

SENATE BILL NO. 256
INTRODUCED BY SWYSGOOD

IN THE SENATE

JANUARY 26, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 10, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 11, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 12, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 16, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 30, 1993	THIRD READING, CONCURRED IN. AYES, 100; NOES, 0.
MARCH 31, 1993	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 5, 1993	RECEIVED FROM HOUSE.
	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 6, 1993	THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *256*
2 INTRODUCED BY *Swygand*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING A NONRESIDENT
5 DRIVER WHO IS DISPATCHED FROM THIS STATE AND WHO WORKS FOR A
6 MOTOR CARRIER BASED IN THIS STATE AS AN "EMPLOYEE OR WORKER
7 IN THIS STATE"; AND AMENDING SECTIONS 39-71-117 AND
8 39-71-118, MCA."

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

11 **Section 1.** Section 39-71-117, MCA, is amended to read:

12 **"39-71-117. Employer defined.** (1) "Employer" means:

13 (a) the state and each county, city and county, city
14 school district, irrigation district, all other districts
15 established by law, and all public corporations and
16 quasi-public corporations and public agencies therein and
17 every person, every prime contractor, and every firm,
18 voluntary association, and private corporation, including
19 any public service corporation and including an independent
20 contractor who has any person in service under any
21 appointment or contract of hire, expressed or implied, oral
22 or written, and the legal representative of any deceased
23 employer or the receiver or trustee thereof;

24 (b) any association, corporation, or organization that
25 seeks permission and meets the requirements set by the

1 department by rule for a group of individual employers to
2 operate as self-insured under plan No. 1 of this chapter;
3 and

4 (c) any nonprofit association or corporation or other
5 entity funded in whole or in part by federal, state, or
6 local government funds that places community service
7 participants, as defined in 39-71-118(1)(f), with nonprofit
8 organizations or associations or federal, state, or local
9 government entities.

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

12 (3) An employer defined in subsection (1) who utilizes
13 the services of a worker furnished by another person,
14 association, contractor, firm, or corporation, other than a
15 temporary service contractor, is presumed to be the employer
16 for workers' compensation premium and loss experience
17 purposes for work performed by the worker. The presumption
18 may be rebutted by substantial credible evidence of the
19 following:

20 (a) the person, association, contractor, firm, or
21 corporation, other than a temporary service contractor,
22 furnishing the services of a worker to another retains
23 control over all aspects of the work performed by the
24 worker, both at the inception of employment and during all
25 phases of the work; and

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

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

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

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 2. Section 39-71-118, MCA, is amended to read:

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

(a) each person in this state, including a contractor other than an independent contractor, who is in the service

of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for ~~such~~ the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

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

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as

1 outlined above in this subsection while they are on the
2 premises of a public school or community college.

3 (d) students enrolled and in attendance in programs of
4 vocational-technical education at designated
5 vocational-technical centers;

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

8 (f) a person, other than a juvenile as defined in
9 subsection (1)(b), performing community service for a
10 nonprofit organization or association or for a federal,
11 state, or local government entity under a court order, or an
12 order from a hearings officer as a result of a probation or
13 parole violation, whether or not under appointment or
14 contract of hire with an employer as defined in this chapter
15 and whether or not receiving payment from a third party. For
16 a person covered by the definition in this subsection (f):

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

22 (ii) premiums must be paid by the employer, as defined
23 in 39-71-117(3), and must be based upon the minimum wage
24 established under Title 39, chapter 3, part 4, for the
25 number of hours of community service required under the

1 order from the court or hearings officer.

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

6 (3) (a) If the employer is a partnership or sole
7 proprietorship, such the employer may elect to include as an
8 employee within the provisions of this chapter any member of
9 such the partnership or the owner of the sole proprietorship
10 devoting full time to the partnership or proprietorship
11 business.

12 (b) In the event of such an election, the employer must
13 serve upon the employer's insurer written notice naming the
14 partners or sole proprietor to be covered and stating the
15 level of compensation coverage desired by electing the
16 amount of wages to be reported, subject to the limitations
17 in subsection (3)(d). A partner or sole proprietor is not
18 considered an employee within this chapter until such notice
19 has been given.

