

HOUSE BILL NO. 21

INTRODUCED BY MARKS, SMITH, OWENS, SWIFT, HAYNE

BY REQUEST OF GOVERNOR STEPHENS

IN THE HOUSE

DECEMBER 30, 1988	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
JANUARY 2, 1989	FIRST READING.
JANUARY 6, 1989	ON MOTION BY CHIEF SPONSOR, REPRESENTATIVES SMITH, OWENS, SWIFT, AND HAYNE ADDED AS SPONSORS.
JANUARY 20, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 21, 1989	PRINTING REPORT.
JANUARY 23, 1989	SECOND READING, DO PASS.
JANUARY 24, 1989	ENGROSSING REPORT.
JANUARY 25, 1989	THIRD READING, PASSED. AYES, 93; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 26, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
FEBRUARY 7, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
FEBRUARY 9, 1989	SECOND READING, CONCURRED IN.
FEBRUARY 11, 1989	THIRD READING, CONCURRED IN. AYES, 37; NOES, 11.
	RETURNED TO HOUSE.

FEBRUARY 13, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 21
2 INTRODUCED BY MARKS
3 BY REQUEST OF THE GOVERNOR
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT EMPLOYMENT OF
6 DEPENDENT MEMBERS OF AN EMPLOYER'S FAMILY FROM THE WORKERS'
7 COMPENSATION ACT; AMENDING SECTION 39-71-401, MCA; AND
8 PROVIDING AN EFFECTIVE DATE."
9
10 WHEREAS, section 39-71-401(2)(a), MCA, excludes
11 employment of members of an employer's family dwelling in
12 the employer's household from application of the Workers'
13 Compensation Act unless the employer elects coverage; and
14 WHEREAS, the Montana Supreme Court determined in
15 Cottrill v. State Compensation Insurance Fund, 44 St. Rep.
16 1762 (1987), that the Legislature failed to indicate a
17 legitimate state interest or objective in excluding such
18 employments from the Workers' Compensation Act and therefore
19 voided the statutory family member exemption; and
20 WHEREAS, a person has both legal and moral duties to
21 provide for the needs of members of his family who are
22 dependent upon him for support; and
23 WHEREAS, the obligation of providing workers'
24 compensation insurance for dependent family member employees
25 in addition to other family support obligations creates an

1 undue economic hardship on family employers and may
2 discourage and inhibit such employment; and
3 WHEREAS, workers' compensation insurance is duplicative
4 of other nonwork-related insurance that the family employer
5 may wish to provide for dependent members of his family; and
6 WHEREAS, the distinction between performance of normal
7 family responsibilities and "employment" for which workers'
8 compensation coverage is required is in many instances
9 difficult to determine within a family unit, and the
10 uncertainty of what constitutes family employment may result
11 in many employers being unintentionally uninsured, resulting
12 in unknown liabilities for the state compensation insurance
13 fund and the uninsured employer's fund.
14 THEREFORE, the Legislature of the State of Montana
15 finds it is reasonable and necessary to exclude from the
16 Workers' Compensation Act employment of dependent members of
17 the employer's immediate family for whom an exemption may be
18 claimed under the federal Internal Revenue Code.
19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
21 Section 1. Section 39-71-401, MCA, is amended to read:
22 "39-71-401. Employments covered and employments
23 exempted. (1) Except as provided in subsection (2) of this
24 section, the Workers' Compensation Act applies to all
25 employers as defined in 39-71-117 and to all employees as

defined in 39-71-118. 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;

(c) employment of members a dependent member of an employer's family dwelling-in-the-employer's-household for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

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

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

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the

laws of the United States;

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

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

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

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

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

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

1 (3) (a) A sole proprietor or a working member of a
2 partnership who holds himself out or considers himself an
3 independent contractor [and who is not contracting] for
4 cosmetologist's services or barber's services as defined in
5 39-51-204(1)(1) must elect to be bound personally and
6 individually by the provisions of compensation plan No. 1,
7 2, or 3, but he may apply to the division for an exemption
8 from the Workers' Compensation Act for himself.

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

13 (c) When an application is approved by the division,
14 it is conclusive as to the status of an independent
15 contractor and precludes the applicant from obtaining
16 benefits under this chapter.

17 (d) When an election of an exemption is approved by
18 the division, the election remains effective and the
19 independent contractor retains his status as an independent
20 contractor until he notifies the division of any change in
21 his status and provides a description of his present work
22 status.

23 (e) If the division denies the application for
24 exemption, the applicant may contest the denial by
25 petitioning for review of the decision by an appeals referee

1 in the manner provided for in 39-51-1109. An applicant
2 dissatisfied with the decision of the appeals referee may
3 appeal the decision in accordance with the procedure
4 established in 39-51-2403 and 39-51-2404.

