

HOUSE BILL 455

Introduced by Elliott, et al.

2/03	Introduced
2/03	Referred to House Select Committee on Workers' Compensation
2/03	First Reading
2/10	Hearing
3/13	Committee Report--Bill Passed
3/24	2nd Reading Do Pass Motion Failed
3/25	Reconsidered Previous Action
3/30	2nd Reading Do Pass Motion Failed

1 House BILL NO. 455
2 INTRODUCED BY [Signature]
3 [Signature]
4 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING WORKERS'
5 COMPENSATION INSURANCE COVERAGE OPTIONAL; RESTORING
6 COMMON-LAW REMEDIES FOR INJURED WORKERS OF EMPLOYERS NOT
7 PROVIDING WORKERS' COMPENSATION COVERAGE; LIMITING
8 COMMON-LAW DEFENSES OF EMPLOYERS NOT PROVIDING WORKERS'
9 COMPENSATION COVERAGE; AMENDING SECTIONS 39-71-401 AND
10 39-71-2905, MCA; AND REPEALING SECTIONS 39-71-501,
11 39-71-502, 39-71-503, 39-71-504, 39-71-505, 39-71-506,
12 39-71-507, 39-71-508, 39-71-509, 39-71-510, 39-71-511,
13 39-71-515, 39-71-516, 39-71-517, 39-71-518, AND 39-71-519,
14 MCA."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 NEW SECTION. Section 1. Withdrawal or waiver of
18 workers' compensation coverage by employer. (1) An employer
19 beginning a business or an employer covered by the Workers'
20 Compensation Act may elect not to operate under the workers'
21 compensation coverage system. An electing employer shall
22 give written notice to the department or to the employer's
23 insurer, who shall give notice of the employer's withdrawal
24 to the department. The employer shall, within 15 days of
25 giving notice to the department or insurer, notify affected

1 employees of the election, and an employer beginning a
2 business shall give notice to the department prior to hiring
3 any employees that would be affected by the election.

4 (2) The notice must include a statement certifying the
5 date that notice of the employer's election to carry on
6 business without workers' compensation coverage was provided
7 to affected employees.

8 NEW SECTION. Section 2. Notice to employees. (1) An
9 employer electing to operate without workers' compensation
10 coverage shall notify each affected employee of that
11 decision and shall obtain from each affected employee
12 written acknowledgment that the employee received the
13 notice.

14 (2) The employer shall notify a prospective employee of
15 the existence or absence of workers' compensation coverage
16 and shall obtain written acknowledgment from the prospective
17 employee that the prospective employee received the notice.

18 (3) An employer who obtains workers' compensation
19 coverage or whose coverage is terminated or canceled shall
20 notify each affected employee that coverage has been
21 obtained, terminated, or canceled and shall obtain from each
22 affected employee written acknowledgment that the employee
23 received the notice.

24 (4) Each employer shall post in the employer's place of
25 business a notice as to whether or not the employer has

workers' compensation coverage. The employer shall revise the notice whenever the information it contains is revised.

(5) The notice required by subsection (4) must be posted at conspicuous locations at the employer's place of business as necessary to provide reasonable notice to employees. The department may adopt rules relating to the form and content of the notice.

NEW SECTION. Section 3. Common-law defenses -- burden of proof. (1) In an action against an employer that does not have workers' compensation coverage to recover damages for personal injuries or death sustained by an employee in the course and scope of employment, it is not a defense that:

(a) the employee was guilty of contributory negligence;

(b) the employee assumed the risk of the injury or death; or

(c) the injury or death was caused by the negligence of a fellow employee.

(2) The employer may defend the action on the grounds that the injury or death was caused by an intentional act of the employee to bring about the injury or death or while the employee was under the influence of drugs or alcohol.

(3) In all actions against an employer that does not have workers' compensation coverage, it is necessary to a recovery for the plaintiff to prove negligence by the employer or by an employee or agent of the employer acting

within the general scope of employment.

Section 4. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in [section 1] and subsection (2) of this section, the Workers' Compensation Act applies to all 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. Each 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 a dependent member of an employer's family 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 salesperson

1 performing under a license issued by the board of realty
2 regulation;

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

5 (g) employment for which a rule of liability for
6 injury, occupational disease, or death is provided under the
7 laws of the United States;

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

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

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

18 (k) any person performing services as a newspaper
19 carrier or free-lance correspondent if the person performing
20 the services or a parent or guardian of the person
21 performing the services in the case of a minor has
22 acknowledged in writing that the person performing the
23 services and the services are not covered. As used in this
24 subsection, "free-lance correspondent" is a person who
25 submits articles or photographs for publication and is paid

1 by the article or by the photograph. As used in this
2 subsection (k), "newspaper carrier":

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

5 (ii) does not include an employee of the paper who,
6 incidentally to his the person's main duties, carries or
7 delivers papers.