20 (c) A change in elected wages must be in writing and is
21 effective at the start of the next quarter following
22 notification.

23 (d) All weekly compensation benefits must be based on
24 the amount of elected wages, subject to the minimum and
25 maximum limitations of this subsection. For premium

1 ratemaking and for the determination of weekly wage for
2 weekly compensation benefits, the electing employer may
3 elect not less than \$900 a month and not more than 1 1/2
4 times the average weekly wage as defined in this chapter.

5 (4) The trustees of a rural fire district, a county
6 governing body providing rural fire protection, or the
7 county commissioners or trustees for a fire service area may
8 elect to include as an employee within the provisions of
9 this chapter any volunteer firefighter. A volunteer
10 firefighter who receives workers' compensation coverage
11 under this section may not receive disability benefits under
12 Title 19, chapter 12.

13 (5) An employee-~~workman~~, or worker in this state whose
14 services are furnished by a person, association, contractor,
15 firm, or corporation, other than a temporary service
16 contractor, to an employer as defined in 39-71-117 is
17 presumed to be under the control and employment of the
18 employer. This presumption may be rebutted as provided in
19 39-71-117(3).

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

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

25 (b) a nonresident of Montana whose principal employment

1 duties are conducted within this state on a regular basis
2 for an employer; or

3 (c) a nonresident of Montana who is employed as a
4 driver by an interstate common or contract motor carrier
5 based in and doing business in this state, whose employment
6 duties are controlled from Montana by the motor carrier, and
7 who is dispatched from this state."

8 NEW SECTION. Section 3. Code commissioner instruction.

9 Wherever the term "workman" appears in Title 39, chapter 71,
10 or in legislation enacted by the 1993 legislature that is
11 intended to be codified in Title 39, chapter 71, the code
12 commissioner shall change the term to "worker" or delete the
13 term and make appropriate changes in grammar.

-End-

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONSSENATE BILL NO. 256
INTRODUCED BY SWYSGOOD

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING A NONRESIDENT DRIVER-~~WHO-IS-DISPATCHED-FROM-THIS-STATE-AND-WHO-WORKS-FOR-A~~ MOTOR-~~CARRIER-BASED-IN-THIS-STATE~~ AS AN "EMPLOYEE OR WORKER IN THIS STATE"; PROVIDING FOR ELECTION OF COVERAGE FOR CERTAIN NONRESIDENTS; AND AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 39-71-117, MCA, is amended to read:**"39-71-117. Employer defined.** (1) "Employer" means:

(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof;

(b) any association, corporation, or organization that

seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

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

(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

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

1 phases of the work; and

2 (b) the person, association, contractor, firm, or
3 corporation, other than a temporary service contractor,
4 furnishing the services of a worker to another has obtained
5 workers' compensation insurance for the worker in Montana
6 both at the inception of employment and during all phases of
7 the work performed.

8 (4) Notwithstanding the provisions of subsection (3), a
9 an interstate or intrastate common or contract motor carrier
10 doing business in this state who utilizes drivers in this
11 state is considered the employer, is liable for workers'
12 compensation premiums, and is subject to loss experience
13 rating in this state unless:

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

16 (b) the person, association, contractor, firm, or
17 corporation furnishing drivers in this state to a motor
18 carrier has obtained workers' compensation insurance on the
19 drivers in Montana both at the inception of employment and
20 during all phases of the work performed."

21 **Section 2.** Section 39-71-118, MCA, is amended to read:

22 "39-71-118. **Employee, worker, workman, and volunteer**
23 **firefighter defined.** (1) The terms term "employee",
24 "workman", or "worker" mean means:

25 (a) each person in this state, including a contractor

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

15 (b) a recipient of general relief who is performing
16 work for a county of this state under the provisions of
17 53-3-303 through 53-3-305 and any juvenile performing work
18 under authorization of a district court judge in a
19 delinquency prevention or rehabilitation program;

20 (c) a person receiving on-the-job vocational
21 rehabilitation training or other on-the-job training under a
22 state or federal vocational training program, whether or not
23 under an appointment or contract of hire with an employer as
24 defined in this chapter and whether or not receiving payment
25 from a third party. However, this subsection does not apply

to students enrolled in vocational training programs as outlined above in this subsection while they are on the premises of a public school or community college.

