRESPONDENT" IS A PERSON WHO SUBMITS
17 ARTICLES OR PHOTOGRAPHS FOR PUBLICATION AND IS PAID BY THE
18 ARTICLE OR BY THE PHOTOGRAPH; AND

19 (II) "NEWSPAPER CARRIER" MEANS A PERSON WHO PROVIDES A
20 NEWSPAPER WITH THE SERVICE OF DELIVERING NEWSPAPERS SINGLY
21 OR IN BUNDLES. THE TERM DOES NOT INCLUDE AN EMPLOYEE OF THE
22 PAPER WHO, INCIDENTALLY TO HIS MAIN DUTIES, CARRIES OR
23 DELIVERS PAPERS.

24 (h) services performed by real estate, securities, and
25 insurance salespeople paid solely by commissions and without

1 guarantee of minimum earnings;

2 (i) service performed in the employ of a school,
3 college, or university if such service is performed by a
4 student who is enrolled and is regularly attending classes
5 at such school, college, or university or by the spouse of
6 such a student if such spouse is advised, at the time such
7 spouse commences to perform such service, that the
8 employment of such spouse to perform such service is
9 provided under a program to provide financial assistance to
10 such student by such school, college, or university and such
11 employment will not be covered by any program of
12 unemployment insurance;

13 (j) service performed by an individual who is enrolled
14 at a nonprofit or public educational institution, which
15 normally maintains a regular faculty and curriculum and
16 normally has a regularly organized body of students in
17 attendance at the place where its educational activities are
18 carried on, as a student in a full-time program taken for
19 credit at such institution which combines academic
20 instruction with work experience if such service is an
21 integral part of such program and such institution has so
22 certified to the employer, except that this subsection shall
23 not apply to service performed in a program established for
24 or on behalf of an employer or group of employers;

25 (k) service performed in the employ of a hospital if

1 such service is performed by a patient of the hospital;

2 (l) services performed by a cosmetologist who is

3 licensed under Title 37, chapter 31, or a barber who is

4 licensed under Title 37, chapter 30, and who has

5 acknowledged in writing that he is not covered by

6 unemployment insurance and workers' compensation and who

7 contracts with a cosmetological establishment as defined in

8 37-31-101 or a barbershop as defined in 37-30-101, which

9 contract shall show the cosmetologist or barber is free from

10 all control and direction of the owner in the contract and

11 in fact; receives payment for services from his or her

12 individual clientele; leases, rents, or furnishes all of his

13 or her own equipment, skills, or knowledge; and whose

14 contract gives rise to an action for breach of contract in

15 the event of contract termination (the existence of a single

16 license for the cosmetological establishment or barbershop

17 shall not be construed as a lack of freedom from control or

18 direction under this subsection);

19 (m) casual labor not in the course of an employer's

20 trade or business performed in any calendar quarter, unless

21 the cash remuneration paid for such service is \$50 or more

22 and such service is performed by an individual who is

23 regularly employed by such employer to perform such service.

24 "Regularly employed" means the services are performed during

25 at least 24 days in the same quarter.

1 (N) EMPLOYMENT OF SOLE PROPRIETORS OR WORKING MEMBERS

2 OF A PARTNERSHIP;

3 ~~(n)~~(O) services performed for the installation of floor

4 coverings if the installer:

5 (i) bids or negotiates a contract price based upon work

6 performed by the yard or by the job;

7 (ii) is paid upon completion of an agreed upon portion

8 of the job or after the job is completed;

9 (iii) may perform services for anyone without

10 limitation;

11 (iv) may accept or reject any job;

12 (v) furnishes substantially all tools and equipment

13 necessary to provide the services; and

14 (vi) works under a written contract that:

15 (A) gives rise to a breach of contract action if the

16 installer or any other party fails to perform the contract

17 obligations;

18 (B) states the installer is not covered by unemployment

19 insurance; and

20 (C) requires the installer to provide a current

21 workers' compensation policy or to obtain an exemption from

22 workers' compensation requirements;

23 ~~(o) employment of sole proprietors or working members~~

24 ~~of a partnership, except as provided in subsection (i)(i);~~

25 ~~(p) employment of a direct seller engaged in the sale~~

1 ~~of consumer products, primarily in the customer's home;~~
 2 ~~(g) employment for which a rule of liability for~~
 3 ~~injury, occupational disease, or death is provided under the~~
 4 ~~laws of the United States;~~
 5 ~~(f) employment of a person performing services in~~
 6 ~~return for aid or sustenance only, except employment of a~~
 7 ~~volunteer under 67-2-105;~~
 8 ~~(s) employment with a railroad engaged in interstate~~
 9 ~~commerce, except that railroad construction work is included~~
 10 ~~in and subject to the provisions of this chapter, and~~
 11 ~~(t) employment as an official, including a timer,~~
 12 ~~referee, or judge, at a school amateur athletic event unless~~
 13 ~~the person is otherwise employed by a school district.~~

14 (2) "Employment" does not include elected public
 15 officials.