5 (4) (a) A private corporation shall provide coverage
6 for its officers and other employees under the provisions of
7 compensation plan No. 1, 2, or 3. However, pursuant to such
8 rules as the division promulgates and subject in all cases
9 to approval by the division, an officer of a private
10 corporation may elect not to be bound as an employee under
11 this chapter by giving a written notice, on a form provided
12 by the division, served in the following manner:

13 (i) if the employer has elected to be bound by the
14 provisions of compensation plan No. 1, by delivering the
15 notice to the board of directors of the employer and the
16 division; or

17 (ii) if the employer has elected to be bound by the
18 provisions of compensation plan No. 2 or 3, by delivering
19 the notice to the board of directors of the employer, the
20 division, and the insurer.

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

25 (c) The appointment or election of an employee as an

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

8 (5) 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 **Section 2.** Extension of authority. Any existing
25 authority to make rules on the subject of the provisions of

1 [this act] is extended to the provisions of [this act].

2 **Section 3.** Effective date. [This act] is effective
3 July 1, 1989.

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12 the employer's household from application of the Workers'
13 Compensation Act unless the employer elects coverage; and
14 WHEREAS, the Montana Supreme Court determined in
15 Cottrill v. State Compensation Insurance Fund, 44 St. Rep.
16 1762 (1987), that the Legislature failed to indicate a
17 legitimate state interest or objective in excluding such
18 employments from the Workers' Compensation Act and therefore
19 voided the statutory family member exemption; and
20 WHEREAS, a person has both legal and moral duties to
21 provide for the needs of members of his family who are
22 dependent upon him for support; and
23 WHEREAS, the obligation of providing workers'
24 compensation insurance for dependent family member employees
25 in addition to other family support obligations creates an

1 undue economic hardship on family employers and may
2 discourage and inhibit such employment; and
3 WHEREAS, workers' compensation insurance is duplicative
4 of other nonwork-related insurance that the family employer
5 may wish to provide for dependent members of his family; and
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7 family responsibilities and "employment" for which workers'
8 compensation coverage is required is in many instances
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(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:

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- (d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);
- (e) employment of a broker or salesman performing under a license issued by the board of realty regulation;
- (f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;
- (g) employment for which a rule of liability for injury, occupational disease, or death is provided under the

laws of the United States;

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

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

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

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

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9 at the locations where notices to employees are normally
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15 business or property of a third person while the employer
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19 division, distributed through insurers or directly by the
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22 knowingly fails to post a sign as provided in this
23 subsection is subject to a \$50 fine for each citation."

24 **Section 2. Extension of authority.** Any existing
25 authority to make rules on the subject of the provisions of

1 [this act] is extended to the provisions of [this act].

2 **Section 3. Effective date.** [This act] is effective
3 July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB021, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill that would exempt employment of dependent members of an employer's family from the Workers' Compensation Act.

ASSUMPTIONS:

1. The affected volume of premium is minimal. A similar exemption was in effect until the Supreme Court decision, and insurers have only operated a short period of time under the decision.
2. Over time the premium collected for coverage of family members would cover losses incurred by family members. Therefore, there will be no net effect on the insurance carriers or employers.
3. The State Compensation Insurance Fund would be required to notify its policyholders and change its forms, instructions, letters, etc.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>Current Law</u>	<u>FY90 Proposed Law</u>	<u>Difference</u>
State Special Revenue Fund	\$ -0-	\$10,560	\$10,560



DATE

1/7/89

RAY SHACKLEFORD, BUDGET DIRECTOR
Office of Budget and Program Planning



DATE

ROBERT L. MARKS, PRIMARY SPONSOR

Fiscal Note for HB021, AS INTRODUCED

HB 21

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

HOUSE BILL NO. 21

INTRODUCED BY MARKS, SMITH, OWENS, SWIFT, HAYNE

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT EMPLOYMENT OF
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WHEREAS, section 39-71-401(2)(a), MCA, excludes
employment of members of an employer's family dwelling in
the employer's household from application of the Workers'
Compensation Act unless the employer elects coverage; and

WHEREAS, the Montana Supreme Court determined in
Cottrill v. State Compensation Insurance Fund, 44 St. Rep.
1762 (1987), that the Legislature failed to indicate a
legitimate state interest or objective in excluding such
employments from the Workers' Compensation Act and therefore
voided the statutory family member exemption; and

WHEREAS, a person has both legal and moral duties to
provide for the needs of members of his family who are
dependent upon him for support; and

WHEREAS, the obligation of providing workers'
compensation insurance for dependent family member employees
in addition to other family support obligations creates an
undue economic hardship on family employers and may

discourage and inhibit such employment; and

WHEREAS, workers' compensation insurance ~~is duplicative~~
of MAY OVERLAP COVERAGE PROVIDED UNDER other nonwork-related
insurance that the family employer may wish to provide for
dependent members of his family; and