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

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

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

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

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the

number of hours of community service required under the order from the court or hearings officer.

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

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

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

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

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and

1 maximum limitations of this subsection. For premium
 2 ratemaking and for the determination of weekly wage for
 3 weekly compensation benefits, the electing employer may
 4 elect not less than \$900 a month and not more than 1 1/2
 5 times the average weekly wage as defined in this chapter.

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

14 (5) An employee, workman, or worker in this state whose
 15 services are furnished by a person, association, contractor,
 16 firm, or corporation, other than a temporary service
 17 contractor, to an employer as defined in 39-71-117 is
 18 presumed to be under the control and employment of the
 19 employer. This presumption may be rebutted as provided in
 20 39-71-117(3).

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

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

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

4 (c) a nonresident of Montana who is employed as a
 5 driver by an interstate common or contract motor carrier
 6 based in and doing business in this state, whose employment
 7 duties are controlled from Montana by the motor carrier, and
 8 who is dispatched from this state A NONRESIDENT OF MONTANA
 9 WHO DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (6)(B) AND
 10 WHOSE EMPLOYER ELECTS COVERAGE WITH AN INSURER THAT ALLOWS
 11 AN ELECTION FOR AN EMPLOYER WHOSE:

12 (I) NONRESIDENT EMPLOYEES ARE HIRED IN MONTANA;
 13 (II) NONRESIDENT EMPLOYEES' WAGES ARE PAID IN MONTANA;
 14 (III) NONRESIDENT EMPLOYEES ARE SUPERVISED IN MONTANA;
 15 AND
 16 (IV) BUSINESS RECORDS ARE MAINTAINED IN MONTANA.
 17 (7) AN INSURER MAY REQUIRE COVERAGE FOR ALL NONRESIDENT
 18 EMPLOYEES OF A MONTANA EMPLOYER WHO DO NOT MEET THE
 19 REQUIREMENTS OF SUBSECTION (6)(B) OR (6)(C) AS A CONDITION
 20 OF APPROVING THE ELECTION UNDER SUBSECTION (6)(C)."

21 NEW SECTION. Section 3. Code commissioner instruction.
 22 Wherever the term "workman" appears in Title 39, chapter 71,
 23 or in legislation enacted by the 1993 legislature that is
 24 intended to be codified in Title 39, chapter 71, the code
 25 commissioner shall change the term to "worker" or delete the

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1 term and make appropriate changes in grammar.

2 NEW SECTION. SECTION 4. EFFECTIVE DATE. [THIS ACT] IS

3 EFFECTIVE JULY 1, 1993.

-End-

SENATE BILL NO. 256
INTRODUCED BY SWYSGOOD

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING A NONRESIDENT DRIVER WHO IS DISPATCHED FROM THIS STATE AND WHO WORKS FOR A MOTOR CARRIER BASED IN THIS STATE AS AN "EMPLOYEE OR WORKER IN THIS STATE"; PROVIDING FOR ELECTION OF COVERAGE FOR CERTAIN NONRESIDENTS; AND AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 39-71-117, MCA, is amended to read:

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

(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof;

(b) any association, corporation, or organization that

seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

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

(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

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

1 phases of the work; and

2 (b) the person, association, contractor, firm, or
3 corporation, other than a temporary service contractor,
4 furnishing the services of a worker to another has obtained
5 workers' compensation insurance for the worker in Montana
6 both at the inception of employment and during all phases of
7 the work performed.

8 (4) Notwithstanding the provisions of subsection (3), a
9 an interstate or intrastate common or contract motor carrier
10 doing business in this state who utilizes drivers in this
11 state is considered the employer, is liable for workers'
12 compensation premiums, and is subject to loss experience
13 rating in this state unless:

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

16 (b) the person, association, contractor, firm, or
17 corporation furnishing drivers in this state to a motor
18 carrier has obtained workers' compensation insurance on the
19 drivers in Montana both at the inception of employment and
20 during all phases of the work performed."

