

SENATE BILL NO. 473  
INTRODUCED BY SVRCEK, THAYER

IN THE SENATE

APRIL 13, 1991 ON MOTION, RULES SUSPENDED TO ALLOW  
FOR DRAFTING AND INTRODUCTION OF BILL.  
INTRODUCED AND REFERRED TO COMMITTEE  
ON LABOR & EMPLOYMENT RELATIONS.  
FIRST READING.

APRIL 16, 1991 COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

APRIL 17, 1991 PRINTING REPORT.  
SECOND READING, DO PASS.

APRIL 18, 1991 ENGROSSING REPORT.  
THIRD READING, PASSED.  
AYES, 49; NOES, 0.  
TRANSMITTED TO HOUSE.

IN THE HOUSE

APRIL 19, 1991 ON MOTION, RULES SUSPENDED TO ALLOW  
LATE INTRODUCTION OF BILL.  
INTRODUCED AND REFERRED TO COMMITTEE  
ON JUCICIARY.  
FIRST READING.

APRIL 20, 1991 COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

APRIL 22, 1991 SECOND READING, CONCURRED IN.

APRIL 24, 1991 THIRD READING, CONCURRED IN.  
AYES, 84; NOES, 14.  
RETURNED TO SENATE.

IN THE SENATE

APRIL 24, 1991 RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 473  
 2 INTRODUCED BY Sen. Steve Stipanovich

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS'  
 5 COMPENSATION ACT TO INCLUDE IN THE DEFINITION OF "EMPLOYER"  
 6 AN ORGANIZATION PLACING A PERSON WHO PERFORMS COMMUNITY  
 7 SERVICE AND TO INCLUDE IN THE DEFINITION OF "EMPLOYEE" A  
 8 PERSON WHO PERFORMS COMMUNITY SERVICE; PROVIDING FOR  
 9 WORKERS' COMPENSATION BENEFITS TO COMMUNITY SERVICE WORKERS;  
 10 PROVIDING THE BASIS FOR PAYMENT OF PREMIUMS BY THE EMPLOYER;  
 11 AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA; AND  
 12 PROVIDING AN EFFECTIVE DATE."

13  
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 **Section 1.** Section 39-71-117, MCA, is amended to read:

16 "39-71-117. **Employer defined.** "Employer" means:

17 (1) the state and each county, city and county, city  
 18 school district, irrigation district, all other districts  
 19 established by law, and all public corporations and  
 20 quasi-public corporations and public agencies therein and  
 21 every person, every prime contractor, and every firm,  
 22 voluntary association, and private corporation, including  
 23 any public service corporation and including an independent  
 24 contractor who has any person in service under any  
 25 appointment or contract of hire, expressed or implied, oral

1 or written, and the legal representative of any deceased  
 2 employer or the receiver or trustee thereof; and

3 (2) any association, corporation, or organization that  
 4 seeks permission and meets the requirements set by the  
 5 department by rule for a group of individual employers to  
 6 operate as self-insured under plan No. 1 of this chapter;  
 7 and

8 (3) any nonprofit association or corporation or other  
 9 entity funded in whole or in part by federal, state, or  
 10 local government funds that places community service  
 11 participants, as defined in 39-71-118(1)(f), with nonprofit  
 12 organizations or associations or federal, state, or local  
 13 government entities."

14 **Section 2.** Section 39-71-118, MCA, is amended to read:

15 "39-71-118. **Employee, worker, and workman defined.** (1)

16 The terms "employee", "workman", or "worker" mean:

17 (a) each person in this state, including a contractor  
 18 other than an independent contractor, who is in the service  
 19 of an employer, as defined by 39-71-117, under any  
 20 appointment or contract of hire, expressed or implied, oral  
 21 or written. The terms include aliens and minors, whether  
 22 lawfully or unlawfully employed, and all of the elected and  
 23 appointed paid public officers and officers and members of  
 24 boards of directors of quasi-public or private corporations  
 25 while rendering actual service for such corporations for

1 pay. Casual employees as defined by 39-71-116 are included  
 2 as employees if they are not otherwise covered by workers'  
 3 compensation and if an employer has elected to be bound by  
 4 the provisions of the compensation law for these casual  
 5 employments, as provided in 39-71-401(2). Household or  
 6 domestic service is excluded.

7 (b) a recipient of general relief who is performing  
 8 work for a county of this state under the provisions of  
 9 53-3-303 through 53-3-305 and any juvenile performing work  
 10 under authorization of a district court judge in a  
 11 delinquency prevention or rehabilitation program;

12 (c) a person receiving on-the-job vocational  
 13 rehabilitation training or other on-the-job training under a  
 14 state or federal vocational training program, whether or not  
 15 under an appointment or contract of hire with an employer as  
 16 defined in this chapter and whether or not receiving payment  
 17 from a third party. However, this subsection does not apply  
 18 to students enrolled in vocational training programs as  
 19 outlined above while they are on the premises of a public  
 20 school or community college.

