

HOUSE BILL NO. 381

INTRODUCED BY GRADY, MANNING, CODY, MILLER, RASMUSSEN

IN THE HOUSE

JANUARY 21, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & LABOR.

FEBRUARY 6, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 7, 1987 PRINTING REPORT.

FEBRUARY 9, 1987 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 10, 1987 ENGROSSING REPORT.

FEBRUARY 11, 1987 THIRD READING, PASSED.
AYES, 72; NOES, 24.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 12, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

MARCH 27, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 30, 1987 SECOND READING, CONCURRED IN.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, CONCURRED IN.
AYES, 37; NOES, 13.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 8, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

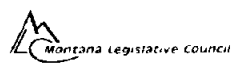
1 House BILL NO. 391
 2 INTRODUCED BY Dorothy Richard Manning Cody
 3 Miller Rasmussen
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM COVERAGE
 5 UNDER THE UNEMPLOYMENT INSURANCE LAW AND THE WORKERS'
 6 COMPENSATION ACT SELF-EMPLOYED COSMETOLOGISTS WHO RENT SPACE
 7 OR EQUIPMENT IN A SHOP; AND AMENDING SECTIONS 39-51-204 AND
 8 39-71-401, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 39-51-204, MCA, is amended to read:
 12 "39-51-204. Exclusions from definition of employment.
 13 (1) The term "employment" does not include:
 14 (a) agricultural labor, except as provided in
 15 39-51-203(8);
 16 (b) domestic service in a private home, local college
 17 club, or local chapter of a college fraternity or sorority,
 18 except as provided in 39-51-203(9);
 19 (c) service performed as an officer or member of the
 20 crew of a vessel on the navigable waters of the United
 21 States;
 22 (d) service performed by an individual in the employ
 23 of his son, daughter, or spouse and service performed by a
 24 child under the age of 21 in the employ of his father or
 25 mother;

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

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

24 (g) services performed in the delivery and
 25 distribution of newspapers or shopping news from house to



1 house and business establishments by an individual under the
2 age of 18 years, but not including the delivery or
3 distribution to any point or points for subsequent delivery
4 or distribution;

5 (h) services performed by real estate, securities, and
6 insurance salesmen paid solely by commissions and without
7 guarantee of minimum earnings;

8 (i) service performed in the employ of a school,
9 college, or university if such service is performed by a
10 student who is enrolled and is regularly attending classes
11 at such school, college, or university or by the spouse of
12 such a student if such spouse is advised, at the time such
13 spouse commences to perform such service, that the
14 employment of such spouse to perform such service is
15 provided under a program to provide financial assistance to
16 such student by such school, college, or university and such
17 employment will not be covered by any program of
18 unemployment insurance;

19 (j) service performed by an individual who is enrolled
20 at a nonprofit or public educational institution, which
21 normally maintains a regular faculty and curriculum and
22 normally has a regularly organized body of students in
23 attendance at the place where its educational activities are
24 carried on, as a student in a full-time program taken for
25 credit at such institution which combines academic

1 instruction with work experience if such service is an
2 integral part of such program and such institution has so
3 certified to the employer, except that this subsection shall
4 not apply to service performed in a program established for
5 or on behalf of an employer or group of employers;

6 (k) service performed in the employ of a hospital if
7 such service is performed by a patient of the hospital;

8 (l) services performed by a self-employed person at
9 the order of clients by whom the person is compensated, who
10 is licensed under Title 37, chapter 31, who rents or leases
11 space or equipment in a cosmetological establishment as
12 defined in 37-31-101, and who has no guarantee of minimum
13 earnings; or

14 ~~(l)~~(m) casual labor not in the course of an employer's
15 trade or business performed in any calendar quarter, unless
16 the cash remuneration paid for such service is \$50 or more
17 and such service is performed by an individual who is
18 regularly employed by such employer to perform such service.
19 "Regularly employed" means the services are performed during
20 at least 24 days in the same quarter.

21 (2) "Employment" does not include elected public
22 officials.

23 (3) For the purposes of 39-51-203(6), the term
24 "employment" does not apply to service performed:

25 (a) in the employ of a church or convention or

1 association of churches or an organization which is operated
2 primarily for religious purposes and which is operated,
3 supervised, controlled, or principally supported by a church
4 or convention or association of churches;

5 (b) by a duly ordained, commissioned, or licensed
6 minister of a church in the exercise of his ministry or by a
7 member of a religious order in the exercise of duties
8 required by such order;

9 (c) in the employ of a school which is not an
10 institution of higher education, prior to December 31, 1977;

11 (d) in a facility conducted for the purpose of
12 carrying out a program of rehabilitation for individuals
13 whose earning capacity is impaired by age or physical or
14 mental deficiency or injury or providing remunerative work
15 for individuals who, because of their impaired physical or
16 mental capacity, cannot be readily absorbed in the
17 competitive labor market by an individual receiving such
18 rehabilitation or remunerative work;

19 (e) as part of an unemployment work-relief or
20 work-training program assisted or financed in whole or in
21 part by a federal agency or any agency of a state or
22 political subdivision thereof by an individual receiving
23 such work relief or work training; or

24 (f) for a state prison or other state correctional or
25 custodial institution by an inmate of that institution."