21 **Section 2.** Section 39-71-118, MCA, is amended to read:

22 "39-71-118. Employee, worker, workman, and volunteer
23 firefighter defined. (1) The terms term "employee",
24 "workman", or "worker" mean means:

25 (a) each person in this state, including a contractor

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

15 (b) a recipient of general relief who is performing
16 work for a county of this state under the provisions of
17 53-3-303 through 53-3-305 and any juvenile performing work
18 under authorization of a district court judge in a
19 delinquency prevention or rehabilitation program;

20 (c) a person receiving on-the-job vocational
21 rehabilitation training or other on-the-job training under a
22 state or federal vocational training program, whether or not
23 under an appointment or contract of hire with an employer as
24 defined in this chapter and whether or not receiving payment
25 from a third party. However, this subsection does not apply

1 to students enrolled in vocational training programs as
2 outlined above in this subsection while they are on the
3 premises of a public school or community college.

4 (d) students enrolled and in attendance in programs of
5 vocational-technical education at designated
6 vocational-technical centers;

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

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

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

23 (ii) premiums must be paid by the employer, as defined
24 in 39-71-117(3), and must be based upon the minimum wage
25 established under Title 39, chapter 3, part 4, for the

1 number of hours of community service required under the
2 order from the court or hearings officer.

3 (2) The term "volunteer firefighter" means a
4 firefighter who is an enrolled and active member of a fire
5 company organized and funded by a county, a rural fire
6 district, or a fire service area.

7 (3) (a) If the employer is a partnership or sole
8 proprietorship, such the employer may elect to include as an
9 employee within the provisions of this chapter any member of
10 such the partnership or the owner of the sole proprietorship
11 devoting full time to the partnership or proprietorship
12 business.

13 (b) In the event of such an election, the employer must
14 serve upon the employer's insurer written notice naming the
15 partners or sole proprietor to be covered and stating the
16 level of compensation coverage desired by electing the
17 amount of wages to be reported, subject to the limitations
18 in subsection (3)(d). A partner or sole proprietor is not
19 considered an employee within this chapter until such notice
20 has been given.

21 (c) A change in elected wages must be in writing and is
22 effective at the start of the next quarter following
23 notification.

24 (d) All weekly compensation benefits must be based on
25 the amount of elected wages, subject to the minimum and

1 maximum limitations of this subsection. For premium
 2 ratemaking and for the determination of weekly wage for
 3 weekly compensation benefits, the electing employer may
 4 elect not less than \$900 a month and not more than 1 1/2
 5 times the average weekly wage as defined in this chapter.

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

14 (5) An employee, workman or worker in this state whose
 15 services are furnished by a person, association, contractor,
 16 firm, or corporation, other than a temporary service
 17 contractor, to an employer as defined in 39-71-117 is
 18 presumed to be under the control and employment of the
 19 employer. This presumption may be rebutted as provided in
 20 39-71-117(3).

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

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

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

4 (c) a nonresident of Montana who is employed as a
 5 driver by an interstate common or contract motor carrier
 6 based in and doing business in this state, whose employment
 7 duties are controlled from Montana by the motor carrier, and
 8 who is dispatched from this state A NONRESIDENT OF MONTANA
 9 WHO DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (6)(B) AND
 10 WHOSE EMPLOYER ELECTS COVERAGE WITH AN INSURER THAT ALLOWS
 11 AN ELECTION FOR AN EMPLOYER WHOSE:

12 (I) NONRESIDENT EMPLOYEES ARE HIRED IN MONTANA;

13 (II) NONRESIDENT EMPLOYEES' WAGES ARE PAID IN MONTANA;

14 (III) NONRESIDENT EMPLOYEES ARE SUPERVISED IN MONTANA;

15 AND

16 (IV) BUSINESS RECORDS ARE MAINTAINED IN MONTANA.

17 (7) AN INSURER MAY REQUIRE COVERAGE FOR ALL NONRESIDENT
 18 EMPLOYEES OF A MONTANA EMPLOYER WHO DO NOT MEET THE
 19 REQUIREMENTS OF SUBSECTION (6)(B) OR (6)(C) AS A CONDITION
 20 OF APPROVING THE ELECTION UNDER SUBSECTION (6)(C)."

