

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN TOM KEATING, on January 19, 1995, at
1:00 p.m.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddy McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

{Tape: One; Side: One}

Committee Business Summary:

Hearing: SB 125
Executive Action: HB 47
SB 80
HB 31

CHAIRMAN TOM KEATING turned the gavel over to VICE CHAIRMAN GARY
AKLESTAD so that he could present SB 125 to the committee.

HEARING ON SB 125

Opening Statement by Sponsor:

SENATOR TOM KEATING, SB #5, Billings, MT, stated SB 125 is an act
exempting certain petroleum land professionals from the
requirements of unemployment insurance and Workers' Compensation
laws. For the purposes of exemptions, professional petroleum

landsmen are independent contractors and are not employees under certain circumstances.

SENATOR KEATING explained petroleum landmen can either be on the company payrolls or be independent contractors. Company petroleum landmen are on a payroll, work in company offices, and perform company functions. In the industry, there are approximately 5,000 independent petroleum landmen who work on a contract basis, per diem or on per acre basis, when they buy leases. Independent petroleum landmen can also contract flat rates for other particular services. Historically, workers were called "landmen", now the politically correct name is "petroleum land professional". **SENATOR KEATING** stated he owns his own petroleum company, and Senate Bill 125 affects his business, somewhat. **SENATOR KEATING** is an employee of his company and pays unemployment insurance. Since he is the sole proprietor, he is exempt from Workers Compensation insurance. A number of independent landmen are not incorporated. As petroleum land professionals, they act as agents for clients, which may be individual clients, small or major companies, law offices, etc. Clients use the petroleum land professional's services in title work to determine mineral ownership. This work also includes gas, mining geothermal, coal leasing, etc. Ownership determinations are made by doing title searches. Leases are then bought, delivered, and/or sold for future drilling or mining purposes.

The petroleum land professionals also do curative work to perfect titles. When an operator, who owns a well lease, is getting ready to drill, he/she has to perfect the title and the lease. In which case, a lawyer does a drilling opinion and researches the title from patent to the current date. Each transfer title, probate, lean or tax document is researched to find flaws. The client then hires a petroleum landsperson, who will negotiate quick claim deeds, affidavits for possession, affidavits for identity, and other instruments needed to perfect the title. Curative work is also completed.

Due Diligence searches are completed when a company buys producing properties from another company. All the properties have title opinions and title reports, lease memos and leases etc. The landsperson reads the files and determines ownership of the land title, as well as the lease titles. They review all operating contracts to determine who the working interest owners are, who the operators are, etc. They render an opinion of Due Diligence as to who the owners of the leases and the properties are, so the buyer gets clear title to the property. Most of the work a petroleum land professional does can be done from their offices, through the mail, and on the telephone. Sometimes, particularly in Due Diligence work, the landsperson goes into the client's office to go through files looking for proof of title. The petroleum land professional will, in this case, work in the client's office. They are not employees because they are not on the payroll, and they are doing the job on a contract basis.

Recently, state audits have identified a gray area between the independent contractors status and employees status. This has created a hardship on independent contractors because they have to prove they are not employees. The law is not definite. The purpose of the SB 125 is to define the law to identify what a petroleum land professional is; to determine they are independent contractors; they have written agreements with the client for their contractual work; and they are not employees. **SENATOR KEATING** asked the committee to look on the bill, page 5, section 2 (**EXHIBIT 1**). Under the Work Comp Act, the law states certain individuals are not employees, for the purpose of Workers' Compensation. Cosmetologists, barbers, paper carriers, and other people who perform certain duties, such as outside salespeople and direct sellers are identified as being exempt. Senate Bill 125 adds petroleum land professionals to the Workers' Compensation list of independent contractor. There is no impact on the unemployment insurance payments for payroll purposes because no people have been on or will be on the payrolls. They do not pay unemployment insurance, at this time, and they will not continue to pay unemployment insurance. There will be no impact. They are not employees for the purpose of workers compensation and cannot claim injury and demand Workers' Comp, as a independent contractor. There is no impact on the Work Comp fund. **SENATOR KEATING** urged the committee to establish petroleum land professionals as independent contractors.