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

2 "39-71-401. Employments covered and employments
3 exempted. (1) Except as provided in subsection (2) of this
4 section, the Workers' Compensation Act applies to all
5 employers as defined in 39-71-117 and to all employees as
6 defined in 39-71-118. An employer who has any employee in
7 service under any appointment or contract of hire, expressed
8 or implied, oral or written, shall elect to be bound by the
9 provisions of compensation plan No. 1, 2, or 3. Every
10 employee whose employer is bound by the Workers'
11 Compensation Act is subject to and bound by the compensation
12 plan that has been elected by the employer.

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

17 (a) household and domestic employment;

18 (b) casual employment as defined in 39-71-116(3)
19 except employment of a volunteer under 67-2-105;

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

22 (d) employment of sole proprietors or working members
23 of a partnership other than those who consider themselves or
24 hold themselves out as independent contractors and who are
25 not contracting for agricultural services to be performed on

1 a farm or ranch, or for broker or salesman services
 2 performed under a license issued by the board of realty
 3 regulation, or for services as a direct seller engaged in
 4 the sale of consumer products to customers primarily in the
 5 home;

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

9 (f) any person performing services in return for aid
 10 or sustenance only, except employment of a volunteer under
 11 67-2-105;

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

15 (h) employment as an official, including a timer,
 16 referee, or judge, at a school amateur athletic event,
 17 unless the person is otherwise employed by a school
 18 district.

19 (3) A sole proprietor or working member of a
 20 partnership who holds himself out or considers himself an
 21 independent contractor and who is not contracting for
 22 agricultural services to be performed on a farm or ranch, or
 23 for broker or salesman services performed under a license
 24 issued by the board of realty regulation, or for services as
 25 a direct seller engaged in the sale of consumer products to

1 customers primarily in the home, or for cosmetologists'
 2 services as defined in 39-51-204(1)(1) must elect to be
 3 bound personally and individually by the provisions of
 4 compensation plan No. 1, 2, or 3, but he may apply to the
 5 division for an exemption from the Workers' Compensation Act
 6 for himself. The application must be made in accordance with
 7 the rules adopted by the division. The division may deny the
 8 application only if it determines that the applicant is not
 9 an independent contractor. When an application is approved
 10 by the division, it is conclusive as to the status of an
 11 independent contractor and precludes the applicant from
 12 obtaining benefits under this chapter.

13 (4) Each employer shall post a sign in the workplace
 14 at the locations where notices to employees are normally
 15 posted, informing employees about the employer's current
 16 provision of compensation insurance. A workplace is any
 17 location where an employee performs any work-related act in
 18 the course of employment, regardless of whether the location
 19 is temporary or permanent, and includes the place of
 20 business or property of a third person while the employer
 21 has access to or control over such place of business or
 22 property for the purpose of carrying on his usual trade,
 23 business, or occupation. The sign will be provided by the
 24 division, distributed through insurers or directly by the
 25 division, and posted by employers in accordance with rules

LC 1022/01

1 adopted by the division. An employer who purposely or
2 knowingly fails to post a sign as provided in this
3 subsection is subject to a \$50 fine for each citation."

4 NEW SECTION. Section 3. Extension of authority. Any
5 existing authority of the department of labor and industry
6 to make rules on the subject of the provisions of this act
7 is extended to the provisions of this act.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB381, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act exempting from coverage under the unemployment insurance law and the Workers' Compensation Act self-employed cosmetologists who rent space or equipment in a shop; and amending section 39-51-204 and 39-71-401, MCA.

This fiscal note is in two parts:

1. Unemployment Insurance Law
2. Workers' Compensation Act

PART I

ASSUMPTIONS:

1. The Board of Barbers and Cosmetologists industry feels that approximately 10% now rent or lease space and equipment. Therefore about 95 individuals would be exempt from coverage of unemployment insurance based on the proposed bill.
2. It is estimated that the average amount of contributions to be paid on those individuals based on current law would be about \$127.65 and \$130.75 for FY88 and FY89 respectively.
3. Based on current law, it is estimated that about 14% of the 95 individuals would draw unemployment insurance benefits at an average weekly rate of \$77 and \$79 for FY88 and FY89 respectively and would draw on the average of about 14 weeks (receive 14 checks).