21 NEW SECTION. Section 3. Code commissioner instruction.
 22 Wherever the term "workman" appears in Title 39, chapter 71,
 23 or in legislation enacted by the 1993 legislature that is
 24 intended to be codified in Title 39, chapter 71, the code
 25 commissioner shall change the term to "worker" or delete the

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1 term and make appropriate changes in grammar.

2 NEW SECTION. SECTION 4. EFFECTIVE DATE. (THIS ACT) IS

3 EFFECTIVE JULY 1, 1993.


-End-

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Mr. Speaker: We, the committee on Labor report that Senate Bill 256 (third reading copy -- blue) be concurred in as amended.

Signed: 
Tom Nelson, Chair

And, that such amendments read: Carried by: Rep. Driscoll

1. Title, line 8.
Following: "NONRESIDENTS;"
Insert: "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;"
Following: "39-71-117"
Strike: "AND"
Insert: ","
2. Title, line 9.
Following: "39-71-118,"
Insert: "AND 39-71-402,"
Following: "AN"
Insert: "IMMEDIATE"
3. Page 8, line 3.
Strike: "or"
Insert: "(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or"
Renumber: subsequent subsection
4. Page 8, lines 19 and 20.
Strike: "(6)(C)"
Insert: "(6)(d)"
5. Page 8, line 21.
Following: line 20
Insert: "Section 3. 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~~ the other state ~~which~~ that 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 from another state shall obtain coverage for those workers under the provisions of this chapter.~~

Renumber: subsequent sections

6. Page 9, line 2.
Following: line 1
Insert: "

NEW SECTION. Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."

Renumber: subsequent section

7. Page 9, line 3.
Strike: "JULY 1, 1993"

Committee Vote:
Yes 14, No 0.

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Insert: "on passage and approval"

1 SENATE BILL NO. 256

2 INTRODUCED BY SWYSGOOD

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING A NONRESIDENT
5 DRIVER WHO IS DISPATCHED FROM THIS STATE AND WHO WORKS FOR A
6 MOTOR CARRIER BASED IN THIS STATE AS AN "EMPLOYEE OR WORKER
7 IN THIS STATE"; PROVIDING FOR ELECTION OF COVERAGE FOR
8 CERTAIN NONRESIDENTS; REQUIRING OUT-OF-STATE EMPLOYERS
9 ENGAGED IN THE CONSTRUCTION INDUSTRY TO OBTAIN WORKERS'
10 COMPENSATION COVERAGE FOR THEIR OUT-OF STATE EMPLOYEES UNDER
11 THE PROVISIONS OF MONTANA LAW; AND AMENDING SECTIONS
12 39-71-117 AND, 39-71-118, AND 39-71-402, MCA; AND PROVIDING
13 AN IMMEDIATE EFFECTIVE DATE."
14

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

16 **Section 1.** Section 39-71-117, MCA, is amended to read:17 "39-71-117. **Employer defined.** (1) "Employer" means:

18 (a) the state and each county, city and county, city
19 school district, irrigation district, all other districts
20 established by law, and all public corporations and
21 quasi-public corporations and public agencies therein and
22 every person, every prime contractor, and every firm,
23 voluntary association, and private corporation, including
24 any public service corporation and including an independent
25 contractor who has any person in service under any

1 appointment or contract of hire, expressed or implied, oral
2 or written, and the legal representative of any deceased
3 employer or the receiver or trustee thereof;

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

9 (c) any nonprofit association or corporation or other
10 entity funded in whole or in part by federal, state, or
11 local government funds that places community service
12 participants, as defined in 39-71-118(1)(f), with nonprofit
13 organizations or associations or federal, state, or local
14 government entities.

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

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

25 (a) the person, association, contractor, firm, or

corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

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

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

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

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 2. Section 39-71-118, MCA, is amended to read:

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

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

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

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a

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

8 (d) students enrolled and in attendance in programs of
 9 vocational-technical education at designated
 10 vocational-technical centers;

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

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

22 (i) compensation benefits must be limited to medical
 23 expenses pursuant to 39-71-704 and an impairment award
 24 pursuant to 39-71-703 that is based upon the minimum wage
 25 established under Title 39, chapter 3, part 4, for a

1 full-time employee at the time of the injury; and

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

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

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

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

25 (c) A change in elected wages must be in writing and is

effective at the start of the next quarter following notification.

