HOUSE BILL NO. 277

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INTRODUCED BY C. SMITH, JONES, MARKS, ELLISON, STOBIE, LORY, RYAN, R. JENSEN, DEVLIN, EUDAILY

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE HOUSE

January 17, 1983	Introduced and referred to Committee on Labor and Employment Relations.
February 9, 1983	Committee recommend bill do pass as amended. Report adopted.
	Statement of Intent attached.
Pebruary 10, 1983	Bill printed and placed on members' desks.
February 11, 1983	Second reading, do pass.
February 14, 1983	Considered correctly engrossed.
Pebruary 15, 1983	Third reading, passed. Transmitted to Sanate.
1	IN THE SENATE
Pebruary 16, 1983	Introduced and referred to Committee on Labor and Employment Relations.
March 9, 1983	Committee recommend bill and Statement of Intent be concurred in as amended. Report adopted.
March 11, 1983	Second reading, concurred in as amended.
March 14, 1983	Third reading, concurred in. Ayes, 47; Noes, 2.

IN THE HOUSE

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March	14,	1983	Returned to House with amendments.
March	30,	1983	Second reading, bill amendments and Statement of Intent amendments concurred in.
March	31,	1983	Third reading, bill amendments and Statement of Intent amendments concurred in.
			Sent to enrolling.
			Reported correctly enrolled.

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INTRODUCED BY Smith Ton I Gones Which 1 Z BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY 3 Martin 5 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING NORKERS" 6 COMPENSATION COVERAGE MANDATORY FOR INDEPENDENT CONTRACTORS 7 AND PROVIDING FOR AN OPTIONAL EXEMPTION FROM COVERAGE: 8 AMENDING SECTION 39-71-401, MCA." 9 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 11 Section 1. Section 39-71-401, MCA, is amended to read: 12 #39-71-401. Employments covered and employments 13 exempted. (1) Except as provided in subsection subsections 14 (2) and (3) of this section, the Workers' Compensation Act 15 applies to all employers as defined in 39-71-117, and to all 16 employees as defined in 39-71-118, and to all sole 17 proprietors or working members of a partnership who consider 18 thesselves or hold thesselves out as independent 19 contractors. A sole proprietor or working member of a 20 partnership who considers himself or bolds himself out as an 21 independent contractor shall elect to be bound by the 22 provisions of compensation plan No. 1. 2. or 3. An employer 23 who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, 24 25 shall elect to be bound by the provisions of compensation

1 plan No. 1, 2, or 3. Every employee whose employer is bound 2 by the Workers* Compensation Act is subject to and bound by 3 the compensation plan that has been elected by the employer. 4 (2) Unless the employer elects coverage for these 5 employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to 6 7 any of the following employments: 8 (a) household and domestic employment: 9 (b) casual employment as defined in 39-71-116(3): 10 (c) employment of members of an employer's family 11 dwelling in the employer's household; 12 (d) employment of sole proprietors or working members 13 of a partnership other than those who consider themselves or hold_themselves_out_as_independent_contractors; 14 15 (e) employment for which a rule of liability for 16 injury, occupational disease, or death is provided under the 17 laws of the United States; 18 (f) any person performing services in return for aid 19 or sustenance only: 20 (g) employment with any railroad engaged in interstate 21 commerce, except that railroad construction work shall be 22 included in and subject to the provisions of this chapter. 23 (3) A sole proprietor or working member of a 24 partnership, who holds himself out or considers himself an 25 independent contractor may apply to the division for an

-2- INTRODUCED BILL

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1	exemption from the Workers' Compensation Act for himself.
2	The application must be made in accordance with the rules
3	adoptedbythe_division. The_division_max_deny_the
4	application_only_if_it_determines_that_the_applicant_isnot
5	anindependentcontractorWhen_an_application_is_approved
6	by the division. it is conclusive as to the status of
7	independentcontractorand_precludes_theapplicant_from
R	obtaining bonofits under this chanter.M