FISCAL IMPACT:

	<u>FY88</u>			<u>FY89</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Benefits	\$55,500,000	\$55,485,700	(\$ 14,300)	\$58,000,000	\$57,985,300	(\$ 14,700)
<u>Revenues:</u>						
Contributions	\$59,200,000	\$59,187,875	(\$ 12,125)	\$60,250,000	\$60,237,600	(\$ 12,400)
Net Effect on Expendable Trust Fund:		FY88 - \$ 2,175				
		FY89 - \$ 2,300				

The net effect on cosmetologists covered by the bill will be an increase in payroll taxes of 238.60 per year, due to Federal Unemployment Tax Assessment (F.U.T.A.)

David L. Hunter DATE 1/28/87
 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning

Edward Grady DATE 1-29
 EDWARD GRADY, PRIMARY SPONSOR

Fiscal Note for HB381, as introduced.

HB 381

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

Generally beauty operators and cosmetologists who rent or lease space or equipment have not been considered self-employed under state law.

PART II

ASSUMPTIONS

1. The Board of Barbers and Cosmetologists industry feels that approximately 10% now rent or lease space and equipment. Therefore about 95 individuals would be exempt from coverage of unemployment insurance based on the proposed bill.
2. The premium classification covering cosmetologists and barbers generated \$28,802 manual premium for the State Fund in FY86. Losses in this code for FY86 were \$44,169. The past five years loss ratio is 206%.
3. There will be no operational costs or savings associated with this bill.
4. Premium and losses for FY88 and FY89 are unknown.

FISCAL IMPACT:

Expenditures:

Since the basic concept in the State Fund's rate-making process is to offset any losses with premium, the net effect of this bill should be zero.

APPROVED BY COMM. ON
BUSINESS AND LABOR

HOUSE BILL NO. 381

INTRODUCED BY GRADY, MANNING, CODY, MILLER, RASMUSSEN

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM COVERAGE UNDER THE UNEMPLOYMENT INSURANCE LAW AND THE WORKERS' COMPENSATION ACT SELF-EMPLOYED COSMETOLOGISTS AND BARBERS WHO RENT SPACE, FURNITURE, OR EQUIPMENT FIXTURES IN A SHOP; AND AMENDING SECTIONS 39-51-204 AND 39-71-401, MCA."

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

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

"39-51-204. Exclusions from definition of employment.

(1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

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

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

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

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to

1 house and business establishments by an individual under the
2 age of 18 years, but not including the delivery or
3 distribution to any point or points for subsequent delivery
4 or distribution;

5 (h) services performed by real estate, securities, and
6 insurance salesmen paid solely by commissions and without
7 guarantee of minimum earnings;

8 (i) service performed in the employ of a school,
9 college, or university if such service is performed by a
10 student who is enrolled and is regularly attending classes
11 at such school, college, or university or by the spouse of
12 such a student if such spouse is advised, at the time such
13 spouse commences to perform such service, that the
14 employment of such spouse to perform such service is
15 provided under a program to provide financial assistance to
16 such student by such school, college, or university and such
17 employment will not be covered by any program of
18 unemployment insurance;

19 (j) service performed by an individual who is enrolled
20 at a nonprofit or public educational institution, which
21 normally maintains a regular faculty and curriculum and
22 normally has a regularly organized body of students in
23 attendance at the place where its educational activities are
24 carried on, as a student in a full-time program taken for
25 credit at such institution which combines academic

1 instruction with work experience if such service is an
2 integral part of such program and such institution has so
3 certified to the employer, except that this subsection shall
4 not apply to service performed in a program established for
5 or on behalf of an employer or group of employers;

6 (k) service performed in the employ of a hospital if
7 such service is performed by a patient of the hospital;

8 (l) services performed by a self-employed person at
9 the order of clients by whom the person is compensated, who
10 is licensed under Title 37, chapter 31, who rents or leases
11 space or equipment in a cosmetological establishment as
12 defined in 37-31-101, and who has no guarantee of minimum
13 earnings COSMETOLOGIST WHO IS LICENSED UNDER TITLE 37,
14 CHAPTER 31, OR A BARBER WHO IS LICENSED UNDER TITLE 37,
15 CHAPTER 30, AND WHO HAS ACKNOWLEDGED IN WRITING THAT HE IS
16 NOT COVERED BY UNEMPLOYMENT INSURANCE AND WORKERS'
17 COMPENSATION AND WHO CONTRACTS WITH A COSMETOLOGICAL
18 ESTABLISHMENT AS DEFINED IN 37-31-101 OR A BARBERSHOP AS
19 DEFINED IN 37-30-101, WHICH CONTRACT SHALL SHOW THE
20 COSMETOLOGIST OR BARBER IS FREE FROM ALL CONTROL AND
21 DIRECTION OF THE OWNER IN THE CONTRACT AND IN FACT; RECEIVES
22 PAYMENT FOR SERVICES FROM HIS OR HER INDIVIDUAL CLIENTELE;
23 LEASES, RENTS, OR FURNISHES ALL OF HIS OR HER OWN EQUIPMENT,
24 SKILLS, OR KNOWLEDGES; AND WHOSE CONTRACT GIVES RISE TO AN
25 ACTION FOR BREACH OF CONTRACT IN THE EVENT OF CONTRACT