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

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

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

(6) For purposes of this section, an "employee,

workman, or worker in this state" means:

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

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

(C) A NONRESIDENT EMPLOYEE OF AN EMPLOYER FROM ANOTHER STATE ENGAGED IN THE CONSTRUCTION INDUSTRY, AS DEFINED IN 39-71-116, WITHIN THIS STATE; OR

(D) a nonresident of Montana who is employed as a driver by an interstate common or contract motor carrier based in and doing business in this state, whose employment duties are controlled from Montana by the motor carrier, and who is dispatched from this state A NONRESIDENT OF MONTANA WHO DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (6)(B) AND WHOSE EMPLOYER ELECTS COVERAGE WITH AN INSURER THAT ALLOWS AN ELECTION FOR AN EMPLOYER WHOSE:

(I) NONRESIDENT EMPLOYEES ARE HIRED IN MONTANA;

(II) NONRESIDENT EMPLOYEES' WAGES ARE PAID IN MONTANA;

(III) NONRESIDENT EMPLOYEES ARE SUPERVISED IN MONTANA;

AND

(IV) BUSINESS RECORDS ARE MAINTAINED IN MONTANA.

(7) AN INSURER MAY REQUIRE COVERAGE FOR ALL NONRESIDENT EMPLOYEES OF A MONTANA EMPLOYER WHO DO NOT MEET THE

1 REQUIREMENTS OF SUBSECTION (6)(B) OR ~~(6)(C)~~ (6)(D) AS A
 2 CONDITION OF APPROVING THE ELECTION UNDER SUBSECTION ~~(6)(C)~~
 3 (6)(D)."

4 **SECTION 3.** SECTION 39-71-402, MCA, IS AMENDED TO READ:

5 "39-71-402. Extraterritorial application and
 6 reciprocity -- exception. (1) If a worker employed in this
 7 state who is subject to the provisions of this chapter
 8 temporarily leaves the state incidental to that employment
 9 and receives an injury arising out of and in the course of
 10 such employment, the provisions of this chapter ~~shall~~ apply
 11 to such the worker as though he the worker were injured
 12 within this state.

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

17 (a) if the employer and employee are bound by the
 18 provisions of the workers' compensation law or similar law
 19 of such the other state ~~which that~~ applies to them while
 20 they are in the state of Montana; and

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

25 (3) A certificate from an authorized officer of the

1 workers' compensation department or similar agency of
 2 another state certifying that an employer of ~~such the~~ other
 3 state is bound by the Workers' Compensation Act of the state
 4 and that its act will be applied to employees of the
 5 employer while in the state of Montana ~~shall be~~ is prima
 6 facie evidence of the application of the workers'
 7 compensation law of the certifying state.

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

14 (5) ~~The provisions of this section do not apply to the~~
 15 ~~construction--industry--as--defined--in 39-71-116.~~ Employers
 16 from another state that are engaged in the construction
 17 industry, as defined in 39-71-116, and that employ workers
 18 from another state shall obtain coverage for those workers
 19 under the provisions of this chapter."

20 **NEW SECTION.** Section 4. Code commissioner instruction.

21 Wherever the term "workman" appears in Title 39, chapter 71,
 22 or in legislation enacted by the 1993 legislature that is
 23 intended to be codified in Title 39, chapter 71, the code
 24 commissioner shall change the term to "worker" or delete the
 25 term and make appropriate changes in grammar.

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1 NEW SECTION. SECTION 5. SAVING CLAUSE. [THIS ACT] DOES
2 NOT AFFECT RIGHTS AND DUTIES THAT MATURED, PENALTIES THAT
3 WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE
4 EFFECTIVE DATE OF THIS ACT].

5 NEW SECTION. SECTION 6. EFFECTIVE DATE. [THIS ACT] IS
6 EFFECTIVE ~~JULY-17-1993~~ ON PASSAGE AND APPROVAL.

-End-