Proponents' Testimony: None

Opponents' Testimony: None.

Questions From Committee Members and Responses'

SENATOR FRED VAN VALKENBURG directed attention to page six, line 30, and page seven, lines 1 through 2. The definition of a petroleum land professional is far more general in respect to what is essentially, an independent contractor, or the ABC test. **SENATOR VAN VALKENBURG** questioned whether it is appropriate to put the language in that part of the bill with just the petroleum land professional as opposed to all the other exceptions. Maybe there should be additional general language that makes those two conditions applicable to all the identified employments. **SENATOR KEATING** replied that he submitted language to the council that was taken from the New Mexico, Texas, and Colorado statutes. The information was supplied by the National Petroleum Association. **SENATOR KEATING** stated he took that language to be used as an example. **SENATOR KEATING** stated he has no problems with **SENATOR VAN VALKENBURG's** suggestion. The language does clarify that the landsman is not on an hourly wage, the fee for service is not a salary, which complies with the definition of employer/employee relationship. **SENATOR KEATING** stated he would asked the bill drafter if the language is necessary.

SENATOR AKLESTAD stated the committee can clarify the definition during executive action. **SENATOR AKLESTAD** asked, if the language was taken out, how does one distinguish between an individual who is an independent, doing this work, and the person who does this type of work as an independent and also does it for a company. How should the line be drawn. **SENATOR KEATING** explained the answer to that question depends on how the term "independent" is applied. An independent petroleum landsperson means the person is self employed. In this instance, as an independent contractor, it means "not employed, but self employed". There are independent operators, as well as company operators. As an independent landsman, he/she can do work for an independent contractor, and he/she would not be his/her employee. The word independent applies differently to the type of profession.

SENATOR EMERSON asked if there were any problems for these people who may want Workers Compensation coverage. **SENATOR KEATING** stated, as an independent contractor, the person would have to get private insurance and disability coverage. **SENATOR KEATING** stated he did not think the person could buy a Workers' Comp policy among themselves. **Laurence Hubbard, State Fund**, stated an independent contractor, the professional landsperson, is a person who is otherwise exempted from Workers' Comp coverage.

Closing by Sponsor:

SENATOR KEATING closed the hearing on SB 125. **SENATOR KEATING** urged the committee, on the behalf of the 4,000 independent petroleum land professionals, to give SB 125 a DO PASS recommendation.

The gavel was returned to **CHAIRMAN TOM KEATING** by **VICE-CHAIRMAN GARY AKLESTAD** for executive action. **CHAIRMAN KEATING** stated the process is somewhat cumbersome. The usual procedure is to have the first motion on the bill, then a motion to amend. However, **CHAIRMAN KEATING** asked the committee. He, then, stated the consensus of the group was to take up the amendments first. The amendments would be voted on first; then, the bill would be voted on, with or without amendments.

EXECUTIVE ACTION ON HB 47

Motion:

BENEDICT moved to AMEND HB 47.

Discussion:

CHAIRMAN KEATING stated the amendment is the **SENATOR BAER** Amendment. Page 5, line 18, following "video conference", insert "with the consent of the necessary parties"

SENATOR BAER stated both former district Judge Michael Keedy, who is representing the school board association and he have concerns over the language of the bill. A lot of people would be concerned whether or not they wanted to use telephone or video conferencing for the grievance hearings, etc. Therefore, the amendment was created to solve the problems.

Vote:

The motion to amend HB 47 CARRIED UNANIMOUSLY.

Motion/Vote:

SENATOR SUE BARTLETT moved HB 47 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY. **SENATOR BARTLETT** will carry the bill.

EXECUTIVE ACTION ON SB 80

Motion:

SENATOR BURNETT moved SB 80 DO PASS

Discussion:

SENATOR WILSON made a substitute motion to TABLE SB 80.

SENATOR BAER asked **CHAIRMAN KEATING** to explain the ramification of a tabled vote. **CHAIRMAN KEATING** explained if the motion to table is successful, the bill will be placed on the table. It will take a majority vote from the senate floor to get it from the table to second reading. **SENATOR BAER** asked if discussion can be held to determine why the motion to table was made. **CHAIRMAN KEATING** replied no. The motion to table is an attempt to kill the bill.