1 TERMINATION (THE EXISTENCE OF A SINGLE LICENSE FOR THE
 2 COSMETOLOGICAL ESTABLISHMENT OR BARBERSHOP SHALL NOT BE
 3 CONSTRUED AS A LACK OF FREEDOM FROM CONTROL OR DIRECTION
 4 UNDER THIS SUBSECTION); or

5 ~~††~~(m) casual labor not in the course of an employer's
 6 trade or business performed in any calendar quarter, unless
 7 the cash remuneration paid for such service is \$50 or more
 8 and such service is performed by an individual who is
 9 regularly employed by such employer to perform such service.
 10 "Regularly employed" means the services are performed during
 11 at least 24 days in the same quarter.

12 (2) "Employment" does not include elected public
 13 officials.

14 (3) For the purposes of 39-51-203(6), the term
 15 "employment" does not apply to service performed:

16 (a) in the employ of a church or convention or
 17 association of churches or an organization which is operated
 18 primarily for religious purposes and which is operated,
 19 supervised, controlled, or principally supported by a church
 20 or convention or association of churches;

21 (b) by a duly ordained, commissioned, or licensed
 22 minister of a church in the exercise of his ministry or by a
 23 member of a religious order in the exercise of duties
 24 required by such order;

25 (c) in the employ of a school which is not an

1 institution of higher education, prior to December 31, 1977;

2 (d) in a facility conducted for the purpose of
 3 carrying out a program of rehabilitation for individuals
 4 whose earning capacity is impaired by age or physical or
 5 mental deficiency or injury or providing remunerative work
 6 for individuals who, because of their impaired physical or
 7 mental capacity, cannot be readily absorbed in the
 8 competitive labor market by an individual receiving such
 9 rehabilitation or remunerative work;

10 (e) as part of an unemployment work-relief or
 11 work-training program assisted or financed in whole or in
 12 part by a federal agency or any agency of a state or
 13 political subdivision thereof by an individual receiving
 14 such work relief or work training; or

15 (f) for a state prison or other state correctional or
 16 custodial institution by an inmate of that institution."

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

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

1 employee whose employer is bound by the Workers'
 2 Compensation Act is subject to and bound by the compensation
 3 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
 6 election, the Workers' Compensation Act does not apply to
 7 any of the following employments:

- 8 (a) household and domestic employment;
- 9 (b) casual employment as defined in 39-71-116(3)
 10 except employment of a volunteer under 67-2-105;
- 11 (c) employment of members of an employer's family
 12 dwelling in the employer's household;
- 13 (d) employment of sole proprietors or working members
 14 of a partnership other than those who consider themselves or
 15 hold themselves out as independent contractors and who are
 16 not contracting for agricultural services to be performed on
 17 a farm or ranch, or for broker or salesman services
 18 performed under a license issued by the board of realty
 19 regulation, or for services as a direct seller engaged in
 20 the sale of consumer products to customers primarily in the
 21 home;
- 22 (e) employment for which a rule of liability for
 23 injury, occupational disease, or death is provided under the
 24 laws of the United States;
- 25 (f) any person performing services in return for aid

1 or sustenance only, except employment of a volunteer under
 2 67-2-105;

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

6 (h) employment as an official, including a timer,
 7 referee, or judge, at a school amateur athletic event,
 8 unless the person is otherwise employed by a school
 9 district;

10 (I) COSMETOLOGIST'S SERVICES AS DEFINED IN
 11 39-51-204(1)(L).

12 (3) A sole proprietor or working member of a
 13 partnership who holds himself out or considers himself an
 14 independent contractor and who is not contracting for
 15 agricultural services to be performed on a farm or ranch, or
 16 for broker or salesman services performed under a license
 17 issued by the board of realty regulation, or for services as
 18 a direct seller engaged in the sale of consumer products to
 19 customers primarily in the home ~~or for cosmetologists'~~
 20 ~~services as defined in 39-51-204(1)(L)~~ must elect to be
 21 bound personally and individually by the provisions of
 22 compensation plan No. 1, 2, or 3, but he may apply to the
 23 division for an exemption from the Workers' Compensation Act
 24 for himself. The application must be made in accordance with
 25 the rules adopted by the division. The division may deny the

1 application only if it determines that the applicant is not
2 an independent contractor. When an application is approved
3 by the division, it is conclusive as to the status of an
4 independent contractor and precludes the applicant from
5 obtaining benefits under this chapter.

