

HOUSE BILL 286

Introduced by L. Nelson, et al.

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| 1/19 | Introduced |
| 1/20 | Referred to Labor & Employment Relations |
| 1/20 | First Reading |
| 1/26 | Hearing |
| 1/28 | Tabled in Committee |

1 House BILL NO. 286
2 INTRODUCED BY Linda Nelson Rahlke
3 John Johnson NATHAN Thrist
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM WORKERS'
5 COMPENSATION COVERAGE DEVELOPMENTALLY DISABLED PERSONS
6 RECEIVING TRAINING IN FACILITIES OR CENTERS THAT PROVIDE
7 EMPLOYMENT TRAINING OR INSTRUCTION TO THOSE PERSONS; AND
8 AMENDING SECTION 39-71-401, MCA."

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

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

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

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

1 to any of the following employments:

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

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(1); or

(m) a developmentally disabled person, as defined in 52-4-101, receiving training in a facility or center that provides employment training or instruction to the person.

(3) (a) A sole proprietor or a working member of a partnership who holds-himself-out represents to the public or considers--himself is considered to be an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1,

2, or 3, but he the proprietor or member may apply to the department for an individual exemption from the Workers' Compensation Act for-himself.

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

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

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

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

(4) (a) A private corporation shall provide coverage

for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However, pursuant to rules the department promulgates and subject in all cases to approval by the department, an officer of a private corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the department, served in the following manner:

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

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

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if he the officer elects not to be 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 shall 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 the officer 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 the place of business or property for the purpose of carrying on his the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. 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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