

HOUSE BILL NO. 277

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.
February 10, 1983	Bill printed and placed on members' desks.
February 11, 1983	Second reading, do pass.
February 14, 1983	Considered correctly engrossed.
February 15, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 16, 1983	Introduced and referred to Committee on Labor and Employment Relations.
March 9, 1983	Committee recommend bill and Statement of Intent be concurring 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

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.

House BILL NO. *277*
 INTRODUCED BY *Smith, T. & Jones*
 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY *Ellison, Stahle, Long, Mark*

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING WORKERS' COMPENSATION COVERAGE MANDATORY FOR INDEPENDENT CONTRACTORS AND PROVIDING FOR AN OPTIONAL EXEMPTION FROM COVERAGE; AMENDING SECTION 39-71-401, MCA."

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

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection ~~subsections~~ (2) and (3) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117, and to all employees as defined in 39-71-118, ~~and to all sole proprietors or working members of a partnership who consider themselves or hold themselves out as independent contractors. A sole proprietor or working member of a partnership who considers himself or holds himself out as an independent contractor shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3.~~ An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation

plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' 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;

(b) casual employment as defined in 39-71-116(3);

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership ~~other than those who consider themselves or hold themselves out as independent contractors;~~

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

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

(g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter.

~~(3) A sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor may apply to the division for an~~

1 exemption from the Workers' Compensation Act for himself.
2 The application must be made in accordance with the rules
3 adopted by the division. The division may deny the
4 application only if it determines that the applicant is not
5 an independent contractor. When an application is approved
6 by the division, it is conclusive as to the status of
7 independent contractor and precludes the applicant from
8 obtaining benefits under this chapter."

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 277

3 House Labor and Employment Relations Committee

4

5 Under 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
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'
14 Compensation Act but requires that they apply for that
15 status to be exempt.

16 This bill authorizes the Division of Workers'
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."

SECOND READING

HB 277

Approved by Committee
on Labor & Employment
Relations

1 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

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 (b) casual employment as defined in 39-71-116(3);

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 ~~other than those who consider themselves or~~
12 ~~hold 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 sustenance 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 ~~(1) A sole proprietor or working member of a~~
22 ~~partnership who holds himself out or considers himself an~~
23 ~~independent contractor must elect to be bound personally and~~
24 ~~individually by the provisions of compensation plan No. 1,~~
25 ~~2, or 3, but he may apply to the division for an exemption~~

1 ~~from the Workers' Compensation Act for himself. The~~
2 ~~application must be made in accordance with the rules~~
3 ~~adopted by the division. The division may deny the~~
4 ~~application only if it determines that the applicant is not~~
5 ~~an independent contractor. When an application is approved~~
6 ~~by the division, it is conclusive as to the status of an~~
7 ~~independent contractor and precludes the applicant from~~
8 ~~obtaining benefits under this chapter."~~

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2 HOUSE BILL 277

3 House Labor and Employment Relations Committee
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6 act, independent contractors were exempt from coverage under
7 the Workers' Compensation laws. Many times, the
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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'
14 Compensation Act but requires that they apply for that
15 status to be exempt.

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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

HB 277

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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

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;

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9 dwelling in the employer's household;

10 (d) employment of sole proprietors or working members
11 of a partnership other than those who consider themselves or
12 hold 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 sustenance 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) A sole proprietor or working member of a
22 partnership who holds himself out or considers himself an
23 independent contractor must elect to be bound personally and
24 individually by the provisions of compensation plan No. 1,
25 2, or 3, but he may apply to the division for an exemption

1 from the Workers' Compensation Act for himself. The
2 application must be made in accordance with the rules
3 adopted by the division. The division may deny the
4 application only if it determines that the applicant is not
5 an independent contractor. When an application is approved
6 by the division, it is conclusive as to the status of an
7 independent contractor and precludes the applicant from
8 obtaining benefits under this chapter."

-End-

March 9, 1983

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."