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

22 NEW SECTION. Section 3. Extension of authority. Any
23 existing authority of the department of labor and industry
24 to make rules on the subject of the provisions of this act
25 is extended to the provisions of this act.

-End-

1 HOUSE BILL NO. 381

2 INTRODUCED BY GRADY, MANNING, CODY, MILLER, RASMUSSEN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM COVERAGE
5 UNDER THE UNEMPLOYMENT INSURANCE LAW AND THE WORKERS'
6 COMPENSATION ACT SELF-EMPLOYED COSMETOLOGISTS AND BARBERS
7 WHO RENT SPACE, FURNITURE, OR EQUIPMENT FIXTURES IN A SHOP;
8 AND AMENDING SECTIONS 39-51-204 AND 39-71-401, MCA."
9

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

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

12 "39-51-204. Exclusions from definition of employment.

13 (1) The term "employment" does not include:

14 (a) agricultural labor, except as provided in
15 39-51-203(8);16 (b) domestic service in a private home, local college
17 club, or local chapter of a college fraternity or sorority,
18 except as provided in 39-51-203(9);19 (c) service performed as an officer or member of the
20 crew of a vessel on the navigable waters of the United
21 States;22 (d) service performed by an individual in the employ
23 of his son, daughter, or spouse and service performed by a
24 child under the age of 21 in the employ of his father or
25 mother;

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

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

24 (g) services performed in the delivery and
25 distribution of newspapers or shopping news from house to

1 house and business establishments by an individual under the
2 age of 18 years, but not including the delivery or
3 distribution to any point or points for subsequent delivery
4 or distribution;

5 (h) services performed by real estate, securities, and
6 insurance salesmen paid solely by commissions and without
7 guarantee of minimum earnings;

8 (i) service performed in the employ of a school,
9 college, or university if such service is performed by a
10 student who is enrolled and is regularly attending classes
11 at such school, college, or university or by the spouse of
12 such a student if such spouse is advised, at the time such
13 spouse commences to perform such service, that the
14 employment of such spouse to perform such service is
15 provided under a program to provide financial assistance to
16 such student by such school, college, or university and such
17 employment will not be covered by any program of
18 unemployment insurance;

19 (j) service performed by an individual who is enrolled
20 at a nonprofit or public educational institution, which
21 normally maintains a regular faculty and curriculum and
22 normally has a regularly organized body of students in
23 attendance at the place where its educational activities are
24 carried on, as a student in a full-time program taken for
25 credit at such institution which combines academic

1 instruction with work experience if such service is an
2 integral part of such program and such institution has so
3 certified to the employer, except that this subsection shall
4 not apply to service performed in a program established for
5 or on behalf of an employer or group of employers;

6 (k) service performed in the employ of a hospital if
7 such service is performed by a patient of the hospital;

8 (l) services performed by a self-employed person at
9 the order of clients by whom the person is compensated, who
10 is licensed under Title 37, chapter 31, who rents or leases
11 space or equipment in a cosmetological establishment as
12 defined in 37-31-101, and who has no guarantee of minimum
13 earnings COSMETOLOGIST WHO IS LICENSED UNDER TITLE 37,
14 CHAPTER 31, OR A BARBER WHO IS LICENSED UNDER TITLE 37,
15 CHAPTER 30, AND WHO HAS ACKNOWLEDGED IN WRITING THAT HE IS
16 NOT COVERED BY UNEMPLOYMENT INSURANCE AND WORKERS'
17 COMPENSATION AND WHO CONTRACTS WITH A COSMETOLOGICAL
18 ESTABLISHMENT AS DEFINED IN 37-31-101 OR A BARBERSHOP AS
19 DEFINED IN 37-30-101, WHICH CONTRACT SHALL SHOW THE
20 COSMETOLOGIST OR BARBER IS FREE FROM ALL CONTROL AND
21 DIRECTION OF THE OWNER IN THE CONTRACT AND IN FACT; RECEIVES
22 PAYMENT FOR SERVICES FROM HIS OR HER INDIVIDUAL CLIENTELE;
23 LEASES, RENTS, OR FURNISHES ALL OF HIS OR HER OWN EQUIPMENT,
24 SKILLS, OR KNOWLEDGES; AND WHOSE CONTRACT GIVES RISE TO AN
25 ACTION FOR BREACH OF CONTRACT IN THE EVENT OF CONTRACT

1 TERMINATION (THE EXISTENCE OF A SINGLE LICENSE FOR THE
 2 COSMETOLOGICAL ESTABLISHMENT OR BARBERSHOP SHALL NOT BE
 3 CONSTRUED AS A LACK OF FREEDOM FROM CONTROL OR DIRECTION
 4 UNDER THIS SUBSECTION); or

5 ~~(1)~~(m) casual labor not in the course of an employer's
 6 trade or business performed in any calendar quarter, unless
 7 the cash remuneration paid for such service is \$50 or more
 8 and such service is performed by an individual who is
 9 regularly employed by such employer to perform such service.
 10 "Regularly employed" means the services are performed during
 11 at least 24 days in the same quarter.

