

HOUSE BILL 296

Introduced by Driscoll

1/21	Introduced
1/21	Referred to Labor & Employment Relations
1/21	First Reading
2/02	Hearing
2/10	Committee Report--Bill Passed as Amended
2/13	2nd Reading Passed
2/16	3rd Reading Passed
	Transmitted to Senate
2/20	First Reading
2/20	Referred to Labor & Employment Relations
3/10	Tabled in Committee

1 *House* BILL NO. *296*  
 2 INTRODUCED BY *Dresliff*  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING OUT-OF-STATE  
 5 EMPLOYERS ENGAGED IN THE CONSTRUCTION INDUSTRY TO OBTAIN  
 6 WORKERS' COMPENSATION COVERAGE FOR THEIR OUT-OF-STATE  
 7 EMPLOYEES UNDER THE PROVISIONS OF MONTANA LAW; AMENDING  
 8 SECTION 39-71-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
 9 DATE."

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

12 **Section 1.** Section 39-71-402, MCA, is amended to read:

13 "39-71-402. Extraterritorial application and  
 14 reciprocity ----exception. (1) If a worker employed in this  
 15 state who is subject to the provisions of this chapter  
 16 temporarily leaves the state incidental to that employment  
 17 and receives an injury arising out of and in the course of  
 18 such employment, the provisions of this chapter ~~shall~~ apply  
 19 to ~~such the~~ worker as though he ~~the worker~~ were injured  
 20 within this state.

21 (2) If ~~Except as provided in subsection (5), if a~~  
 22 worker from another state and ~~his the worker's~~ employer from  
 23 another state are temporarily engaged in work within this  
 24 state, this chapter ~~shall~~ does not apply to them:

25 (a) if the employer and employee are bound by the

1 provisions of the workers' compensation law or similar law  
 2 of such other state which applies to them while they are in  
 3 the state of Montana; and

4 (b) if the Workers' Compensation Act of this state is  
 5 recognized and given effect as the exclusive remedy for  
 6 workers employed in this state who are injured while  
 7 temporarily employed in ~~such the~~ other state.

8 (3) A certificate from an authorized officer of the  
 9 workers' compensation department or similar agency of  
 10 another state certifying that an employer of ~~such the~~ other  
 11 state is bound by the Workers' Compensation Act of the state  
 12 and that its act will be applied to employees of the  
 13 employer while in the state of Montana ~~shall--be~~ is prima  
 14 facie evidence of the application of the workers'  
 15 compensation law of the certifying state.

16 (4) The department may, with the approval of the  
 17 governor, enter into agreements with workers' compensation  
 18 agencies of other states for the purpose of promulgating  
 19 regulations not inconsistent with the provisions of this  
 20 chapter to carry out the extraterritorial application of the  
 21 workers' compensation laws of the agreeing states.

22 (5) ~~The--provisions-of-this-section-do-not-apply-to-the~~  
 23 ~~construction-industry-as--defined--in--39-71-116.~~ Employers  
 24 from another state that are engaged in the construction  
 25 industry, as defined in 39-71-116, and that employ workers

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1 from another state shall obtain coverage for those workers  
2 under the provisions of this chapter."

3 NEW SECTION. **Section 2.** **Effective date.** [This act] is  
4 effective on passage and approval.

-End-

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

HOUSE BILL NO. 296

INTRODUCED BY DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING OUT-OF-STATE EMPLOYERS ENGAGED IN THE CONSTRUCTION INDUSTRY TO OBTAIN WORKERS' COMPENSATION COVERAGE FOR THEIR OUT-OF-STATE EMPLOYEES UNDER THE PROVISIONS OF MONTANA LAW; AMENDING SECTION SECTIONS 39-71-118 AND 39-71-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 39-71-402, MCA, is amended to read:

"39-71-402. Extraterritorial application and reciprocity ----exception. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this chapter shall apply to such the worker as though he the worker were injured within this state.

(2) If Except as provided in subsection (5), if a worker from another state and his the worker's employer from another state are temporarily engaged in work within this state, this chapter shall does not apply to them:

(a) if the employer and employee are bound by the

provisions of the workers' compensation law or similar law of such other state which applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such the other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such the other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall--be is prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

(5) The--provisions-of-this-section-do-not-apply-to-the construction-industry-as--defined--in--39-71-116- Employers from another state that are engaged in the construction industry, as defined in 39-71-116, and that employ workers

1 from another state shall obtain coverage for those workers  
 2 under the provisions of this chapter."