A roll call vote was taken with **SENATORS BAER, BENEDICT, BURNETT, EMERSON, AKLESTAD, AND KEATING** voting NO.

Motion:

CHAIRMAN KEATING stated the committee will vote on the original motion: SB 80 DO PASS.

Discussion:

SENATOR AKLESTAD asked the committee for a recapitulation of the original hearing's testimonials. **CHAIRMAN KEATING** stated the bill deals with the fair labors standards act, section 213. **SENATOR BENEDICT** stated he announced he was not going to vote on SB 80 because of a conflict of interest. Disregard the roll call vote on the table motion. **SENATOR BENEDICT** removed himself from further discussion.

SENATOR EMERSON stated opponent testimony slanted the bill. Most of the opposition was not germane to the issue.

SENATOR VAN VALKENBURG stated the opponents were strongly opposed to SB 80. They had essentially won the right to overtime compensation in a law suit. Senate Bill 80 would overturn the lawsuit. The opponents work for very low wages. It is adding insult to injury, in their minds, to say not only are they going to suffer through very low wages, but when they work more than forty hours a week, they are not going to get compensated with overtime pay. The industry's attitude was that the industry is such an unique industry. They can not afford to pay overtime pay. The industry should get an exemption because Congress voted an exemption for the small markets. Most of Montana is a small market entity. Montana cannot produce news if the operators can not count on the fact they have to pay the employees overtime. **SENATOR EMERSON** stated the employees would get compensated.

CHAIRMAN KEATING stated the fact remains that it cannot be applied to all broadcasters. In the broadcasting business, some broadcasters make money, some do not. It is a business decision whether the employer can afford overtime, in certain conditions. **CHAIRMAN KEATING** said SB 80 does not specify that the employee must accept comp time in lieu of overtime payment. If the station operator wants to pay the employees overtime, the operator can pay the overtime. For example, if a public service activity is to be covered by the media and the small broadcaster can't afford to pay overtime without advertising compensation and the operator is not all that profitable, the operator can make an agreement with the broadcasters, announcers and/or the chief engineer. If they work over the forty hours to broadcast, they can have comp time in lieu of overtime. It comes down to a comp time/overtime issue. The wages and salaries, and time-and-a-half for overtime became an issue because of the low pay some of the rural broadcasting people make. The bill does not specify the employee must accept comp time in lieu of time and a half for overtime. It just says that the broadcaster is exempt from paying overtime, if the operator chooses not to pay.

SENATOR AKLESTAD asked if the employee would get their comp time, which is regular time. **CHAIRMAN KEATING** said no. **SENATOR VAN VALKENBURG** stated the employee is not automatically granted anything. **SENATOR AKLESTAD** said the employee could be working on "free time", they would not have automatic comp time. **CHAIRMAN KEATING** said that was not necessarily, so. **SENATOR WILSON** brought attention to **CHAIRMAN KEATING's** testimony, when he had said some of the business could not afford to pay overtime. Actually, there was not one shred of testimony about anyone saying they are going under because they were not able to pay overtime. The operators are trying to fatten the bottom line on the backs of the people who work for them, when they should be charging more for their product. This is an absolutely, ridiculous bill. **SENATOR WILSON** stated there is a silver lining to the bill. The arrogance, the greed, and flat-out meanness will lead the unions to organize the industry. Senate Bill 80 is

truly an unfair bill. **SENATOR BURNETT** stated it is a management problem, and they are negotiating between the employer and the employee. It is like a ranching operation, if you cannot afford "them", you do not have "them". **SENATOR EMERSON** wondered why the employees would work so cheap. He can't get employees to work that cheap. It must be like an entertainer, who goes out and puts in hour after hour, hoping for the big break to be a star worth millions of dollars. **SENATOR EMERSON** stated he is sure that is why the job is attractive. The employees work cheap because they expect the future rewards. The employees change around very quickly, especially if they are good. It is a choice because there is a big possibility for success in the industry.