12 (2) "Employment" does not include elected public
 13 officials.

14 (3) For the purposes of 39-51-203(6), the term
 15 "employment" does not apply to service performed:

16 (a) in the employ of a church or convention or
 17 association of churches or an organization which is operated
 18 primarily for religious purposes and which is operated,
 19 supervised, controlled, or principally supported by a church
 20 or convention or association of churches;

21 (b) by a duly ordained, commissioned, or licensed
 22 minister of a church in the exercise of his ministry or by a
 23 member of a religious order in the exercise of duties
 24 required by such order;

25 (c) in the employ of a school which is not an

1 institution of higher education, prior to December 31, 1977;

2 (d) in a facility conducted for the purpose of
 3 carrying out a program of rehabilitation for individuals
 4 whose earning capacity is impaired by age or physical or
 5 mental deficiency or injury or providing remunerative work
 6 for individuals who, because of their impaired physical or
 7 mental capacity, cannot be readily absorbed in the
 8 competitive labor market by an individual receiving such
 9 rehabilitation or remunerative work;

10 (e) as part of an unemployment work-relief or
 11 work-training program assisted or financed in whole or in
 12 part by a federal agency or any agency of a state or
 13 political subdivision thereof by an individual receiving
 14 such work relief or work training; or

15 (f) for a state prison or other state correctional or
 16 custodial institution by an inmate of that institution."

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

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

1 employee whose employer is bound by the Workers'
 2 Compensation Act is subject to and bound by the compensation
 3 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
 6 election, the Workers' Compensation Act does not apply to
 7 any of the following employments:

- 8 (a) household and domestic employment;
- 9 (b) casual employment as defined in 39-71-116(3)
 10 except employment of a volunteer under 67-2-105;
- 11 (c) employment of members of an employer's family
 12 dwelling in the employer's household;
- 13 (d) employment of sole proprietors or working members
 14 of a partnership other than those who consider themselves or
 15 hold themselves out as independent contractors and who are
 16 not contracting for agricultural services to be performed on
 17 a farm or ranch, or for broker or salesman services
 18 performed under a license issued by the board of realty
 19 regulation, or for services as a direct seller engaged in
 20 the sale of consumer products to customers primarily in the
 21 home;
- 22 (e) employment for which a rule of liability for
 23 injury, occupational disease, or death is provided under the
 24 laws of the United States;
- 25 (f) any person performing services in return for aid

1 or sustenance only, except employment of a volunteer under
 2 67-2-105;

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

6 (h) employment as an official, including a timer,
 7 referee, or judge, at a school amateur athletic event,
 8 unless the person is otherwise employed by a school
 9 district;

10 (I) COSMETOLOGIST'S SERVICES AND BARBER'S SERVICES AS
 11 DEFINED IN 39-51-204(1)(L).

12 (3) A sole proprietor or working member of a
 13 partnership who holds himself out or considers himself an
 14 independent contractor and who is not contracting for
 15 agricultural services to be performed on a farm or ranch, or
 16 for broker or salesman services performed under a license
 17 issued by the board of realty regulation, or for services as
 18 a direct seller engaged in the sale of consumer products to
 19 customers primarily in the home--or--for--cosmetologists+
 20 services--as--defined--in--39-51-204(1)(L) must elect to be
 21 bound personally and individually by the provisions of
 22 compensation plan No. 1, 2, or 3, but he may apply to the
 23 division for an exemption from the Workers' Compensation Act
 24 for himself. The application must be made in accordance with
 25 the rules adopted by the division. The division may deny the

1 application only if it determines that the applicant is not
2 an independent contractor. When an application is approved
3 by the division, it is conclusive as to the status of an
4 independent contractor and precludes the applicant from
5 obtaining benefits under this chapter.

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

22 NEW SECTION. Section 3. Extension of authority. Any
23 existing authority of the department of labor and industry
24 to make rules on the subject of the provisions of this act
25 is extended to the provisions of this act.

-End-

-9-

1 HOUSE BILL NO. 381

2 INTRODUCED BY GRADY, MANNING, CODY, MILLER, RASMUSSEN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM COVERAGE
5 UNDER THE UNEMPLOYMENT INSURANCE LAW AND THE WORKERS'
6 COMPENSATION ACT SELF-EMPLOYED COSMETOLOGISTS AND BARBERS
7 WHO RENT SPACE, FURNITURE, OR EQUIPMENT FIXTURES IN A SHOP;
8 AND AMENDING SECTIONS 39-51-204 AND 39-71-401, MCA."