16 (3) For the purposes of 39-51-203(6), the term
 17 "employment" does not apply to service performed:

18 (a) in the employ of a church or convention or
 19 association of churches or an organization which is operated
 20 primarily for religious purposes and which is operated,
 21 supervised, controlled, or principally supported by a church
 22 or convention or association of churches;

23 (b) by a duly ordained, commissioned, or licensed
 24 minister of a church in the exercise of the church's
 25 ministry or by a member of a religious order in the exercise

1 of duties required by such order;

2 (c) in a facility conducted for the purpose of carrying
 3 out a program of rehabilitation for individuals whose
 4 earning capacity is impaired by age or physical or mental
 5 deficiency or injury or providing remunerative work for
 6 individuals who, because of their impaired physical or
 7 mental capacity, cannot be readily absorbed in the
 8 competitive labor market by an individual receiving such
 9 rehabilitation or remunerative work;

10 (d) as part of an unemployment work-relief or
 11 work-training program assisted or financed in whole or in
 12 part by a federal agency or any agency of a state or
 13 political subdivision thereof by an individual receiving
 14 such work relief or work training; or

15 (e) for a state prison or other state correctional or
 16 custodial institution by an inmate of that institution.

17 (4) AN INDIVIDUAL FOUND TO BE AN INDEPENDENT CONTRACTOR
 18 BY THE DEPARTMENT UNDER THE TERMS OF 39-71-401(3) IS
 19 CONSIDERED AN INDEPENDENT CONTRACTOR FOR THE PURPOSES OF
 20 THIS CHAPTER."

21 **Section 2.** Section 39-71-401, MCA, is amended to read:

22 "39-71-401. **Employments covered and employments**
 23 **exempted.** (1) Except as provided in subsection (2) of this
 24 section, the Workers' Compensation Act applies to all
 25 employers as defined in 39-71-117 and to all employees as

1 defined in 39-71-118. An employer who has any employee in
 2 service under any appointment or contract of hire, expressed
 3 or implied, oral or written, shall elect to be bound by the
 4 provisions of compensation plan No. 1, 2, or 3. Every
 5 employee whose employer is bound by the Workers'
 6 Compensation Act is subject to and bound by the compensation
 7 plan that has been elected by the employer.

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

12 (a) household and domestic employment service--in--a
 13 private--home--local--college--club--or--local--chapter--of--a
 14 college--fraternity--or--sorority--except--as--provided--in
 15 39-51-203(9) EMPLOYMENT;

16 (b) casual employment as defined in 39-71-116
 17 performed--in--any--calendar--quarter--unless--the--case
 18 remuneration--paid--for--the--service--is--\$50--or--more--and--the
 19 service--is--performed--by--an--individual--who--is--regularly
 20 employed--by--the--employer--to--perform--the--service--"Regularly
 21 employed"--means--the--services--are--performed--during--at--least
 22 24--days--in--the--same--calendar--quarter";

23 (c) employment of a--dependent--member--of--an--employer's
 24 family--for--whom--an--exemption--may--be--claimed--by--the--employer
 25 under--the--federal--Internal--Revenue--Code--an--individual's--son;

1 daughter--or--spouse--and--service--performed--by--a--child--under
 2 21--years--of--age--in--the--employ--of--the--child's--father--or
 3 mother A DEPENDENT MEMBER OF AN EMPLOYER'S FAMILY FOR WHOM
 4 AN EXEMPTION MAY BE CLAIMED BY THE EMPLOYER UNDER THE
 5 FEDERAL INTERNAL REVENUE CODE;

6 (d) employment of sole proprietors or working members
 7 of a partnership, except as provided in subsection (3);

8 (e) employment of a--broker--or--salesman--performing--under
 9 a--license--issued--by--the--board--of--realty--regulation--real
 10 estate--securities--and--insurance--salespeople--paid--solely--by
 11 commission--and--without--guarantee--of--minimum--earnings A
 12 BROKER OR SALESMAN PERFORMING UNDER A LICENSE ISSUED BY THE
 13 BOARD OF REALTY REGULATION;