March 11, 1983

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"

1 STATEMENT OF INTENT

2 HOUSE BILL 277

3 House Labor and Employment Relations Committee

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6 act, independent contractors were exempt from coverage under
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9 contractor is made after a worker, for whom no contributions
10 have been made, is injured and files a claim. This act
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12 independent contractor status. The act is not intended to
13 make independent contractors subject to the Workers'
14 Compensation Act but requires that they apply for that
15 status to be exempt.

16 This bill authorizes the Division of Workers'
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."

24 IT IS ALSO THE INTENT OF THE LEGISLATURE THAT THE
25 DIVISION WILL PROVIDE EMPLOYERS WITH SIGNS AND DETERMINE AN

1 ECONOMICAL AND CONVENIENT METHOD OF DISTRIBUTION AND
2 DISPOSAL OF SUCH SIGNS THROUGH INSURERS WHEN THE EMPLOYER IS
3 PROPERLY COVERED UNDER ONE OF THE THREE COMPENSATION PLANS
4 OR WHEN A POLICY IS CANCELED IN ACCORDANCE WITH 39-71-2205,
5 MCA, OR THROUGH THE DIVISION DIRECTLY WHEN A POLICY IS
6 CANCELED IN ACCORDANCE WITH 39-71-2307, MCA, WHEN
7 SELF-INSURANCE STATUS IS REVOKED IN ACCORDANCE WITH
8 39-71-2105, MCA, WHEN AN EMPLOYER IS EXEMPT FROM COVERAGE
9 UNDER THIS CHAPTER, OR WHEN AN EMPLOYER LACKS COVERAGE AND
10 HAS BEEN ORDERED TO CEASE OPERATIONS IN ACCORDANCE WITH
11 39-71-507, MCA, AND THAT THE DIVISION WILL MAINTAIN
12 PROCEDURES TO CONTROL THE DISTRIBUTION AND DISPOSAL OF SUCH
13 SIGNS TO PREVENT THEIR IMPROPER USE AND TO ACCOMMODATE THE
14 CHANGING COVERAGE EMPLOYERS MAY HAVE FROM TIME TO TIME.

HOUSE BILL NO. 277

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

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING WORKERS' COMPENSATION COVERAGE MANDATORY FOR INDEPENDENT CONTRACTORS WHO ARE NOT CONTRACTING FOR AGRICULTURAL SERVICES TO BE PERFORMED ON A FARM OR RANCH OR FOR BROKER OR SALESMAN SERVICES TO BE PERFORMED IN A REAL ESTATE BUSINESS AND PROVIDING FOR AN OPTIONAL EXEMPTION FROM COVERAGE; REQUIRING EMPLOYERS TO POST SIGNS GIVING NOTICE OF EMPLOYER'S COVERAGE AND PROVIDING A FINE;" AMENDING SECTION 39-71-401, MCA."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

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or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

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- (a) household and domestic employment;
- (b) casual employment as defined in 39-71-116(3);
- (c) employment of members of an employer's family dwelling in the employer's household;
- (d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors AND WHO ARE NOT CONTRACTING FOR AGRICULTURAL SERVICES TO BE PERFORMED ON A FARM OR RANCH OR FOR BROKER OR SALESMAN SERVICES PERFORMED UNDER A LICENSE ISSUED BY THE BOARD OF REALTY REGULATION;
- (e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (f) any person performing services in return for aid or sustenance only;
- (g) employment with any railroad engaged in interstate

commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter.

(41) A sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor AND WHO IS NOT CONTRACTING FOR AGRICULTURAL SERVICES TO BE PERFORMED ON A FARM OR RANCH OR FOR BROKER OR SALESMAN SERVICES PERFORMED UNDER A LICENSE ISSUED BY THE BOARD OF REALTY REGULATION 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 division for an exemption from the Workers' Compensation Act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(42) 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 \$20 FINE FOR EACH CITATION."

-End-