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

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

12 "39-51-204. Exclusions from definition of employment.

13 (1) The term "employment" does not include:

14 (a) agricultural labor, except as provided in
15 39-51-203(8);

16 (b) domestic service in a private home, local college
17 club, or local chapter of a college fraternity or sorority,
18 except as provided in 39-51-203(9);

19 (c) service performed as an officer or member of the
20 crew of a vessel on the navigable waters of the United
21 States;

22 (d) service performed by an individual in the employ
23 of his son, daughter, or spouse and service performed by a
24 child under the age of 21 in the employ of his father or
25 mother;

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

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

24 (g) services performed in the delivery and
25 distribution of newspapers or shopping news from house to

1 house and business establishments by an individual under the
 2 age of 18 years, but not including the delivery or
 3 distribution to any point or points for subsequent delivery
 4 or distribution;

5 (h) services performed by real estate, securities, and
 6 insurance salesmen paid solely by commissions and without
 7 guarantee of minimum earnings;

8 (i) service performed in the employ of a school,
 9 college, or university if such service is performed by a
 10 student who is enrolled and is regularly attending classes
 11 at such school, college, or university or by the spouse of
 12 such a student if such spouse is advised, at the time such
 13 spouse commences to perform such service, that the
 14 employment of such spouse to perform such service is
 15 provided under a program to provide financial assistance to
 16 such student by such school, college, or university and such
 17 employment will not be covered by any program of
 18 unemployment insurance;

19 (j) service performed by an individual who is enrolled
 20 at a nonprofit or public educational institution, which
 21 normally maintains a regular faculty and curriculum and
 22 normally has a regularly organized body of students in
 23 attendance at the place where its educational activities are
 24 carried on, as a student in a full-time program taken for
 25 credit at such institution which combines academic

1 instruction with work experience if such service is an
 2 integral part of such program and such institution has so
 3 certified to the employer, except that this subsection shall
 4 not apply to service performed in a program established for
 5 or on behalf of an employer or group of employers;

6 (k) service performed in the employ of a hospital if
 7 such service is performed by a patient of the hospital;

8 (l) services performed by a self-employed person at
 9 the order of clients by whom the person is compensated, who
 10 is licensed under Title 37, chapter 31, who rents or leases
 11 space or equipment in a cosmetological establishment as
 12 defined in 37-31-101, and who has no guarantee of minimum
 13 earnings COSMETOLOGIST WHO IS LICENSED UNDER TITLE 37,
 14 CHAPTER 31, OR A BARBER WHO IS LICENSED UNDER TITLE 37,
 15 CHAPTER 30, AND WHO HAS ACKNOWLEDGED IN WRITING THAT HE IS
 16 NOT COVERED BY UNEMPLOYMENT INSURANCE AND WORKERS'
 17 COMPENSATION AND WHO CONTRACTS WITH A COSMETOLOGICAL
 18 ESTABLISHMENT AS DEFINED IN 37-31-101 OR A BARBERSHOP AS
 19 DEFINED IN 37-30-101, WHICH CONTRACT SHALL SHOW THE
 20 COSMETOLOGIST OR BARBER IS FREE FROM ALL CONTROL AND
 21 DIRECTION OF THE OWNER IN THE CONTRACT AND IN FACT; RECEIVES
 22 PAYMENT FOR SERVICES FROM HIS OR HER INDIVIDUAL CLIENTELE;
 23 LEASES, RENTS, OR FURNISHES ALL OF HIS OR HER OWN EQUIPMENT,
 24 SKILLS, OR KNOWLEDGES; AND WHOSE CONTRACT GIVES RISE TO AN
 25 ACTION FOR BREACH OF CONTRACT IN THE EVENT OF CONTRACT

1 TERMINATION (THE EXISTENCE OF A SINGLE LICENSE FOR THE
 2 COSMETOLOGICAL ESTABLISHMENT OR BARBERSHOP SHALL NOT BE
 3 CONSTRUED AS A LACK OF FREEDOM FROM CONTROL OR DIRECTION
 4 UNDER THIS SUBSECTION); or

5 {i}(m) casual labor not in the course of an employer's
 6 trade or business performed in any calendar quarter, unless
 7 the cash remuneration paid for such service is \$50 or more
 8 and such service is performed by an individual who is
 9 regularly employed by such employer to perform such service.
 10 "Regularly employed" means the services are performed during
 11 at least 24 days in the same quarter.

12 (2) "Employment" does not include elected public
 13 officials.