WHEREAS, the distinction between performance of normal
family responsibilities and "employment" for which workers'
compensation coverage is required is in many instances
difficult to determine within a family unit, and the
uncertainty of what constitutes family employment may result
in many employers being unintentionally uninsured, resulting
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THEREFORE, the Legislature of the State of Montana
finds it is reasonable and necessary to exclude from the
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1 undue economic hardship on family employers and may
2 discourage and inhibit such employment; and

3 WHEREAS, workers' compensation insurance ~~is duplicative~~
4 of MAY OVERLAP COVERAGE PROVIDED UNDER other nonwork-related
5 insurance that the family employer may wish to provide for
6 dependent members of his family; and

7 WHEREAS, the distinction between performance of normal
8 family responsibilities and "employment" for which workers'
9 compensation coverage is required is in many instances
10 difficult to determine within a family unit, and the
11 uncertainty of what constitutes family employment may result
12 in many employers being unintentionally uninsured, resulting
13 in unknown liabilities for the state compensation insurance
14 fund and the uninsured employer's fund.

15 THEREFORE, the Legislature of the State of Montana
16 finds it is reasonable and necessary to exclude from the
17 Workers' Compensation Act employment of dependent members of
18 the employer's immediate family for whom an exemption may be
19 claimed under the federal Internal Revenue Code.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

23 "39-71-401. Employments covered and employments
24 exempted. (1) Except as provided in subsection (2) of this
25 section, the Workers' Compensation Act applies to all

1 employers as defined in 39-71-117 and to all employees as
 2 defined in 39-71-118. An employer who has any employee in
 3 service under any appointment or contract of hire, expressed
 4 or implied, oral or written, shall elect to be bound by the
 5 provisions of compensation plan No. 1, 2, or 3. Every
 6 employee whose employer is bound by the Workers'
 7 Compensation Act is subject to and bound by the compensation
 8 plan that has been elected by the employer.

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

- 13 (a) household and domestic employment;
- 14 (b) casual employment as defined in 39-71-116;
- 15 (c) employment of members a dependent member of an
 16 employer's family dwelling-in-the-employer's-household for
 17 whom an exemption may be claimed by the employer under the
 18 federal Internal Revenue Code;
- 19 (d) employment of sole proprietors or working members
 20 of a partnership, except as provided in subsection (3);
- 21 (e) employment of a broker or salesman performing
 22 under a license issued by the board of realty regulation;
- 23 (f) employment of a direct seller engaged in the sale
 24 of consumer products, primarily in the customer's home;
- 25 (g) employment for which a rule of liability for

1 injury, occupational disease, or death is provided under the
 2 laws of the United States;

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

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

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

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

- 23 (i) is a person who provides a newspaper with the
 24 service of delivering newspapers singly or in bundles; but
- 25 (ii) does not include an employee of the paper who,

1 incidentally to his main duties, carries or delivers papers.

2 (3) (a) A sole proprietor or a working member of a
3 partnership who holds himself out or considers himself an
4 independent contractor [and who is not contracting] for
5 cosmetologist's services or barber's services as defined in
6 39-51-204(1)(1) must elect to be bound personally and
7 individually by the provisions of compensation plan No. 1,
8 2, or 3, but he may apply to the division for an exemption
9 from the Workers' Compensation Act for himself.

10 (b) The application must be made in accordance with
11 the rules adopted by the division. The division may deny the
12 application only if it determines that the applicant is not
13 an independent contractor.

14 (c) When an application is approved by the division,
15 it is conclusive as to the status of an independent
16 contractor and precludes the applicant from obtaining
17 benefits under this chapter.

18 (d) When an election of an exemption is approved by
19 the division, the election remains effective and the
20 independent contractor retains his status as an independent
21 contractor until he notifies the division of any change in
22 his status and provides a description of his present work
23 status.

24 (e) If the division denies the application for
25 exemption, the applicant may contest the denial by

1 petitioning for review of the decision by an appeals referee
2 in the manner provided for in 39-51-1109. An applicant
3 dissatisfied with the decision of the appeals referee may
4 appeal the decision in accordance with the procedure
5 established in 39-51-2403 and 39-51-2404.

6 (4) (a) A private corporation shall provide coverage
7 for its officers and other employees under the provisions of
8 compensation plan No. 1, 2, or 3. However, pursuant to such
9 rules as the division promulgates and subject in all cases
10 to approval by the division, an officer of a private
11 corporation may elect not to be bound as an employee under
12 this chapter by giving a written notice, on a form provided
13 by the division, served in the following manner:

14 (i) if the employer has elected to be bound by the
15 provisions of compensation plan No. 1, by delivering the
16 notice to the board of directors of the employer and the
17 division; or

18 (ii) if the employer has elected to be bound by the
19 provisions of compensation plan No. 2 or 3, by delivering
20 the notice to the board of directors of the employer, the
21 division, and the insurer.