3 **SECTION 2. SECTION 39-71-118, MCA, IS AMENDED TO READ:**

4 "39-71-118. Employee, worker, workman, and volunteer  
 5 firefighter defined. (1) The terms "employee", "workman", or  
 6 "worker" mean:

7 (a) each person in this state, including a contractor  
 8 other than an independent contractor, who is in the service  
 9 of an employer, as defined by 39-71-117, under any  
 10 appointment or contract of hire, expressed or implied, oral  
 11 or written. The terms include aliens and minors, whether  
 12 lawfully or unlawfully employed, and all of the elected and  
 13 appointed paid public officers and officers and members of  
 14 boards of directors of quasi-public or private corporations  
 15 while rendering actual service for such the corporations for  
 16 pay. Casual employees as defined by 39-71-116 are included  
 17 as employees if they are not otherwise covered by workers'  
 18 compensation and if an employer has elected to be bound by  
 19 the provisions of the compensation law for these casual  
 20 employments, as provided in 39-71-401(2). Household or  
 21 domestic service is excluded.

22 (b) a recipient of general relief who is performing  
 23 work for a county of this state under the provisions of  
 24 53-3-303 through 53-3-305 and any juvenile performing work  
 25 under authorization of a district court judge in a

1 delinquency prevention or rehabilitation program;

2 (c) a person receiving on-the-job vocational  
 3 rehabilitation training or other on-the-job training under a  
 4 state or federal vocational training program, whether or not  
 5 under an appointment or contract of hire with an employer as  
 6 defined in this chapter and whether or not receiving payment  
 7 from a third party. However, this subsection does not apply  
 8 to students enrolled in vocational training programs as  
 9 outlined above while they are on the premises of a public  
 10 school or community college.

11 (d) students enrolled and in attendance in programs of  
 12 vocational-technical education at designated  
 13 vocational-technical centers;

14 (e) an airman or other person employed as a volunteer  
 15 under 67-2-105; or

16 (f) a person, other than a juvenile as defined in  
 17 subsection (1)(b), performing community service for a  
 18 nonprofit organization or association or for a federal,  
 19 state, or local government entity under a court order, or an  
 20 order from a hearings officer as a result of a probation or  
 21 parole violation, whether or not under appointment or  
 22 contract of hire with an employer as defined in this chapter  
 23 and whether or not receiving payment from a third party. For  
 24 a person covered by the definition in this subsection (f):

25 (i) compensation benefits must be limited to medical

1 expenses pursuant to 39-71-704 and an impairment award  
2 pursuant to 39-71-703 that is based upon the minimum wage  
3 established under Title 39, chapter 3, part 4, for a  
4 full-time employee at the time of the injury; and

5 (ii) premiums must be paid by the employer, as defined  
6 in 39-71-117(3), and must be based upon the minimum wage  
7 established under Title 39, chapter 3, part 4, for the  
8 number of hours of community service required under the  
9 order from the court or hearings officer.

10 (2) The term "volunteer firefighter" means a  
11 firefighter who is an enrolled and active member of a fire  
12 company organized and funded by a county, a rural fire  
13 district, or a fire service area.

14 (3) (a) If the employer is a partnership or sole  
15 proprietorship, such the employer may elect to include as an  
16 employee within the provisions of this chapter any member of  
17 such the partnership or the owner of the sole proprietorship  
18 devoting full time to the partnership or proprietorship  
19 business.

20 (b) In the event of such an election, the employer must  
21 serve upon the employer's insurer written notice naming the  
22 partners or sole proprietor to be covered and stating the  
23 level of compensation coverage desired by electing the  
24 amount of wages to be reported, subject to the limitations  
25 in subsection (3)(d). A partner or sole proprietor is not

1 considered an employee within this chapter until such notice  
2 has been given.

3 (c) A change in elected wages must be in writing and is  
4 effective at the start of the next quarter following  
5 notification.

6 (d) All weekly compensation benefits must be based on  
7 the amount of elected wages, subject to the minimum and  
8 maximum limitations of this subsection. For premium  
9 ratemaking and for the determination of weekly wage for  
10 weekly compensation benefits, the electing employer may  
11 elect not less than \$900 a month and not more than 1 1/2  
12 times the average weekly wage as defined in this chapter.

13 (4) The trustees of a rural fire district, a county  
14 governing body providing rural fire protection, or the  
15 county commissioners or trustees for a fire service area may  
16 elect to include as an employee within the provisions of  
17 this chapter any volunteer firefighter. A volunteer  
18 firefighter who receives workers' compensation coverage  
19 under this section may not receive disability benefits under  
20 Title 19, chapter 12.

21 (5) An ~~employee~~-workman or worker in this state whose  
22 services are furnished by a person, association, contractor,  
23 firm, or corporation, other than a temporary service  
24 contractor, to an employer as defined in 39-71-117 is  
25 presumed to be under the control and employment of the

1 employer. This presumption may be rebutted as provided in  
2 39-71-117(3).

3 (6) For purposes of this section, an "employee,  
4 workman, or worker in this state" means:

5 (a) a resident of Montana who is employed by an  
6 employer and whose employment duties are primarily carried  
7 out or controlled within this state; or

8 (b) a nonresident of Montana whose principal employment  
9 duties are conducted within this state on a regular basis  
10 for an employer; or

11 (c) a nonresident employee of an employer from another  
12 state engaged in the construction industry, as defined in  
13 39-71-116, within this state."

14 NEW SECTION. SECTION 3. SAVING CLAUSE. [THIS ACT] DOES  
15 NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES THAT  
16 WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE  
17 EFFECTIVE DATE OF THIS ACT].

18 NEW SECTION. Section 4. Effective date. [This act] is  
19 effective on passage and approval.

-End-

## HOUSE BILL NO. 296

INTRODUCED BY DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING OUT-OF-STATE EMPLOYERS ENGAGED IN THE CONSTRUCTION INDUSTRY TO OBTAIN WORKERS' COMPENSATION COVERAGE FOR THEIR OUT-OF-STATE EMPLOYEES UNDER THE PROVISIONS OF MONTANA LAW; AMENDING SECTION SECTIONS 39-71-118 AND 39-71-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 39-71-402, MCA, is amended to read:

"39-71-402. Extraterritorial application and reciprocity ----exception. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this chapter ~~shall~~ apply to ~~such the~~ worker as though he the worker were injured within this state.

(2) If Except as provided in subsection (5), if a worker from another state and his the worker's employer from another state are temporarily engaged in work within this state, this chapter ~~shall~~ does not apply to them:

(a) if the employer and employee are bound by the

provisions of the workers' compensation law or similar law of such other state which applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in ~~such the~~ other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of ~~such the~~ other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana ~~shall--be~~ is prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

(5) ~~The--provisions-of-this-section-do-not-apply-to-the construction-industry-as--defined--in--39-71-116:~~ Employers from another state that are engaged in the construction industry, as defined in 39-71-116, and that employ workers



1 from another state shall obtain coverage for those workers  
 2 under the provisions of this chapter."

3 **SECTION 2. SECTION 39-71-118, MCA, IS AMENDED TO READ:**

4 "39-71-118. Employee, worker, workman, and volunteer  
 5 firefighter defined. (1) The terms "employee", "workman", or  
 6 "worker" mean:

7 (a) each person in this state, including a contractor  
 8 other than an independent contractor, who is in the service  
 9 of an employer, as defined by 39-71-117, under any  
 10 appointment or contract of hire, expressed or implied, oral  
 11 or written. The terms include aliens and minors, whether  
 12 lawfully or unlawfully employed, and all of the elected and  
 13 appointed paid public officers and officers and members of  
 14 boards of directors of quasi-public or private corporations  
 15 while rendering actual service for such the corporations for  
 16 pay. Casual employees as defined by 39-71-116 are included  
 17 as employees if they are not otherwise covered by workers'  
 18 compensation and if an employer has elected to be bound by  
 19 the provisions of the compensation law for these casual  
 20 employments, as provided in 39-71-401(2). Household or  
 21 domestic service is excluded.

