

HOUSE BILL 470

Introduced by Driscoll

2/04	Introduced
2/04	Referred to House Select Committee on Workers' Compensation
2/04	First Reading
2/04	Fiscal Note Requested
2/10	Hearing
2/10	Fiscal Note Received
2/10	Fiscal Note Printed
2/18	Committee Report--Bill Passed as Amended
2/20	2nd Reading Passed
2/23	3rd Reading Passed
	Transmitted to Senate
3/01	First Reading
3/01	Referred to Labor & Employment Relations
3/16	Hearing
3/19	Committee Report--Bill Concurred as Amended
3/22	Revised Fiscal Note Requested
3/23	2nd Reading Concur Motion Failed
3/23	2nd Reading Indefinitely Postponed
3/24	Motion Failed to Reconsider Previous Action

1 House BILL NO. 470
2 INTRODUCED BY Driscoll
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WORKERS'
5 COMPENSATION COVERAGE FOR INDEPENDENT CONTRACTORS, SOLE
6 PROPRIETORS, AND WORKING MEMBERS OF A PARTNERSHIP WHEN ANY
7 OF THESE PERSONS ARE ENGAGED IN A CONSTRUCTION INDUSTRY;
8 CREATING REMEDIES FOR FAILURE TO PROVIDE COVERAGE; AND
9 AMENDING SECTION 39-71-401, MCA."

10

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

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

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

24 (2) Unless the employer elects coverage for these
25 employments under this chapter and an insurer allows such an

1 election, the Workers' Compensation Act does not apply to
2 any of the following employments:

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

1 district;

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

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

14 (ii) does not include an employee of the paper who,
15 incidentally to his the employee's main duties, carries or
16 delivers papers.

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

19 (3) (a) A sole proprietor or a working member of a
20 partnership who ~~holds--himself--out--or--considers-himself~~
21 represents to the public to be an independent contractor and
22 who is contracting for construction industry services shall
23 elect to be bound personally and individually by the
24 provisions of compensation plan No. 1, 2, or 3, ~~but he may~~
25 or shall apply to the department for an a personal exemption

1 from the Workers' Compensation Act ~~for-himself~~.

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

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

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

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

23 (4) (a) A private corporation shall provide coverage
24 for its officers and other employees under the provisions of
25 compensation plan No. 1, 2, or 3. However, pursuant to rules

1 the department promulgates and subject in all cases to
 2 approval by the department, an officer of a private
 3 corporation may elect not to be bound as an employee under
 4 this chapter by giving a written notice, on a form provided
 5 by the department, served in the following manner:

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

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

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

18 (c) The appointment or election of an employee as an
 19 officer of a corporation for the purpose of excluding the
 20 employee from coverage under this chapter does not entitle
 21 the officer to elect not to be bound as an employee under
 22 this chapter. In any case, the officer shall sign the notice
 23 required by subsection (4)(a) under oath or affirmation, and
 24 he is subject to the penalties for false swearing under
 25 45-7-202 if he the officer falsifies the notice.

1 (5) Each employer shall post a sign in the workplace at
 2 the locations where notices to employees are normally
 3 posted, informing employees about the employer's current
 4 provision of compensation insurance. A workplace is any
 5 location where an employee performs any work-related act in
 6 the course of employment, regardless of whether the location
 7 is temporary or permanent, and includes the place of
 8 business or property of a third person while the employer
 9 has access to or control over the place of business or
 10 property for the purpose of carrying on his the employer's
 11 usual trade, business, or occupation. The sign must be
 12 provided by the department, distributed through insurers or
 13 directly by the department, and posted by employers in
 14 accordance with rules adopted by the department. An employer
 15 who purposely or knowingly fails to post a sign as provided
 16 in this subsection is subject to a \$50 fine for each
 17 citation."

18 NEW SECTION. Section 2. Remedies for failure to
 19 provide coverage -- construction industry. (1) The
 20 department shall, within 5 working days after receiving a
 21 complaint, investigate the complaint and apply the remedy as
 22 provided in 39-71-507(1) against an uninsured employer or a
 23 sole proprietor or a working member of a partnership who:

24 (a) represents to the public to be an independent
 25 contractor; and

1 (b) has contracted for construction industry services
2 and:

3 (i) has not elected to be bound personally and
4 individually by the provisions of compensation plan No. 1,
5 2, or 3; or

6 (ii) has not obtained a personal exemption from the
7 Workers' Compensation Act.

8 (2) This section does not preclude the department from
9 applying other remedies in Title 39, chapter 71, part 5, to
10 independent contractors.