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STATEMENT	OF	INTENT

HOUSE BILL 277

House Labor and Employment Relations Committee

5 Under the law in effect prior to the enactment of this act, independent contractors were exempt from coverage under 6 7 Workers* Compensation laws. Many times, the the 8 determination of whether a worker is an independent 9 contractor is made after a worker, for whom no contributions 10 have been made, is injured and files a claim. This act 11 provides a method for a before-the-fact determination of the 12 independent contractor status. The act is not intended to make independent contractors subject to the Workers* 13 14 Compensation Act but requires that they apply for that 15 status to be exempt.

This bill authorizes the Division of Workers* 16 17 Compensation of the Department of Labor and Industry to adopt rules to implement this act. It is the intent of the 18 Legislature that the Division will provide an application 19 form and provide for a hearing if the applicant disagrees 20 21 with the Division's initial determination. Any substantive 22 rules adopted pursuant to this act must be consistent with 23 the statutory definition of "independent contractor."

SECOND READING

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HB 0277/02

Approved by Committee on Labor & Employment Relations

1	HOUSE BILL NO. 277	1	plan that has bee
2	INTRODUCED BY C. SMITH, JONES,	2	(2) Unless
		-	employments under
3	MARKS, ELLISON, STOBIE, LORY, RYAN,		
4	R. JENSEN, DEVLIN, EUDAILY	4	election, the Wor
5	BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY	5	any of the follow
6		6	(a) househo
7	A BILL FOR AN ACT ENTITLED: "AN ACT MAKING WORKERS"	7	(b) casual
8	COMPENSATION COVERAGE MANDATORY FOR INDEPENDENT CONTRACTORS	8	(c) employma
9	AND PROVIDING FOR AN OPTIONAL EXEMPTION FROM COVERAGE;	9	dwelling in the e
10	AMENDING SECTION 39-71-401, MCA."	10	(d) employm
11		11	of a partnership
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA;	12	bold_themselves_o
13	(Refer to Introduced Bill)	13	(e) employm
14	Strike everything after the enacting clause and insert:	14	injury, occupation
15	Section 1. Section 39-71-401, NCA, is amended to read:	15	laws of the Unite
16	"39-71-401. Employments covered and employments	16	(f) any per
17	exempted. (1) Except as provided in subsection (2) of this	17	or sustemance onl
18	section, the Workers' Compensation Act applies to all	18	(g) employm
19	employers as defined in 39-71-117 and to all employees as	19	commerce, except
20	defined in 39-71-118. An employer who has any employee in	20	included in and s
21	service under any appointment or contract of hire, expressed	21	(3)sol
22	or implied, oral or written, shall elect to be bound by the	22	partoarsbip_wbo_b
23	provisions of compensation plan No. 1, 2, or 3. Every	23	independent_contr
24	employee whose employer is bound by the Workers*	24	individuallyby_
25	Compensation Act is subject to and bound by the compensation	25	21_or_31_but_be_m

1	plan that has been elected by the employer.
2	(2) Unless the employer elects coverage for these
3	employments under this chapter and an insurer allows such an
4	election, the Workers" Compensation Act does not apply to
5	any of the following employments:
6	(a) household and domestic employment;
7	<pre>(b) casual employment as defined in 39-71-116(3);</pre>
8	(c) employment of members of an employer's family
9	dwelling in the employer's household;
10	(d) employment of sole proprietors or working members
11	of a partnership <u>other_than_those_who_consider_theaselves_or</u>
12	bold_themselves_out_as_independent_contractors;
13	(e) employment for which a rule of liability for
14	injury, occupational disease, or death is provided under the
15	laws of the United States;
16	(f) any person performing services in return for aid
17	or sustemance only;
18	(g) employment with any railroad engaged in interstate
19	commerce, except that railroad construction work shall be
20	included in and subject to the provisions of this chapter.
21	(3)ASoleproprietororworkingmemberofa
22	partuership_wbo_bolds_bimself_out_orconsidersbimselfan
23	independent_contractor_must_elect_to_be_bound_personally_and
24	individually_by_the_provisions_of_compensation_plan_Nosl*
25	21_or_31_but_he_may_apply_to_the_division_foranexemption