The testimony about the pay concern was not a great factor. The broadcasters have a problem, such as a news worthy event when they can hardly hire people for eight hours each day. The broadcasters might have to cover a two day, newsworthy wreck or snowstorm. Natural disasters cannot be scheduled. **SENATOR WILSON** stated there was testimony about announcers moving on to better paying jobs, but that was not the issue. The issue is the marginal living, and the \$20 or \$30 dollars in the two weeks pay period means the difference in eating well, eating at all, or paying the rent. The announcer's faces are changing constantly, they are moving into other jobs, but that is no reason to abuse the announcers. There was no testimony about marginal operations or about people who are about to go under. The situation is strictly a case of sensing the political climate, of jumping and of abusing. **SENATOR BAER** stated he would offer the analogy of being a Senator. Senators are paid approximate \$106 a day, and it costs him approximately \$300 a day to be here. He spends 10 to 12 hours a day working. Senators are here because they chose to be in the legislature. The announcers and others have the same choice. It would be inappropriate for the legislatures to asked for overtime for the many, many hours they work over the forty hours. The analogy may not be perfect, but perhaps it can clarify the problem.

CHAIRMAN KEATING stated SB 80 is being considered because of a Supreme Court decision. The decision was that these people must receive time and a half for overtime. The exemption in federal law had never been applied or had never been added to state law. The individual, who filed suit for time and a half, won his/her case in the Supreme Court. Another Supreme Court case followed shortly thereafter, which put a financial hit on the broadcasters. The rest of the broadcasters anticipated what was coming. **CHAIRMAN KEATING** stated if this measure does not pass and the exemption is not made allowable in the negotiation between the employee and the employer, the pay scale would continue to remain low. The pay would be just enough to attract an announcer or an editor for a while. When they become accomplished, they will move on. Since the Supreme Court made an exception, the negotiations between the employer and the employee take a whole different tone. On the other hand, there could be

adjustments in the base wage, as long as the broadcasters are not looking at some kind of a hit later on. It can work both ways.

SENATOR BARTLETT stated she would like to add a slightly different slant to the discussion. **SENATOR BARTLETT** commented that part of the information provided by Riley Johnson bothered her. Although **SENATOR BARTLETT** appreciated the comprehensive informational package, the fair labor standards act definitions of an announcer or a news editor concerned her. It appeared that the definitions of the announcer and the news editor are very broad. The bill addresses a 50% work threshold. The door to potential mischief could be opened if managers have to make sure at least 50% of the employee's time is assigned to certain duties. The definitions in tandem with the low pay schedule combine to represent the very problems the Fair Labor Standards Act and the Montana Wage a Hour Act were originally enacted to address. **SENATOR BARTLETT** stated she agrees to some extent with **SENATOR BURNETT** that, in part, it could be a management issue. Certainly, the proposed legislation tasks managers to manage the employees' time, and to recognize instances when employees have to work beyond the 40 hour week because of unscheduled newsworthy events. That does not happen, nor did anyone contend that happens every week of every year. If the managers did their job, in spite of the occasional overtime needs, the managers could live under the wage and hour law.

SENATOR VAN VALKENBURG addressed the ability of the employers to pay. There is mixed evidence of the employer's ability to pay overtime. What is generally known is the big price of the publicly granted licenses needed to run the broadcasting businesses. Subject to the same free market forces and labor management relationships that every other business faces, the broadcast industry is not unique. The licenses are publicly granted licenses, limited in nature so that the owners of these companies have essentially a limited monopoly in which to operate. The licenses are very valuable. While there may not be clear evidence as to yearly profitability. When the licenses get sold, the owners make lots of money. The business is not unlike other businesses that have situations where the overtime cannot be predicted, let alone be controlled. Police and firefighters are an entity that also has a management need to plan for unexpected, but expected overtime. The overtime has to be planned within the yearly budget. The businesses ought to be planning ahead. It seems extremely ironic that the day after SB 80 was heard in committee, many of the same proponents were also proponents of a resolution that castigated the federal government for imposing mandates on the state that in this bill we would be adopting and forcing on Montanans, federal law in superseding what is state law. **SENATOR EMERSON** stated it appears like we are getting into the "management's head" and telling the operators to pay their employees \$10 or \$15 an hour. That is not the business of the legislature.