14 (3) For the purposes of 39-51-203(6), the term
 15 "employment" does not apply to service performed:

16 (a) in the employ of a church or convention or
 17 association of churches or an organization which is operated
 18 primarily for religious purposes and which is operated,
 19 supervised, controlled, or principally supported by a church
 20 or convention or association of churches;

21 (b) by a duly ordained, commissioned, or licensed
 22 minister of a church in the exercise of his ministry or by a
 23 member of a religious order in the exercise of duties
 24 required by such order;

25 (c) in the employ of a school which is not an

1 institution of higher education, prior to December 31, 1977;

2 (d) in a facility conducted for the purpose of
 3 carrying out a program of rehabilitation for individuals
 4 whose earning capacity is impaired by age or physical or
 5 mental deficiency or injury or providing remunerative work
 6 for individuals who, because of their impaired physical or
 7 mental capacity, cannot be readily absorbed in the
 8 competitive labor market by an individual receiving such
 9 rehabilitation or remunerative work;

10 (e) as part of an unemployment work-relief or
 11 work-training program assisted or financed in whole or in
 12 part by a federal agency or any agency of a state or
 13 political subdivision thereof by an individual receiving
 14 such work relief or work training; or

15 (f) for a state prison or other state correctional or
 16 custodial institution by an inmate of that institution."

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

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

1 employee whose employer is bound by the Workers'
2 Compensation Act is subject to and bound by the compensation
3 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
6 election, the Workers' Compensation Act does not apply to
7 any of the following employments:

- 8 (a) household and domestic employment;
- 9 (b) casual employment as defined in 39-71-116(3)
10 except employment of a volunteer under 67-2-105;
- 11 (c) employment of members of an employer's family
12 dwelling in the employer's household;
- 13 (d) employment of sole proprietors or working members
14 of a partnership other than those who consider themselves or
15 hold themselves out as independent contractors and who are
16 not contracting for agricultural services to be performed on
17 a farm or ranch, or for broker or salesman services
18 performed under a license issued by the board of realty
19 regulation, or for services as a direct seller engaged in
20 the sale of consumer products to customers primarily in the
21 home;
- 22 (e) employment for which a rule of liability for
23 injury, occupational disease, or death is provided under the
24 laws of the United States;
- 25 (f) any person performing services in return for aid

1 or sustenance only, except employment of a volunteer under
2 67-2-105;

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

6 (h) employment as an official, including a timer,
7 referee, or judge, at a school amateur athletic event,
8 unless the person is otherwise employed by a school
9 district.

10 ~~(i) COSMETOLOGIST'S SERVICES AND BARBER'S SERVICES AS~~
11 ~~DEFINED IN 39-51-204(1)(B);~~

12 (3) A sole proprietor or working member of a
13 partnership who holds himself out or considers himself an
14 independent contractor and who is not contracting for
15 agricultural services to be performed on a farm or ranch, or
16 for broker or salesman services performed under a license
17 issued by the board of realty regulation, or for services as
18 a direct seller engaged in the sale of consumer products to
19 customers primarily in the home, ~~or for cosmetologists'~~
20 ~~services as defined in 39-51-204(1)(i),~~ OR FOR
21 COSMETOLOGIST'S SERVICES OR BARBER'S SERVICES AS DEFINED IN
22 39-51-204(1)(L) must elect to be bound personally and
23 individually by the provisions of compensation plan No. 1,
24 2, or 3, but he may apply to the division for an exemption
25 from the Workers' Compensation Act for himself. The

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

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

24 NEW SECTION. Section 3. Extension of authority. Any
 25 existing authority of the department of labor and industry

1 to make rules on the subject of the provisions of this act
 2 is extended to the provisions of this act.

-End-

STANDING COMMITTEE REPORT

SENATE

March 26, 1987..... 19 87....

MR. PRESIDENT

We, your committee on.....LABOR AND EMPLOYMENT RELATIONS.....

having had under consideration...HOUSE BILL..... No. 381.....

~~third~~ reading copy (blue color)

COSMETOLOGISTS' UNEMPLOYMENT AND WORKERS' COMPENSATION COVERAGE

GRADY (MANNING)

Respectfully report as follows: That....HOUSE BILL..... No. 381.....

be amended as follows:

1. Page 8, line 9.

Strike: ";"

Insert: "."

2. Page 8, lines 10 through 11.

Strike: subsection (I) in its entirety

3. Page 8, line 20.

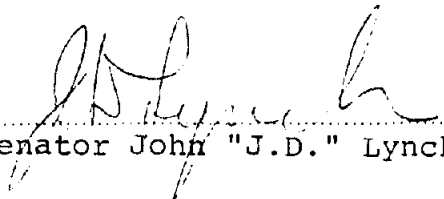
Following: "~~39-51-204 (1) (1)~~"

Insert: ", or for cosmetologist's services or barber's services as defined in 39-51-204 (1) (1)"

KMC

AND AS AMENDED,
BE CONCURRED IN
~~XXXXXX~~

~~XXXXXXXXXX~~


.....
Senator John "J.D." Lynch Chairman.

3-27-87
J.D.
11/15