

Senate Bill 439

In The Senate

February 9, 1981	Fiscal note requested.
February 11, 1981	Introduced and referred to Committee on Labor and Employment Relations.
February 12, 1981	Fiscal note returned.
April 23, 1981	Died in Committee.

1 *Senate* BILL NO. *439*
 2 INTRODUCED BY *David Salmon Keating*

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION
 5 39-71-120, MCA, TO REDEFINE AN INDEPENDENT CONTRACTOR FOR
 6 PURPOSES OF THE WORKERS' COMPENSATION ACT AND THE
 7 OCCUPATIONAL DISEASE ACT OF MONTANA."

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

10 Section 1. Section 39-71-120, MCA, is amended to read:

11 "39-71-120. Independent contractor defined. (1) An
 12 "independent "Independent contractor" is ~~one who renders~~
 13 ~~service in the course of an occupation and~~

14 ~~(1) has been and will continue to be free from control~~
 15 ~~or direction over the performance of the services, both~~
 16 ~~under his contract and in fact; and~~

17 ~~(2) is engaged in an independently established trade,~~
 18 ~~occupational, professional, or business; means any person who:~~

19 (a) has obtained a federal identification number for
 20 income tax and social security purposes; and

21 (b) renders service for a specified monetary amount
 22 and for a specified result, subject to the right to control,
 23 actual or otherwise, of his principal as to the result of
 24 his work only and not as to the means by which such result
 25 is accomplished; and

1 (c) enters into a contract for the performance of work
 2 in a capacity other than as an employee.

3 (2) For the purposes of this section, there is a
 4 rebuttable presumption that a person is in fact free from
 5 direction and control as to when work is performed if the
 6 work is performed pursuant to a contract which provides:

7 (a) that the person is free from direction and control
 8 over the method or manner of performing the services, even
 9 though work is performed on a jobsite according to a
 10 specified sequence and even though time limits or date
 11 limits are established for completion of piecework or an
 12 entire job;

13 (b) that payment is made on a piecework basis for the
 14 entire job upon the completion of a certain type of work or
 15 kind or piece of work on a specific project or worksite;

16 (c) that the person is responsible for all employment
 17 taxes on wages paid to his or its employees or assistants,
 18 if any;

19 (d) that the person is responsible for all workers'
 20 compensation coverage for his or its employees or
 21 assistants, if any;

22 (e) that the person is placed on notice that his or
 23 its compensation may not be considered wages for the
 24 purposes of unemployment insurance benefits; and

25 (f) that the person owns the tools of the trade which

1 are necessary for the performance of the work to be done, if
2 tools of the trade are required to perform the work.

3 (3) A person shall file a declaration of independent
4 contractor status with the person letting the work and with
5 the division. The division shall furnish an appropriate form
6 for filing a declaration of independent contractor status.

7 (4) A person who files a valid declaration of
8 independent contractor status shall be considered an
9 independent contractor for a period not to exceed 1 year."

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