11 NEW SECTION. **Section 3.** Codification instruction.
12 [Section 2] is intended to be codified as an integral part
13 of Title 39, chapter 71, and the provisions of Title 39,
14 chapter 71, apply to [section 2].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0470, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

Clarifying workers' compensation coverage for independent contractors, sole proprietors, and working members of a partnership when engaged in a construction industry; creating remedies for failure to provide coverage.

ASSUMPTIONS:

Department of Labor:

1. The majority of independent contractors are in the construction industry. The level of investigations in the construction industry has historically been relatively high.
2. The term "investigate" is interpreted to mean a telephone inquiry of the entity against which the complaint has been lodged and a computer screen determination of the existence of insurance coverage for that entity. "Complaint" is assumed to be a formal written complaint received by the department; anonymous or telephone complaints are excluded in this definition.
3. 1.00 FTE compliance specialist II (grade 12) would be required, as well as telephone and associated travel costs for cases requiring on-site investigation. Operating costs for the investigations work unit are comparable to the work activity of the Compliance Specialist II required by this proposed legislation. One-time start up costs for this position include office equipment and a PC.
4. Funding for department costs would be 50% from the workers' compensation assessment and 50% from the uninsured employers fund. The assumption implicit in the funding mix is that 50% of the investigations would be attributable to uninsured employers.

State Compensation Mutual Insurance Fund:

1. Most independent contractors will apply for a personal exemption from the workers' compensation act rather than electing to be bound by the provisions of compensation plans 1-3. Some contractors may choose to insure with the State Fund.

FISCAL IMPACT:

(continued)

Dave Lewis 2-10-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Jerry Driscoll 2-10-93
JERRY DRISCOLL, PRIMARY SPONSOR DATE

Fiscal Note for HB0470, as introduced

HB470

FISCAL IMPACT:

Department of Labor and Industry (Pg 04)

Expenditures:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	60.55	61.55	1.00	60.55	61.55	1.00
Personal Services	1,813,414	1,839,684	26,270	1,817,143	1,843,893	26,750
Operating Expenses	943,410	956,106	12,696	926,413	937,559	11,146
Equipment	87,020	91,520	4,500	87,020	87,020	0
Benefits	<u>1,628,827</u>	<u>1,628,827</u>	<u>0</u>	<u>1,769,827</u>	<u>1,769,827</u>	<u>0</u>
Total	4,472,671	4,516,137	43,466	4,600,403	4,638,299	37,896

Funding:

General Fund	348,118	348,118	0	319,589	319,589	0
State Special Revenue	1,723,306	1,745,039	21,733	1,722,779	1,741,727	18,948
Federal Revenue	635,365	635,365	0	632,662	632,662	0
Proprietary Revenue	<u>1,765,882</u>	<u>1,787,615</u>	<u>21,733</u>	<u>1,925,373</u>	<u>1,944,321</u>	<u>18,948</u>
Total	4,472,671	4,516,137	43,466	4,600,403	4,638,299	37,896

State Compensation Mutual Insurance Fund

Inestimable but likely to be negligible.

APPROVED BY THE SELECT COMMITTEE
ON WORKER'S COMP.

HOUSE BILL NO. 470
INTRODUCED BY DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WORKERS' COMPENSATION COVERAGE FOR INDEPENDENT CONTRACTORS, SOLE PROPRIETORS, AND WORKING MEMBERS OF A PARTNERSHIP WHEN ANY OF THESE PERSONS ARE ENGAGED IN A CONSTRUCTION INDUSTRY; CREATING REMEDIES FOR FAILURE TO PROVIDE COVERAGE; AND AMENDING SECTION 39-71-401, MCA."

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

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

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), 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 performing under a license issued by the board of realty regulation;
- (f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;
- (g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
- (h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
- (i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;
- (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school

1 district;

2 (k) any person performing services as a newspaper
3 carrier or free-lance correspondent if the person performing
4 the services or a parent or guardian of the person
5 performing the services in the case of a minor has
6 acknowledged in writing that the person performing the
7 services and the services are not covered. As used in this
8 subsection, "free-lance correspondent" is a person who
9 submits articles or photographs for publication and is paid
10 by the article or by the photograph. As used in this
11 subsection, "newspaper carrier":
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13 (i) is a person who provides a newspaper with the
14 service of delivering newspapers singly or in bundles; but
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16 (ii) does not include an employee of the paper who,
17 incidentally to his the employee's main duties, carries or
18 delivers papers.

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

21 (3) (a) (I) A sole proprietor or a working member of a
22 partnership who holds--himself--out--or--considers-himself
23 represents to the public to be an independent contractor and
24 who-is-contracting-for-construction-industry-services shall
25 elect to be bound personally and individually by the
provisions of compensation plan No. 1, 2, or 3, but he may
or shall apply to the department for an a personal exemption

1 from the Workers' Compensation Act for-himself.