HB 277

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2	application_mustbemadeinaccordancewiththerules
3	adoptedbytbe_divisionTbe_division_may_deny_tbe
4	application_only_if_it_determines_that_the_applicant_isont
5	anindependentcontractors_Wben_an_application_is_approxed
6	by_tbe_division:_it_is_conclusive_as_totbestatus_ofan
7	independent_contractor_and_precludes_the_applicant_from
8	obtaining_benefits_under_this_chapters"

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	STATEMENT	OF	INTENT

HOUSE BILL 277

House Labor and Employment Relations Committee

5 Under the law in effect prior to the enactment of this 6 act, independent contractors were exempt from coverage under the Workers* Compensation laws. 7 Many times, the determination of whether a worker is an independent 8 9 contractor is made after a worker, for whom no contributions 10 have been made, is injured and files a claim. This act 11 provides a method for a before-the-fact determination of the 12 independent contractor status. The act is not intended to 13 make independent contractors subject to the Workers* 24 Compensation Act but requires that they apply for that 15 status to be exempt.

16 This bill authorizes the Division of Norkers* 17 Compensation of the Department of Labor and Industry to 18 adopt rules to implement this act. It is the intent of the 19 Legislature that the Division will provide an application 20 form and provide for a hearing if the applicant disagrees 21 with the Division's initial determination. Any substantive 22 rules adopted pursuant to this act must be consistent with 23 the statutory definition of "independent contractor."

> THIRD READING 40277

HB 0277/02

l	HOUSE BILL NO. 277
2	INTRODUCED BY C. SMITH, JONES,
3	MARKS, ELLISON, STOBIE, LORY, RYAN,
4	R. JENSEN, DEVLIN, EUDAILY
5	BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
6	
7	A BILL FOR AN ACT ENTITLED: "AN ACT MAKING WORKERS"
8	COMPENSATION COVERAGE MANDATORY FOR INDEPENDENT CONTRACTORS
9	AND PROVIDING FOR AN OPTIONAL EXEMPTION FROM COVERAGE;
10	AMENDING SECTION 39-71-401. MCA.
11	
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13	(Refer to Introduced Bill)
14	Strike everything after the enacting clause and insert:
15	Section 1. Section 39-71-401, MCA, is amended to read:
16	"39-71-401. Employments covered and employments
17	exempted. (1) Except as provided in subsection (2) of this
18	section, the Workers* Compensation Act applies to all
19	employers as defined in 39-71-117 and to all employees as
20	defined in 39-71-118. An employer who has any employee in
21	service under any appointment or contract of hire+ expressed
22	or implied, oral or written, shall elect to be bound by the
23	provisions of compensation plan No. 1, 2, or 3. Every
24	employee whose employer is bound by the workers*
25	Compensation Act is subject to and bound by the compensation

plan that has been elected by the employer.
(2) Unless the employer elects coverage for these
employments under this chapter and an insurer allows such an
election, the Workers' Compensation Act does not apply to
any of the following employments:
(a) household and domestic employment;
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dwelling in the employer's household;
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individually_by_tbe_provisions_of_compensation_plan_Noelx

25 21 or 31 but he may apply to the division for an exemption

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THIRD READING

HB 277

HB 277

1	fromtheWorkers*_CompensationActforhimselfaIbe
2	application_mustbemadeinaccordancewiththerules
з	adontedbythedivisionThedivisionmay_decy_the
4	application_only_if_it_detarmines_that_the_applicant_isnot
5	acicdependentcontractors_Wbec_ac_application_is_approved
6	by_tbe_divisions_it_is_conclusive_as_totbestatus_ofao
7	independent_contractor_and_precludes_the_applicant_from
8	<u>obtaining_benefits_under_this_chapters"</u>