14 (f) employment of a direct seller engaged in the sale
 15 of consumer products, primarily in the customer's home;

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

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

22 (i) employment with any railroad engaged in interstate
 23 commerce, except that railroad construction work is included
 24 in and subject to the provisions of this chapter;

25 (j) employment as an official, including a timer,

1 referee, or judge, at a school amateur athletic event,
2 unless the person is otherwise employed by a school
3 district;

4 (k) any person performing services as a newspaper
5 carrier or free-lance correspondent if the person performing
6 the services or a parent or guardian of the person
7 performing the services in the case of a minor has
8 acknowledged in writing that the person performing the
9 services and the services are not covered. As used in this
10 subsection "free-lance correspondent" is a person who
11 submits articles or photographs for publication and is paid
12 by the article or by the photograph. As used in this
13 subsection "newspaper carrier":

14 (i) is a person who provides a newspaper with the
15 service of delivering newspapers singly or in bundles; but

16 (ii) does not include an employee of the paper who,
17 incidentally to his main duties, carries or delivers papers.

18 ~~(l) agricultural labor, except as provided in~~
19 ~~39-51-203(8);~~

20 ~~(m) service performed as an officer or member of the~~
21 ~~crew of a vessel on the navigable waters of the United~~
22 ~~States;~~

23 ~~(n) service performed in the employ of any other state~~
24 ~~or its political subdivisions or of the United States~~
25 ~~government or of an instrumentality of any other state or~~

1 ~~states or their political subdivisions or of the United~~
2 ~~States, except that national banks organized under the~~
3 ~~national banking law are not entitled to exemption under~~
4 ~~this subsection and are subject to this chapter the same as~~
5 ~~state banks, provided that the service is excluded from~~
6 ~~employment as defined in the Federal Unemployment Tax Act by~~
7 ~~section 3306(c)(7) of that act;~~

8 ~~(o) service performed in the employ of a school,~~
9 ~~college, or university if the service is performed by a~~
10 ~~student who is enrolled and is regularly attending classes~~
11 ~~at the school, college, or university or by the spouse of~~
12 ~~the student if the spouse is advised, at the time the spouse~~
13 ~~commences to perform the service, that the employment of the~~
14 ~~spouse to perform the service is provided under a program to~~
15 ~~provide financial assistance to the student by the school,~~
16 ~~college, or university and the employment will not be~~
17 ~~covered by any program of workers' compensation;~~

18 ~~(p) service performed by an individual who is enrolled~~
19 ~~at a nonprofit or public educational institution, which~~
20 ~~normally maintains a regular faculty and curriculum and~~
21 ~~normally has a regularly organized body of students in~~
22 ~~attendance at the place where its educational activities are~~
23 ~~carried on, as a student in a full-time program taken for~~
24 ~~credit at the institution that combines academic instruction~~
25 ~~with work experience if the service is an integral part of~~

~~the program and the institution has so certified to the~~
~~employer, except that this subsection does not apply to~~
~~service performed in a program established for or on behalf~~
~~of an employer or group of employers;~~
~~(g) service performed in the employ of a hospital if~~
~~the service is performed by a patient of the hospital;~~
~~(r) services performed for the installation of floor~~
~~coverings if the installer~~
~~(i) bids or negotiates a contract price based upon work~~
~~performed by the yard or by the job;~~
~~(ii) is paid upon completion of an agreed upon portion~~
~~of the job or after the job is completed;~~
~~(iii) may perform services for anyone without~~
~~limitation;~~
~~(iv) may accept or reject any job;~~
~~(v) furnishes substantially all tools and equipment~~
~~necessary to provide the services; and~~
~~(vi) works under a written contract that~~
~~(A) gives rise to a breach of contract action if the~~
~~installer or any other party fails to perform the contract~~
~~obligations;~~
~~(B) states the installer is not covered by unemployment~~
~~insurance; and~~
~~(C) requires the installer to provide a current~~
~~workers' compensation policy or to obtain an exemption from~~