CHAIRMAN KEATING explained in regards to the irony argument, the federal government imposed the 40 hour week, imposed the time-and-a-half overtime, and offered the exemption. The same law has both elements. If the legislature applies the law in part, it should also apply the law in whole.

Vote:

The DO PASS motion for SB 80 CARRIED with SENATORS BARTLETT, VAN VALKENBURG and WILSON voting NO. A roll call vote was taken.

EXECUTIVE ACTION ON HB 31

Discussion:

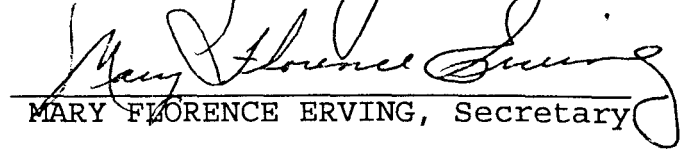
SENATOR VAN VALKENBURG said instead of offering an amendment, the department has a different idea as to what should be done. **Eddy McClure** stated **SENATOR VAN VALKENBURG'S** amendment would read on line 26 "a minor under 16 years of age cannot officiate at adult events". The department thought of an easier way to correct the problem. As the bill reads currently, it does one thing. With **SENATOR VAN VALKENBURG'S** amendment, it will do two things. It will allow all minors to do some sports events, and 16 year old minors to do other types of sport events. The concept amendment would also be for line 26. The discussion with the department of labor was whether the legislature needs to go in to the three tier layers, where there are age exemptions and prohibitions in other parts of the child labor law. The consensus opinion was that the layer issue does not need to be addressed. The proposed amendment would say, "any minor could do an official or referee job for a non-athletic sport, but only a minor, who is over the age of 16, can officiate at an adult athletic event. **SENATOR VAN VALKENBURG** stated his preference would be to wait until Tuesday and continue the executive action at that time. The committee would have the amendment document, rather than voting today on a conceptual amendment.

ADJOURNMENT

Adjournment: The meeting was adjourned at 1:57 p.m.



TOM KEATING, Chairman



MARY FLORENCE ERVING, Secretary

TK/mfe

MONTANA SENATE
 1995 LEGISLATURE
 LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE *January 19, 1995*

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	✓		
SUE BARTLETT	✓		
STEVE BENEDICT	✓		
JIM BURNETT	✓		
CASEY EMERSON	✓		
FRED VAN VALKENBURG	✓		
BILL WILSON	✓		
GARY AKLESTAD, VICE CHAIRMAN	✓		
TOM KEATING, CHAIRMAN	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 19, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration HB 47 (third reading copy -- blue), respectfully report that HB 47 be amended as follows and as so amended be concurred in.

Signed: 
Senator Thomas F. Keating, Chair

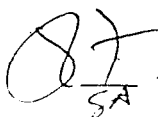
That such amendments read:

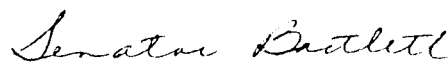
1. Page 5, line 18.

Following: "videoconference"

Insert: "; with the consent of the necessary parties"

-END-


Amd. Coord.
SA Sec. of Senate


Senator Carrying Bill


161551SC.SRF


SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 19, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration SB 80 (first reading copy -- white), respectfully report that SB 80 do pass.

Signed: 
Senator Thomas F. Keating, Chair


Amd. Coord.
Sec. of Senate

161547SC.SRF

MONTANA SENATE
 1995 LEGISLATURE
 LABOR AND EMPLOYMENT RELATIONS COMMITTEE
 ROLL CALL VOTE

DATE January 19, 1995 BILL NO. SB 80 NUMBER _____

MOTION: Senator Wilson made a motion to table SB 80

NAME	AYE	NO
LARRY BAER		*
SUE BARTLETT	*	
STEVE BENEDICT	<i>Senator Benedict asked to have his vote disregarded.</i>	*
JIM BURNETT		*
CASEY EMERSON		*
FRED VAN VALKENBURG	*	
BILL WILSON	*	
GARY AKLESTAD, VICE CHAIRMAN		*
TOM KEATING, CHAIRMAN		*