2 (II) A SOLE PROPRIETOR OR WORKING MEMBER OF A
3 PARTNERSHIP WHO REPRESENTS TO THE PUBLIC TO BE AN
4 INDEPENDENT CONTRACTOR AND WHO IS IN THE CONSTRUCTION
5 INDUSTRY SHALL ELECT TO BE BOUND PERSONALLY AND INDIVIDUALLY
6 BY THE PROVISIONS OF COMPENSATION PLAN NO. 1, 2, OR 3.

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

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

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

21 (e) If the department denies the application for
22 exemption, the applicant may contest the denial by
23 petitioning for review of the decision by an appeals referee
24 in the manner provided for in 39-51-1109. An applicant
25 dissatisfied with the decision of the appeals referee may

1 appeal the decision in accordance with the procedure
2 established in 39-51-2403 and 39-51-2404.

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

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

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

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

23 (c) The appointment or election of an employee as an
24 officer of a corporation for the purpose of excluding the
25 employee from coverage under this chapter does not entitle

1 the officer to elect not to be bound as an employee under
2 this chapter. In any case, the officer shall sign the notice
3 required by subsection (4)(a) under oath or affirmation, and
4 he is subject to the penalties for false swearing under
5 45-7-202 if he the officer falsifies the notice.

6 (5) Each employer shall post a sign in the workplace at
7 the locations where notices to employees are normally
8 posted, informing employees about the employer's current
9 provision of compensation insurance. A workplace is any
10 location where an employee performs any work-related act in
11 the course of employment, regardless of whether the location
12 is temporary or permanent, and includes the place of
13 business or property of a third person while the employer
14 has access to or control over the place of business or
15 property for the purpose of carrying on his the employer's
16 usual trade, business, or occupation. The sign must be
17 provided by the department, distributed through insurers or
18 directly by the department, and posted by employers in
19 accordance with rules adopted by the department. An employer
20 who purposely or knowingly fails to post a sign as provided
21 in this subsection is subject to a \$50 fine for each
22 citation."

23 NEW SECTION. Section 2. Remedies for failure to
24 provide coverage -- construction industry. (1) The
25 department shall, within 5 working days after receiving a

1 complaint, investigate the complaint and apply the remedy as
2 provided in 39-71-507(1) against an uninsured employer or a
3 sole proprietor or a working member of a partnership who:

4 (a) represents to the public to be an independent
5 contractor; and

6 (b) has contracted for construction industry services
7 and:

8 {i} has not elected, AS REQUIRED, to be bound
9 personally and individually by the provisions of
10 compensation plan No. 1, 2, or 3; or

11 {ii} ~~has not obtained a personal exemption from the~~
12 ~~Workers' Compensation Act.~~

13 (2) This section does not preclude the department from
14 applying other remedies in Title 39, chapter 71, part 5, to
15 independent contractors.

16 NEW SECTION. Section 3. Codification instruction.

17 [Section 2] is intended to be codified as an integral part
18 of Title 39, chapter 71, and the provisions of Title 39,
19 chapter 71, apply to [section 2].

-End-

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2 INTRODUCED BY DRISCOLL

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24 (2) Unless the employer elects coverage for these
25 employments under this chapter and an insurer allows such an

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2 (II) A SOLE PROPRIETOR OR WORKING MEMBER OF A
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16 NEW SECTION. Section 3. Codification instruction.
17 [Section 2] is intended to be codified as an integral part
18 of Title 39, chapter 71, and the provisions of Title 39,
19 chapter 71, apply to [section 2].

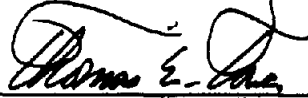
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 470 (first reading copy -- blue), respectfully report that House Bill No. 470 be amended as follows and as so amended be concurred in.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Title, line 8.
Strike: "AND"

2. Title, line 9.
Following: "MCA"
Insert: "; AND PROVIDING AN APPLICABILITY DATE"

3. Page 7, line 20.
Following: line 19
Insert: "NEW SECTION. Section 4. Applicability --
exemption. (1) [This act] does not apply to any
construction project bid by an employer prior to October 1,
1993.
(2) Notwithstanding any other provisions of [this act], an
independent contractor may apply to the department of labor and
industry for an exemption from [this act] in the manner provided
for in 39-71-401 if the independent contractor can demonstrate,
on a quarterly basis, proof of insurance that provides
compensation and benefits providing coverage for medical claims
and loss of wages resulting from injuries and occupational
disease that is comparable, as defined by department rule, to the
coverage provided under Title 39, chapters 71 and 72."

-END-