

HOUSE BILL 96

Introduced by Peterson

1/09	Introduced
1/09	Referred to Labor & Employment Relations
1/10	Fiscal Note Requested
1/14	Fiscal Note Received
1/17	Fiscal Note Printed
	Died in Committee

1 House BILL NO. 96
2 INTRODUCED BY Mary Lou Peterson
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT A LOG
5 TRUCK OWNER AND OPERATOR MAY ELECT TO EXEMPT HIMSELF FROM
6 WORKERS' COMPENSATION COVERAGE IF HE IS AN INDEPENDENT
7 CONTRACTOR; AND AMENDING SECTION 39-71-401, MCA."
8

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

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

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

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

- 1 (a) household and domestic employment;
- 2 (b) casual employment as defined in 39-71-116;
- 3 (c) employment of members of an employer's family
4 dwelling in the employer's household;
- 5 (d) employment of sole proprietors or working members
6 of a partnership, except as provided in subsection (3);
- 7 (e) employment of a broker or salesman performing
8 under a license issued by the board of realty regulation;
- 9 (f) employment of a direct seller engaged in the sale
10 of consumer products, primarily in the customer's home;
- 11 (g) employment for which a rule of liability for
12 injury, occupational disease, or death is provided under the
13 laws of the United States;
- 14 (h) employment of any person performing services in
15 return for aid or sustenance only, except employment of a
16 volunteer under 67-2-105;
- 17 (i) employment with any railroad engaged in interstate
18 commerce, except that railroad construction work is included
19 in and subject to the provisions of this chapter;
- 20 (j) employment as an official, including a timer,
21 referee, or judge, at a school amateur athletic event,
22 unless the person is otherwise employed by a school
23 district;
- 24 (k) any person performing services as a newspaper
25 carrier or free-lance correspondent if the person performing

1 the services or a parent or guardian of the person
 2 performing the services in the case of a minor has
 3 acknowledged in writing that the person performing the
 4 services and the services are not covered. As used in this
 5 subsection "free-lance correspondent" is a person who
 6 submits articles or photographs for publication and is paid
 7 by the article or by the photograph. As used in this
 8 subsection "newspaper carrier":

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

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

13 (3) (a) A sole proprietor or a working member of a
 14 partnership who holds himself out as or considers himself an
 15 independent contractor [and who is not contracting] for
 16 cosmetologist's services or barber's services, as defined in
 17 39-51-204(1)(1), or a log truck owner and operator who holds
 18 himself out as or considers himself an independent
 19 contractor must elect to be bound personally and
 20 individually by the provisions of compensation plan No. 1,
 21 2, or 3, but he may apply to the division for an exemption
 22 from the Workers' Compensation Act for himself.

23 (b) The application must be made in accordance with
 24 the rules adopted by the division. The division may deny the
 25 application only if it determines that the applicant is not

1 an independent contractor.

2 (c) When an application is approved by the division,
 3 it is conclusive as to the status of an independent
 4 contractor and precludes the applicant from obtaining
 5 benefits under this chapter.

6 (d) When an election of an exemption is approved by
 7 the division, the election remains effective and the
 8 independent contractor retains his status as an independent
 9 contractor until he notifies the division of any change in
 10 his status and provides a description of his present work
 11 status.

12 (e) If the division denies the application for
 13 exemption, the applicant may contest the denial by
 14 petitioning for review of the decision by an appeals referee
 15 in the manner provided for in 39-51-1109. An applicant
 16 dissatisfied with the decision of the appeals referee may
 17 appeal the decision in accordance with the procedure
 18 established in 39-51-2403 and 39-51-2404.

19 (4) (a) A private corporation shall provide coverage
 20 for its officers and other employees under the provisions of
 21 compensation plan No. 1, 2, or 3. However, pursuant to such
 22 rules as the division promulgates and subject in all cases
 23 to approval by the division, an officer of a private
 24 corporation may elect not to be bound as an employee under
 25 this chapter by giving a written notice, on a form provided

1 by the division, served in the following manner:

2 (i) if the employer has elected to be bound by the
3 provisions of compensation plan No. 1, by delivering the
4 notice to the board of directors of the employer and the
5 division; or

6 (ii) if the employer has elected to be bound by the
7 provisions of compensation plan No. 2 or 3, by delivering
8 the notice to the board of directors of the employer, the
9 division, and the insurer.

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

14 (c) The appointment or election of an employee as an
15 officer of a corporation for the purpose of excluding the
16 employee from coverage under this chapter does not entitle
17 the officer to elect not to be bound as an employee under
18 this chapter. In any case, the officer must sign the notice
19 required by subsection (4)(a) under oath or affirmation, and
20 he is subject to the penalties for false swearing under
21 45-7-202 if he falsifies the notice.

22 (5) Each employer shall post a sign in the workplace
23 at the locations where notices to employees are normally
24 posted, informing employees about the employer's current
25 provision of compensation insurance. A workplace is any

1 location where an employee performs any work-related act in
2 the course of employment, regardless of whether the location
3 is temporary or permanent, and includes the place of
4 business or property of a third person while the employer
5 has access to or control over such place of business or
6 property for the purpose of carrying on his usual trade,
7 business, or occupation. The sign will be provided by the
8 division, distributed through insurers or directly by the
9 division, and posted by employers in accordance with rules
10 adopted by the division. An employer who purposely or
11 knowingly fails to post a sign as provided in this
12 subsection is subject to a \$50 fine for each citation."

13 NEW SECTION. **Section 2.** Extension of authority. Any
14 existing authority to make rules on the subject of the
15 provisions of [this act] is extended to the provisions of
16 [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 HB096, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 96 clarifies that a log truck owner and operator may elect to exempt himself from workers' compensation coverage if he is an independent contractor.

ASSUMPTIONS:

Under present law, a log truck owner and operator who holds himself out as or considers himself an independent contractor may apply to the division for an exemption from the Workers' Compensation Act for himself. House Bill 96 does not change anything for the log truck owner and operator; therefore, there is no fiscal impact.

FISCAL IMPACT: None

Ray Shackelford 1/13/89
RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Mary Lou Peterson 1/17/89
MARY LOU PETERSON, PRIMARY SPONSOR DATE

Fiscal Note for HB096, as introduced

HB 96