MONTANA SENATE
 1995 LEGISLATURE
 LABOR AND EMPLOYMENT RELATIONS COMMITTEE
 ROLL CALL VOTE

DATE January 19, 1995 BILL NO. SB 80 NUMBER _____

MOTION: Senator Burnett: SB 80 DO PASS

NAME	AYE	NO
LARRY BAER	*	
SUE BARTLETT		*
STEVE BENEDICT	Abstaind	
JIM BURNETT	*	
CASEY EMERSON	*	
FRED VAN VALKENBURG		*
BILL WILSON		*
GARY AKLESTAD, VICE CHAIRMAN	*	
TOM KEATING, CHAIRMAN	*	

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #1
DATE January 12, 1995
BILL NO. SB125

1
2 INTRODUCED BY SENATE BILL NO. 125
Kenting Selman

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN PETROLEUM LAND PROFESSIONALS
5 FROM THE REQUIREMENTS OF UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION LAWS;
6 AMENDING SECTIONS 39-51-204 AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
7 DATE."

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

10
11 **Section 1.** Section 39-51-204, MCA, is amended to read:

12 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not
13 include:

14 (a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to
15 this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded
16 from coverage under this chapter if the employer:

17 (i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the
18 monetary amount or number of employees and days worked, for the subject wages attributable to
19 agricultural labor; and

20 (ii) keeps separate books and records to account for the employment of persons in agricultural
21 labor.

22 (b) household and domestic service in a private home, local college club, or local chapter of a
23 college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to
24 this chapter and has domestic service employment, all employees engaged in domestic service must be
25 excluded from coverage under this chapter if the employer:

26 (i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the
27 subject wages attributable to domestic service; and

28 (ii) keeps separate books and records to account for the employment of persons in domestic
29 service.

30 (c) service performed as an officer or member of the crew of a vessel on the navigable waters of

1 the United States;

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

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

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

18 (g) services performed as a newspaper carrier or free-lance correspondent if the person performing
19 the services or a parent or guardian of the person performing the services in the case of a minor has
20 acknowledged in writing that the person performing the services and the services are not covered. As used
21 in this subsection:

22 (i) "free-lance correspondent" is a person who submits articles or photographs for publication and
23 is paid by the article or by the photograph; and

24 (ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering
25 newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to
26 the employee's main duties, carries or delivers papers.

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

29 (i) service performed in the employ of a school, college, or university if the service is performed
30 by a student who is enrolled and is regularly attending classes at a school, college, or university or by the

1 spouse of a student if the spouse is advised, at the time that the spouse commences to perform the
2 service, that the employment of the spouse to perform the service is provided under a program to provide
3 financial assistance to the student by the school, college, or university and that the employment will not
4 be covered by any program of unemployment insurance;

5 (j) service performed by an individual who is enrolled at a nonprofit or public educational institution,
6 which normally maintains a regular faculty and curriculum and normally has a regularly organized body of
7 students in attendance at the place where its educational activities are carried on, as a student in a full-time
8 program taken for credit at an institution that combines academic instruction with work experience if the
9 service is an integral part of the program and the institution has certified that fact to the employer, except
10 that this subsection does not apply to service performed in a program established for or on behalf of an
11 employer or group of employers;

12 (k) service performed in the employ of a hospital if the service is performed by a patient of the
13 hospital;

14 (l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber
15 who is licensed under Title 37, chapter 30, and:

16 (i) who has acknowledged in writing that the cosmetologist or barber is not covered by
17 unemployment insurance and workers' compensation;

18 (ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined
19 in 37-30-101, which contract must show that the cosmetologist or barber:

20 (A) is free from all control and direction of the owner in the contract;

21 (B) receives payment for services from individual clientele; and

22 (C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or
23 knowledge; and

24 (iii) whose contract gives rise to an action for breach of contract in the event of contract
25 termination (the existence of a single license for the cosmetology salon or barbershop may not be construed
26 as a lack of freedom from control or direction under this subsection);