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

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

(5) 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."

NEW SECTION. **Section 2. Extension of authority.** Any

existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 1989.

-End-

1 HOUSE BILL NO. 21

2 INTRODUCED BY MARKS, SMITH, OWENS, SWIFT, HAYNE

3 BY REQUEST OF GOVERNOR STEPHENS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT EMPLOYMENT OF
6 DEPENDENT MEMBERS OF AN EMPLOYER'S FAMILY FROM THE WORKERS'
7 COMPENSATION ACT; AMENDING SECTION 39-71-401, MCA; AND
8 PROVIDING AN EFFECTIVE DATE."

9
10 WHEREAS, section 39-71-401(2)(a), MCA, excludes
11 employment of members of an employer's family dwelling in
12 the employer's household from application of the Workers'
13 Compensation Act unless the employer elects coverage; and

14 WHEREAS, the Montana Supreme Court determined in
15 Cottrill v. State Compensation Insurance Fund, 44 St. Rep.
16 1762 (1987), that the Legislature failed to indicate a
17 legitimate state interest or objective in excluding such
18 employments from the Workers' Compensation Act and therefore
19 voided the statutory family member exemption; and

20 WHEREAS, a person has both legal and moral duties to
21 provide for the needs of members of his family who are
22 dependent upon him for support; and

23 WHEREAS, the obligation of providing workers'
24 compensation insurance for dependent family member employees
25 in addition to other family support obligations creates an

1 undue economic hardship on family employers and may
2 discourage and inhibit such employment; and

3 WHEREAS, workers' compensation insurance ~~is duplicative~~
4 of MAY OVERLAP COVERAGE PROVIDED UNDER other nonwork-related
5 insurance that the family employer may wish to provide for
6 dependent members of his family; and

7 WHEREAS, the distinction between performance of normal
8 family responsibilities and "employment" for which workers'
9 compensation coverage is required is in many instances
10 difficult to determine within a family unit, and the
11 uncertainty of what constitutes family employment may result
12 in many employers being unintentionally uninsured, resulting
13 in unknown liabilities for the state compensation insurance
14 fund and the uninsured employer's fund.

15 THEREFORE, the Legislature of the State of Montana
16 finds it is reasonable and necessary to exclude from the
17 Workers' Compensation Act employment of dependent members of
18 the employer's immediate family for whom an exemption may be
19 claimed under the federal Internal Revenue Code.

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

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1 employers as defined in 39-71-117 and to all employees as
 2 defined in 39-71-118. An employer who has any employee in
 3 service under any appointment or contract of hire, expressed
 4 or implied, oral or written, shall elect to be bound by the
 5 provisions of compensation plan No. 1, 2, or 3. Every
 6 employee whose employer is bound by the Workers'
 7 Compensation Act is subject to and bound by the compensation
 8 plan that has been elected by the employer.

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

13 (a) household and domestic employment;

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

15 (c) employment of members a dependent member of an
 16 employer's family dwelling-in-the-employer's-household for
 17 whom an exemption may be claimed by the employer under the
 18 federal Internal Revenue Code;

19 (d) employment of sole proprietors or working members
 20 of a partnership, except as provided in subsection (3);

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

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

25 (g) employment for which a rule of liability for

1 injury, occupational disease, or death is provided under the
 2 laws of the United States;

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

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

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

13 (k) any person performing services as a newspaper
 14 carrier or free-lance correspondent if the person performing
 15 the services or a parent or guardian of the person
 16 performing the services in the case of a minor has
 17 acknowledged in writing that the person performing the
 18 services and the services are not covered. As used in this
 19 subsection "free-lance correspondent" is a person who
 20 submits articles or photographs for publication and is paid
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23 (i) is a person who provides a newspaper with the
 24 service of delivering newspapers singly or in bundles; but

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4 independent contractor [and who is not contracting] for
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25 exemption, the applicant may contest the denial by

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4 appeal the decision in accordance with the procedure
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7 for its officers and other employees under the provisions of
8 compensation plan No. 1, 2, or 3. However, pursuant to such
9 rules as the division promulgates and subject in all cases
10 to approval by the division, an officer of a private
11 corporation may elect not to be bound as an employee under
12 this chapter by giving a written notice, on a form provided
13 by the division, served in the following manner:

14 (i) if the employer has elected to be bound by the
15 provisions of compensation plan No. 1, by delivering the
16 notice to the board of directors of the employer and the
17 division; or

18 (ii) if the employer has elected to be bound by the
19 provisions of compensation plan No. 2 or 3, by delivering
20 the notice to the board of directors of the employer, the
21 division, and the insurer.

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

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

(5) 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."

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