~~workers' compensation requirements;~~
~~(s) elected public officials;~~
~~(L) COSMETOLOGIST'S SERVICES AND BARBER'S SERVICES AS~~
~~DEFINED IN 39-51-204(1)(L).~~
~~(3) (a) A sole proprietor or a working member of a~~
~~partnership who holds himself out or considers himself an~~
~~independent contractor (and who is not contracting) for~~
~~cosmetologist's services or barber's services as defined in~~
~~39-51-204(1)(i) must elect to be bound personally and~~
~~individually by the provisions of compensation plan No. 1,~~
~~2, or 3, but he may apply to the department for an exemption~~
~~from the Workers' Compensation Act for himself.~~
~~(b) The application must be made in accordance with the~~
~~rules adopted by the department. The department may deny the~~
~~application only if it determines that the applicant is not~~
~~an independent contractor.~~
~~(c) When an application is approved by the department,~~
~~it is conclusive as to the status of an independent~~
~~contractor and precludes the applicant from obtaining~~
~~benefits under this chapter.~~
~~(d) When an election of an exemption is approved by the~~
~~department, the election remains effective and the~~
~~independent contractor retains his status as an independent~~
~~contractor until he notifies the department of any change in~~
~~his status and provides a description of his present work~~

1 status.

2 (e) If the department denies the application for
 3 exemption, the applicant may contest the denial by
 4 petitioning for review of the decision by an appeals referee
 5 in the manner provided for in 39-51-1109. An applicant
 6 dissatisfied with the decision of the appeals referee may
 7 appeal the decision in accordance with the procedure
 8 established in 39-51-2403 and 39-51-2404.

9 (4) (a) A private corporation shall provide coverage
 10 for its officers and other employees under the provisions of
 11 compensation plan No. 1, 2, or 3. However, pursuant to such
 12 rules as the department promulgates and subject in all cases
 13 to approval by the department, an officer of a private
 14 corporation may elect not to be bound as an employee under
 15 this chapter by giving a written notice, on a form provided
 16 by the department, served in the following manner:

17 (i) if the employer has elected to be bound by the
 18 provisions of compensation plan No. 1, by delivering the
 19 notice to the board of directors of the employer and the
 20 department; or

21 (ii) if the employer has elected to be bound by the
 22 provisions of compensation plan No. 2 or 3, by delivering
 23 the notice to the board of directors of the employer, the
 24 department, and the insurer.

25 (b) If the employer changes plans or insurers, the

1 officer's previous election is not effective and the officer
 2 shall again serve notice as provided if he elects not to be
 3 bound.

4 (c) The appointment or election of an employee as an
 5 officer of a corporation for the purpose of excluding the
 6 employee from coverage under this chapter does not entitle
 7 the officer to elect not to be bound as an employee under
 8 this chapter. In any case, the officer must sign the notice
 9 required by subsection (4)(a) under oath or affirmation, and
 10 he is subject to the penalties for false swearing under
 11 45-7-202 if he falsifies the notice.

12 (5) Each employer shall post a sign in the workplace at
 13 the locations where notices to employees are normally
 14 posted, informing employees about the employer's current
 15 provision of compensation insurance. A workplace is any
 16 location where an employee performs any work-related act in
 17 the course of employment, regardless of whether the location
 18 is temporary or permanent, and includes the place of
 19 business or property of a third person while the employer
 20 has access to or control over such place of business or
 21 property for the purpose of carrying on his usual trade,
 22 business, or occupation. The sign will be provided by the
 23 department, distributed through insurers or directly by the
 24 department, and posted by employers in accordance with rules
 25 adopted by the department. An employer who purposely or

1 knowingly fails to post a sign as provided in this
2 subsection is subject to a \$50 fine for each citation."

3 NEW SECTION. SECTION 3. EXEMPTION. AN EXEMPTION
4 GRANTED UNDER 39-71-401(3) BY THE DEPARTMENT THAT A
5 PARTICULAR EMPLOYEE IS AN INDEPENDENT CONTRACTOR OR THAT A
6 PARTICULAR EMPLOYMENT IS EXEMPT FROM THE PROVISIONS OF THIS
7 CHAPTER MUST BE REPORTED TO THE STATE COMPENSATION MUTUAL
8 INSURANCE FUND.

9 NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION.
10 [SECTION 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART
11 OF TITLE 39, CHAPTER 51, PART 6, AND THE PROVISIONS OF TITLE
12 39, CHAPTER 51, PART 6, APPLY TO [SECTION 3].

13 NEW SECTION. Section 5. Applicability date. [This act]
14 applies to all claims filed on or after [the effective date
15 of this act].

16 NEW SECTION. Section 6. Effective date. [This act] is
17 effective July 1, 1991.

-End-