8 (1) cosmetologist's services and barber's services as
9 defined in 39-51-204(1)(1).

10 (3) (a) A sole proprietor or a working member of a
11 partnership who holds-himself-out represents to the public
12 that the person is or considers-himself who is considered an
13 independent contractor shall elect to be bound personally
14 and individually by the provisions of compensation plan No.
15 1, 2, or 3, but he the person may apply to the department
16 for an a personal exemption from the Workers' Compensation
17 Act for-himself.

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

22 (c) When an application is approved by the department,
23 it is conclusive as to the status of an independent
24 contractor and precludes the applicant from obtaining
25 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 notifies the department is notified of any change in his the person's status and provides is provided with a description of his the person's 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 the person is subject to the penalties for false swearing under 45-7-202 if he the person 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

1 has access to or control over the place of business or
 2 property for the purpose of carrying on his the employer's
 3 usual trade, business, or occupation. The sign must be
 4 provided by the department, distributed through insurers or
 5 directly by the department, and posted by employers in
 6 accordance with rules adopted by the department. An employer
 7 who purposely or knowingly fails to post a sign as provided
 8 in this subsection is subject to a \$50 fine for each
 9 citation."

10 **Section 5.** Section 39-71-2905, MCA, is amended to read:

11 "39-71-2905. Petition to workers' compensation judge. A
 12 claimant or an insurer who has a dispute concerning any
 13 benefits under chapter 71 of this title may petition the
 14 workers' compensation judge for a determination of the
 15 dispute after satisfying dispute resolution requirements
 16 otherwise provided in this chapter. The judge, after a
 17 hearing, shall make a determination of the dispute in
 18 accordance with the law as set forth in chapter 71 of this
 19 title. If the dispute relates to benefits due a claimant
 20 under chapter 71, the judge shall fix and determine any
 21 benefits to be paid and specify the manner of payment. After
 22 parties have satisfied dispute resolution requirements
 23 provided elsewhere in this chapter, the workers'
 24 compensation judge has exclusive jurisdiction to make
 25 determinations concerning disputes under chapter 71, except

1 as provided in 39-71-317 and ~~39-71-516~~. The penalties and
 2 assessments allowed against an insurer under chapter 71 are
 3 the exclusive penalties and assessments that can be assessed
 4 by the workers' compensation judge against an insurer for
 5 disputes arising under chapter 71."

6 **NEW SECTION. Section 6.** Dispersal of money in
 7 uninsured employers' fund. All money in the uninsured
 8 employers' fund created by former 39-71-502, must go toward
 9 the payment of the unfunded liability of the old fund of the
 10 state compensation mutual insurance fund.

11 **NEW SECTION. Section 7. Repealer.** Sections 39-71-501,
 12 39-71-502, 39-71-503, 39-71-504, 39-71-505, 39-71-506,
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 14 39-71-515, 39-71-516, 39-71-517, 39-71-518, and 39-71-519,
 15 MCA, are repealed.

16 **NEW SECTION. Section 8. Codification instruction.**
 17 [Sections 1 through 3] are intended to be codified as an
 18 integral part of Title 39, chapter 71, and the provisions of
 19 Title 39, chapter 71, apply to [sections 1 through 3].

-End-

workers' compensation coverage. The employer shall revise the notice whenever the information it contains is revised.

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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 salesperson

1 performing under a license issued by the board of realty
2 regulation;

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4 of consumer products, primarily in the customer's home;

5 (g) employment for which a rule of liability for
6 injury, occupational disease, or death is provided under the
7 laws of the United States;

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9 return for aid or sustenance only, except employment of a
10 volunteer under 67-2-105;

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12 commerce, except that railroad construction work is included
13 in and subject to the provisions of this chapter;

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15 referee, or judge, at a school amateur athletic event,
16 unless the person is otherwise employed by a school
17 district;

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19 carrier or free-lance correspondent if the person performing
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as provided in 39-71-317 and ~~39-71-516~~. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71."

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NEW SECTION. Section 8. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 through 3].

-End-