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SENATE STANDING COMMITTEE REPORT (Labor & Employment Relations)

That House Bill No. 277 be amended as follows:

1. Title, line 8.
Following: line 8
Insert: "WHO ARE NOT CONTRACTING FOR AGRICULTURAL SERVICES TO BE
PERFORMED ON A FARM OR RANCH"

2. Title, line 9.
Following: line 9
Insert: "REQUIRING EMPLOYERS TO POST SIGNS GIVING NOTICE OF EMPLOYER'S
COVERAGE AND PROVIDING A FINE;"

3. Page 2, line 12. Following: "contractors" Delete: ";"

Insert: "and who are not contracting for agricultural services to be performed on a farm or ranch."

4. Page 2, line 23.
Following: "contractor"
Insert: "and who is not contracting for agricultural services to be
performed on a farm or ranch"

5. Page 3, line 8. Following: line 8

Insert: "(4) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment regardless of whether the location is temporary or permanent and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation." SENATE COMMITTEE OF THE WHOLE AMENDMENT

That the Standing Committee Report of March 9, 1983, on House Bill No. 277 be amended as follows:

- 1. Amend amendment no. 1
 Following: "RANCH"
 Insert: "OR FOR BROKER OR SALESMAN SERVICES TO BE
 PERFORMED IN A REAL ESTATE BUSINESS"
- 2. Amend amendment no. 3 Following: "ranch" Insert: "or for broker or salesman services performed under a license issued by the board of realty regulation"
- 3. Amend amendment no. 4 Following: "ranch" Insert: "or for broker or salesman services performed under a license issued by the board of realty regulation"

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status to be exempt.

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1	STATEMENT OF INTENT
2	HOUSE BILL 277
3	House Labor and Employment Relations Committee
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5	Inder the law in effect prior to the enactment of this
6	act, independent contractors were exempt from coverage under
7	the Workers' Compensation laws. Many times, the
8	determination of whether a worker is an independent
9	contractor is made after a worker, for whom no contributions

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Compensation Act but requires that they apply for that

This bill authorizes the Division of Workers' 16 17 Compensation of the Department of Labor and Industry to adopt rules to implement this act. It is the intent of the 18 Legislature that the Division will provide an application 19 form and provide for a hearing if the applicant disagrees 20 with the Division's initial determination. Any substantive 21 rules adopted pursuant to this act must be consistent with 22 23 the statutory definition of "independent contractor." IT_IS_ALSO_INE__INTENT__OF__INE__LEGISLATURE__INAT__THE 24 25 DIVISION WILL PROVIDE EMPLOYERS WITH SIGNS AND DETERMINE AN

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2	DISPOSAL DE SUCH SIGHS INROUGH INSURERS WHEN INE ENPLOYER IS
3	PROPERLYCOVEREDUNDER_DNE_GE_THE_THREE_COMPENSATION_PLANS
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6	CANCELED_INACCORDANCEWITH39-71-2301HCAWHEN
7	SELE-INSURANCESTATUSISREVOKED_IN_ACCORDANCE_WITH
8	39-11-2105. MCA. WHEN AN EMPLOYER IS EXEMPT ERON COVERAGE
9	UNDERIHISCHAPTEROR_WHEN_AN_EMPLOYER_LACKS_COVERAGE_AND
10	HAS_BEEN_ORDERED_TOCEASEOPERATIONSINACCORDANCEWITH
11	39-11-507. MCA. AND THAT THE DIVISION WILL MAINTAIN
12	PROCEDURES_ID_CONTROL_INE_DISTRIBUTION_AND_DISPOSAL_OESUCH
13	SIGNS_ID_PREVENT_IHEIR_IMPROPER_USE_AND_ID_ACCOMMODATE_IHE