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

- 1 (n) employment of sole proprietors or working members of a partnership;
- 2 (o) services performed for the installation of floor coverings if the installer:
- 3 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;
- 4 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
- 5 (iii) may perform services for anyone without limitation;
- 6 (iv) may accept or reject any job;
- 7 (v) furnishes substantially all tools and equipment necessary to provide the services; and
- 8 (vi) works under a written contract that:
- 9 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
- 10 contract obligations;
- 11 (B) states that the installer is not covered by unemployment insurance; and
- 12 (C) requires the installer to provide a current workers' compensation policy or to obtain an
- 13 exemption from workers' compensation requirements;
- 14 (p) services performed by a petroleum land professional. As used in this subsection, "petroleum
- 15 land professional" means a person who:
- 16 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
- 17 negotiating a business agreement for the exploration or development of minerals;
- 18 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
- 19 than on an hourly wage basis; and
- 20 (iii) performs all services as an independent contractor pursuant to a written contract.
- 21 (2) "Employment" does not include elected public officials.
- 22 (3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:
- 23 (a) in the employ of a church or convention or association of churches or an organization that is
- 24 operated primarily for religious purposes and that is operated, supervised, controlled, or principally
- 25 supported by a church or convention or association of churches;
- 26 (b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the
- 27 church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 28 (c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals
- 29 whose earning capacity is impaired by age or physical or mental deficiency or injury or providing
- 30 remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily

1 absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;

2 (d) as part of an unemployment work-relief or work-training program assisted or financed in whole
3 or in part by a federal agency or any agency of a state or political subdivision of the state by an individual
4 receiving work relief or work training; or

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

7 (4) An individual found to be an independent contractor by the department under the terms of
8 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
9 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
10 39-51-2402.

11 (5) This section does not apply to a state or local governmental entity or a nonprofit organization
12 defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from
13 employment as defined in the Federal Unemployment Tax Act."

14

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

16 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
17 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
18 all employees, as defined in 39-71-118. An employer who has any employee in service under any
19 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
20 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
21 Compensation Act is subject to and bound by the compensation plan that has been elected by the
22 employer.

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

- 26 (a) household and domestic employment;
- 27 (b) casual employment as defined in 39-71-116;
- 28 (c) employment of a dependent member of an employer's family for whom an exemption may be
29 claimed by the employer under the federal Internal Revenue Code;
- 30 (d) employment of sole proprietors or working members of a partnership, except as provided in

1 subsection (3);

2 (e) employment of a broker or salesman performing under a license issued by the board of realty
3 regulation;

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

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

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

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

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

14 (k) any person performing services as a newspaper carrier or free-lance correspondent if the person
15 performing the services or a parent or guardian of the person performing the services in the case of a minor
16 has acknowledged in writing that the person performing the services and the services are not covered. As
17 used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for
18 publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

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

21 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
22 carries or delivers papers.

23 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

24 (m) a person who is employed by an enrolled tribal member who operates solely within the exterior
25 boundaries of an Indian reservation;

26 (n) a person who performs services as a petroleum land professional. As used in this subsection,
27 a "petroleum land professional" is a person who:

28 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
29 negotiating a business agreement for the exploration or development of minerals;

30 (ii) is paid for services that are directly related to the completion of a contracted specific task rather

1 than on an hourly wage basis; and

2 (iii) performs all services as an independent contractor pursuant to a written contract.

3 (3) (a) A sole proprietor or a working member of a partnership who represents to the public that
4 the person is an independent contractor shall elect to be bound personally and individually by the provisions
5 of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers'
6 Compensation Act.

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

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

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

16 (e) If the department denies the application for exemption, the applicant may contest the denial by
17 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
18 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with
19 the procedure established in 39-51-2403 and 39-51-2404.

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

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

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

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

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

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

15

16 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

17

-END-

DATE January 19, 1995
SENATE COMMITTEE ON Jobs & Employment Relations
BILLS BEING HEARD TODAY: SB 125

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<i>Melinda Symms</i>				
<i>Mary Allen</i>	<i>CWCSI</i>	<i>SB 125</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY