

HOUSE BILL 332

Introduced by Ewer

1/23	Introduced
1/23	Referred to Labor & Employment Relations
1/23	First Reading
2/02	Hearing
2/09	Tabled in Committee

1 House BILL NO. 332
 2 INTRODUCED BY [Signature]
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING
 5 VOCATIONAL-TECHNICAL CENTER STUDENTS FROM WORKERS'
 6 COMPENSATION COVERAGE; AMENDING SECTIONS 39-71-117 AND
 7 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE."
 8

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

10 **Section 1.** Section 39-71-118, MCA, is amended to read:

11 "39-71-118. **Employee, worker, workman, and volunteer**
 12 **firefighter defined.** (1) The terms "employee", "workman", or
 13 "worker" mean:

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

1 the provisions of the compensation law for these casual
 2 employments, as provided in 39-71-401(2). Household or
 3 domestic service is excluded.

4 (b) a recipient of general relief who is performing
 5 work for a county of this state under the provisions of
 6 53-3-303 through 53-3-305 and any juvenile performing work
 7 under authorization of a district court judge in a
 8 delinquency prevention or rehabilitation program;

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

18 ~~(d) students enrolled and in attendance in programs of~~
 19 ~~vocational-technical education at designated~~
 20 ~~vocational-technical centers;~~

21 ~~(f)(d)~~ an airman or other person employed as a
 22 volunteer under 67-2-105; or

23 ~~(f)(e)~~ a person, other than a juvenile as defined in
 24 subsection (1)(b), performing community service for a
 25 nonprofit organization or association or for a federal,

1 state, or local government entity under a court order, or an
 2 order from a hearings officer as a result of a probation or
 3 parole violation, whether or not under appointment or
 4 contract of hire with an employer as defined in this chapter
 5 and whether or not receiving payment from a third party. For
 6 a person covered by the definition in this subsection {f}
 7 (e):

8 (i) compensation benefits must be limited to medical
 9 expenses pursuant to 39-71-704 and an impairment award
 10 pursuant to 39-71-703 that is based upon the minimum wage
 11 established under Title 39, chapter 3, part 4, for a
 12 full-time employee at the time of the injury; and

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

18 (2) The term "volunteer firefighter" means a
 19 firefighter who is an enrolled and active member of a fire
 20 company organized and funded by a county, a rural fire
 21 district, or a fire service area.

22 (3) (a) If the employer is a partnership or sole
 23 proprietorship, such the employer may elect to include as an
 24 employee within the provisions of this chapter any member of
 25 such the partnership or the owner of the sole proprietorship

1 devoting full time to the partnership or proprietorship
 2 business.

3 (b) In the event of such an election, the employer must
 4 serve upon the employer's insurer written notice naming the
 5 partners or sole proprietor to be covered and stating the
 6 level of compensation coverage desired by electing the
 7 amount of wages to be reported, subject to the limitations
 8 in subsection (3)(d). A partner or sole proprietor is not
 9 considered an employee within this chapter until such notice
 10 has been given.

11 (c) A change in elected wages must be in writing and is
 12 effective at the start of the next quarter following
 13 notification.

14 (d) All weekly compensation benefits must be based on
 15 the amount of elected wages, subject to the minimum and
 16 maximum limitations of this subsection. For premium
 17 ratemaking and for the determination of weekly wage for
 18 weekly compensation benefits, the electing employer may
 19 elect not less than \$900 a month and not more than 1 1/2
 20 times the average weekly wage as defined in this chapter.

21 (4) The trustees of a rural fire district, a county
 22 governing body providing rural fire protection, or the
 23 county commissioners or trustees for a fire service area may
 24 elect to include as an employee within the provisions of
 25 this chapter any volunteer firefighter. A volunteer

1 firefighter who receives workers' compensation coverage
2 under this section may not receive disability benefits under
3 Title 19, chapter 12.

4 (5) An ~~employee~~^{workman} or worker in this state whose
5 services are furnished by a person, association, contractor,
6 firm, or corporation, other than a temporary service
7 contractor, to an employer as defined in 39-71-117 is
8 presumed to be under the control and employment of the
9 employer. This presumption may be rebutted as provided in
10 39-71-117(3).

11 (6) For purposes of this section, an "employee,
12 ~~workman~~ or worker in this state" means:

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

16 (b) a nonresident of Montana whose principal employment
17 duties are conducted within this state on a regular basis
18 for an employer."

19 **Section 2.** Section 39-71-117, MCA, is amended to read:

20 "39-71-117. **Employer defined.** (1) "Employer" means:

21 (a) the state and each county, city and county, city
22 school district, irrigation district, all other districts
23 established by law, and all public corporations and
24 quasi-public corporations and public agencies therein and
25 every person, every prime contractor, and every firm,

1 voluntary association, and private corporation, including
2 any public service corporation and including an independent
3 contractor who has any person in service under any
4 appointment or contract of hire, expressed or implied, oral
5 or written, and the legal representative of any deceased
6 employer or the receiver or trustee thereof;

7 (b) any association, corporation, or organization that
8 seeks permission and meets the requirements set by the
9 department by rule for a group of individual employers to
10 operate as self-insured under plan No. 1 of this chapter;
11 and

12 (c) any nonprofit association or corporation or other
13 entity funded in whole or in part by federal, state, or
14 local government funds that places community service
15 participants, as defined in 39-71-118~~(f)~~^{(1)(e)}, with
16 nonprofit organizations or associations or federal, state,
17 or local government entities.

18 (2) A temporary service contractor is the employer of a
19 temporary worker for premium and loss experience purposes.

20 (3) An employer defined in subsection (1) who utilizes
21 the services of a worker furnished by another person,
22 association, contractor, firm, or corporation, other than a
23 temporary service contractor, is presumed to be the employer
24 for workers' compensation premium and loss experience
25 purposes for work performed by the worker. The presumption

1 may be rebutted by substantial credible evidence of the
2 following:

3 (a) the person, association, contractor, firm, or
4 corporation, other than a temporary service contractor,
5 furnishing the services of a worker to another retains
6 control over all aspects of the work performed by the
7 worker, both at the inception of employment and during all
8 phases of the work; and

9 (b) the person, association, contractor, firm, or
10 corporation, other than a temporary service contractor,
11 furnishing the services of a worker to another has obtained
12 workers' compensation insurance for the worker in Montana
13 both at the inception of employment and during all phases of
14 the work performed.

15 (4) Notwithstanding the provisions of subsection (3), a
16 common or contract motor carrier doing business in this
17 state who utilizes drivers in this state is considered the
18 employer, is liable for workers' compensation premiums, and
19 is subject to loss experience rating in this state unless:

20 (a) the driver in this state is certified as an
21 independent contractor as provided in 39-71-401(3); or

22 (b) the person, association, contractor, firm, or
23 corporation furnishing drivers in this state to a motor
24 carrier has obtained workers' compensation insurance on the
25 drivers in Montana both at the inception of employment and

1 during all phases of the work performed."

2 NEW SECTION. **Section 3.** Code commissioner instruction.
3 Wherever the term "workman" appears in Title 39, chapter 71,
4 or in legislation enacted by the 1993 legislature that is
5 intended to be codified in Title 39, chapter 71, the code
6 commissioner shall change the term to "worker" or delete the
7 term and shall make appropriate changes in grammar.

8 NEW SECTION. **Section 4.** Effective date. [This act] is
9 effective July 1, 1993.

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