22 (b) a recipient of general relief who is performing  
 23 work for a county of this state under the provisions of  
 24 53-3-303 through 53-3-305 and any juvenile performing work  
 25 under authorization of a district court judge in a

1 delinquency prevention or rehabilitation program;

2 (c) a person receiving on-the-job vocational  
 3 rehabilitation training or other on-the-job training under a  
 4 state or federal vocational training program, whether or not  
 5 under an appointment or contract of hire with an employer as  
 6 defined in this chapter and whether or not receiving payment  
 7 from a third party. However, this subsection does not apply  
 8 to students enrolled in vocational training programs as  
 9 outlined above while they are on the premises of a public  
 10 school or community college.

11 (d) students enrolled and in attendance in programs of  
 12 vocational-technical education at designated  
 13 vocational-technical centers;

14 (e) an airman or other person employed as a volunteer  
 15 under 67-2-105; or

16 (f) a person, other than a juvenile as defined in  
 17 subsection (1)(b), performing community service for a  
 18 nonprofit organization or association or for a federal,  
 19 state, or local government entity under a court order, or an  
 20 order from a hearings officer as a result of a probation or  
 21 parole violation, whether or not under appointment or  
 22 contract of hire with an employer as defined in this chapter  
 23 and whether or not receiving payment from a third party. For  
 24 a person covered by the definition in this subsection (f):

25 (i) compensation benefits must be limited to medical

1 expenses pursuant to 39-71-704 and an impairment award  
2 pursuant to 39-71-703 that is based upon the minimum wage  
3 established under Title 39, chapter 3, part 4, for a  
4 full-time employee at the time of the injury; and

5 (ii) premiums must be paid by the employer, as defined  
6 in 39-71-117(3), and must be based upon the minimum wage  
7 established under Title 39, chapter 3, part 4, for the  
8 number of hours of community service required under the  
9 order from the court or hearings officer.

10 (2) The term "volunteer firefighter" means a  
11 firefighter who is an enrolled and active member of a fire  
12 company organized and funded by a county, a rural fire  
13 district, or a fire service area.

14 (3) (a) If the employer is a partnership or sole  
15 proprietorship, such the employer may elect to include as an  
16 employee within the provisions of this chapter any member of  
17 such the partnership or the owner of the sole proprietorship  
18 devoting full time to the partnership or proprietorship  
19 business.

20 (b) In the event of such an election, the employer must  
21 serve upon the employer's insurer written notice naming the  
22 partners or sole proprietor to be covered and stating the  
23 level of compensation coverage desired by electing the  
24 amount of wages to be reported, subject to the limitations  
25 in subsection (3)(d). A partner or sole proprietor is not

1 considered an employee within this chapter until such notice  
2 has been given.

3 (c) A change in elected wages must be in writing and is  
4 effective at the start of the next quarter following  
5 notification.

6 (d) All weekly compensation benefits must be based on  
7 the amount of elected wages, subject to the minimum and  
8 maximum limitations of this subsection. For premium  
9 ratemaking and for the determination of weekly wage for  
10 weekly compensation benefits, the electing employer may  
11 elect not less than \$900 a month and not more than 1 1/2  
12 times the average weekly wage as defined in this chapter.

13 (4) The trustees of a rural fire district, a county  
14 governing body providing rural fire protection, or the  
15 county commissioners or trustees for a fire service area may  
16 elect to include as an employee within the provisions of  
17 this chapter any volunteer firefighter. A volunteer  
18 firefighter who receives workers' compensation coverage  
19 under this section may not receive disability benefits under  
20 Title 19, chapter 12.

21 (5) An employee-workman, or worker in this state whose  
22 services are furnished by a person, association, contractor,  
23 firm, or corporation, other than a temporary service  
24 contractor, to an employer as defined in 39-71-117 is  
25 presumed to be under the control and employment of the

1 employer. This presumption may be rebutted as provided in  
2 39-71-117(3).

3 (6) For purposes of this section, an "employee,  
4 workman, or worker in this state" means:

5 (a) a resident of Montana who is employed by an  
6 employer and whose employment duties are primarily carried  
7 out or controlled within this state; or

8 (b) a nonresident of Montana whose principal employment  
9 duties are conducted within this state on a regular basis  
10 for an employer; or

11 (c) a nonresident employee of an employer from another  
12 state engaged in the construction industry, as defined in  
13 39-71-116, within this state."

14 NEW SECTION. SECTION 3. SAVING CLAUSE. [THIS ACT] DOES  
15 NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES THAT  
16 WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE  
17 EFFECTIVE DATE OF THIS ACT].

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