CHANGING COVERAGE EMPLOYERS MAY HAVE FROM TIME TO TIME. 14

-z- REFERENCE BILL HB 27

HOUSE BILL NO. 277 L INTRODUCED BY C. SMITH, JONES, 2 MARKS, ELLISON, STOBIE, LORY, RYAN, 3 R. JENSEN, DEVLIN, EUDAILY 4 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY 5 6 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING WORKERS" 7 COMPENSATION COVERAGE MANDATORY FOR INDEPENDENT CONTRACTORS 8 NHO_ABE_NOT_CONTRACTING_EOR_AGRICULTURAL_SERVICES_TO_BE 9 PEREDANED ON A EARM OR BANCH OR FOR BROKER OR SALESMAN 10 SERVICES TO BE PERFORMED IN A BEAL ESTATE BUSINESS AND 11 PROVIDING FOR AN OPTIONAL EXEMPTION FROM COVERAGE; REQUIRING 12 EMPLOYERS_TO_POST_SIGNS_GIVING_NOTICE_DE_EMPLOYER*S_COVERAGE 13 AND_PROVIDING_A_EINE: AMENDING SECTION 39-71-401, MCA." 14

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 17 (Refer to Introduced Bill)

Strike everything after the enacting clause and insert: 10 19 Section 1. Section 39-71-401, MCA, is amended to read: "39-71-401. Employments covered and employments 20 exempted. (1) Except as provided in subsection (2) of this 21 section, the Workers' Compensation Act applies to all 22 employers as defined in 39-71-117 and to all employees as 23 defined in 39-71-118. An employer who has any employee in 24 service under any appointment or contract of hire, expressed 25

1 or impliedy oral or writteny shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every Z 3 employee whose employer is bound by the Workers* 4 Compensation Act is subject to and bound by the compensation plan that has been elected by the employer. 5 6 (2) Unless the employer elects coverage for these 7 employments under this chapter and an insurer allows such an 8 election, the Workers' Compensation Act does not apply to 9 any of the following employments: 10 (a) household and domestic employment; 11 (b) casual employment as defined in 39-71-116(3); 32 (c) employment of members of an employer's family 13 dwelling in the employer's household; 14 (d) employment of sole proprietors or working members 15 of a partnership other_than_those_who_consider_theeselves_pr 16 hold_themselves_out_as_independent_contractors_AND_MHO_ARE 17 NOT_CONTRACTING_EOR_AGBICULTURAL_SERVICES_TO_BE_PERFORMED_ON A FARM_OR_BANCH_OR_FOR_BROKER_OR_SALESMAN_SERVICES_PERFORMED 18

19 UNDER_A_LICENSE_ISSUED_BY_THE_BOARD_DE_BEALTY_REGULATION;

20 (e) employment for which a rule of liability for

21 injury, occupational disease, or death is provided under the

22 laws of the United States;

23 (f) any person performing services in return for aid
 24 or sustenance only;

25 (g) employment with any railroad engaged in interstate

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HB 277 REFERENCE BILL CORPECTED

HB 0277/03

HB 277

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HB 277

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10_08_CONTROL_OVER_SUCH_PLACE_DE_BUSINESS_OR_PROPERTY_EQ8

THE PUSPOSE OF CARRYING ON HIS USUAL IRADE ... BUSINESS ... OB

OCCUPATION. THE SIGN WILL BE PROVIDED BY THE DIVISION.

DISTRIBUTED THROUGH INSURERS DR. DIRECTLY __BY__IHE __DIVISION+

AND__POSTED_BY_EMPLOYERS_IN_ACCORDANCE_WITH_RULES_ADDPIED_BY

THE DIVISION AN EMPLOYER WHO PURPOSELY OR KNOWINGLY FAILS

IO_POST_A_SIGN_AS_PROVIDED_IN_THIS_SUBSECTION_IS_SUBJECT_IO

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