21 (d) students enrolled and in attendance in programs of  
 22 vocational-technical education at designated  
 23 vocational-technical centers; or

24 (e) an airman or other person employed as a volunteer  
 25 under 67-2-105; or

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

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

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

20 (2) (a) If the employer is a partnership or sole  
 21 proprietorship, such employer may elect to include as an  
 22 employee within the provisions of this chapter any member of  
 23 such partnership or the owner of the sole proprietorship  
 24 devoting full time to the partnership or proprietorship  
 25 business.

1 (b) In the event of such election, the employer must  
2 serve upon the employer's insurer written notice naming the  
3 partners or sole proprietor to be covered and stating the  
4 level of compensation coverage desired by electing the  
5 amount of wages to be reported, subject to the limitations  
6 in subsection (2)(d). A partner or sole proprietor is not  
7 considered an employee within this chapter until such notice  
8 has been given.

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

12 (d) All weekly compensation benefits must be based on  
13 the amount of elected wages, subject to the minimum and  
14 maximum limitations of this subsection. For premium  
15 ratemaking and for the determination of weekly wage for  
16 weekly compensation benefits, the electing employer may  
17 elect not less than \$900 a month and not more than 1 1/2  
18 times the average weekly wage as defined in this chapter."

19 NEW SECTION. **Section 3.** Effective date. [This act] is  
20 effective July 1, 1991.

-End-

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

AS AMENDED

SENATE BILL NO. 473

INTRODUCED BY SVRCEK, THAYER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION ACT TO INCLUDE IN THE DEFINITION OF "EMPLOYER" AN ORGANIZATION PLACING A PERSON WHO PERFORMS COMMUNITY SERVICE AND TO INCLUDE IN THE DEFINITION OF "EMPLOYEE" A PERSON WHO PERFORMS COMMUNITY SERVICE; PROVIDING FOR WORKERS' COMPENSATION BENEFITS TO COMMUNITY SERVICE WORKERS; PROVIDING THE BASIS FOR PAYMENT OF PREMIUMS BY THE EMPLOYER; AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 39-71-117, MCA, is amended to read:

**"39-71-117. Employer defined.** "Employer" means:

(1) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral

or written, and the legal representative of any deceased employer or the receiver or trustee thereof; and

(2) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(3) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities."

**Section 2.** Section 39-71-118, MCA, is amended to read:

**"39-71-118. Employee, worker, and workman defined.** (1)

The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for



1 pay. Casual employees as defined by 39-71-116 are included  
 2 as employees if they are not otherwise covered by workers'  
 3 compensation and if an employer has elected to be bound by  
 4 the provisions of the compensation law for these casual  
 5 employments, as provided in 39-71-401(2). Household or  
 6 domestic service is excluded.

7 (b) a recipient of general relief who is performing  
 8 work for a county of this state under the provisions of  
 9 53-3-303 through 53-3-305 and any juvenile performing work  
 10 under authorization of a district court judge in a  
 11 delinquency prevention or rehabilitation program;

12 (c) a person receiving on-the-job vocational  
 13 rehabilitation training or other on-the-job training under a  
 14 state or federal vocational training program, whether or not  
 15 under an appointment or contract of hire with an employer as  
 16 defined in this chapter and whether or not receiving payment  
 17 from a third party. However, this subsection does not apply  
 18 to students enrolled in vocational training programs as  
 19 outlined above while they are on the premises of a public  
 20 school or community college.

21 (d) students enrolled and in attendance in programs of  
 22 vocational-technical education at designated  
 23 vocational-technical centers; or

24 (e) an airman or other person employed as a volunteer  
 25 under 67-2-105; or

1 (f) a person, other than a juvenile as defined in  
 2 subsection (1)(b), performing community service for a  
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 9 a person covered by the definition in this subsection (f):

10 (i) compensation benefits must be limited to medical  
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 12 pursuant to 39-71-703 that is based upon the minimum wage  
 13 established under Title 39, chapter 3, part 4, for a  
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15 (ii) premiums must be paid by the employer, as defined  
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 18 number of hours of community service required under the  
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20 (2) (a) If the employer is a partnership or sole  
 21 proprietorship, such employer may elect to include as an  
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 23 such partnership or the owner of the sole proprietorship  
 24 devoting full time to the partnership or proprietorship  
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1 (b) In the event of such election, the employer must  
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3 partners or sole proprietor to be covered and stating the  
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5 amount of wages to be reported, subject to the limitations  
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7 considered an employee within this chapter until such notice  
8 has been given.

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