

SENATE BILL 367

Introduced by Forrester

2/11	Introduced
2/11	Referred to Business & Industry
2/11	First Reading
2/11	Fiscal Note Requested
2/17	Hearing
2/17	Fiscal Note Received
2/19	Tabled in Committee
2/19	Fiscal Note Printed

1 Senate BILL NO. 367
2 INTRODUCED BY Foran
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PERSON
5 REPRESENTING TO THE PUBLIC THAT THE PERSON IS AN INDEPENDENT
6 CONTRACTOR TO OBTAIN AN INDEPENDENT CONTRACTOR STATUS CARD
7 FROM THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING THAT A
8 PERSON OR ENTITY CONTRACTING WITH AN INDEPENDENT CONTRACTOR
9 CARDHOLDER IS NOT OBLIGATED TO PROVIDE WORKERS' COMPENSATION
10 COVERAGE FOR THE CARDHOLDER; AND AMENDING SECTION 39-71-401,
11 MCA."

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

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

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

1 (2) Unless the employer elects coverage for these
2 employments under this chapter and an insurer allows such an
3 election, the Workers' Compensation Act does not apply to
4 any of the following employments:

5 (a) household and domestic employment;

6 (b) casual employment as defined in 39-71-116;

7 (c) employment of a dependent member of an employer's
8 family for whom an exemption may be claimed by the employer
9 under the federal Internal Revenue Code;

10 (d) employment of sole proprietors or working members
11 of a partnership, except as provided in subsection (3);

12 (e) employment of a broker or salesman performing under
13 a license issued by the board of realty regulation;

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

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

19 (h) employment of any person performing services in
20 return for aid or sustenance only, except employment of a
21 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;

25 (j) employment as an official, including a timer,

1 referee, or judge, at a school amateur athletic event,
2 unless the person is otherwise employed by a school
3 district;

4 (k) any person performing services as a newspaper
5 carrier or free-lance correspondent if the person performing
6 the services or a parent or guardian of the person
7 performing the services in the case of a minor has
8 acknowledged in writing that the person performing the
9 services and the services are not covered. As used in this
10 subsection, "free-lance correspondent" is a person who
11 submits articles or photographs for publication and is paid
12 by the article or by the photograph. As used in this
13 subsection, "newspaper carrier":
14

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

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

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

22 (3) (a) A sole proprietor or a working member of a
23 partnership who ~~holds--himself--out--or--considers-himself~~
24 represents to the public to be an independent contractor
25 shall elect to be bound personally and individually by the
provisions of compensation plan No. 1, 2, or 3, but he may

1 apply to the department for an a personal exemption from the
2 Workers' Compensation Act ~~for-himself~~.

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

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

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

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

24 (4) (a) A person who represents to the public that the
25 person is an independent contractor, regardless of whether

the person applies for an exemption pursuant to subsection (3), shall apply to the department for a status card certifying that the person is an independent contractor. If the person would qualify as an independent contractor under subsection (3), the department shall issue the person an independent contractor status card.

(b) When an application for an independent contractor status card is approved by the department, it is conclusive as to the status of an independent contractor, and a person or entity contracting with the cardholder is not obligated to provide workers' compensation coverage for the cardholder.

(c) The department may adopt rules to implement this section and may impose an application fee commensurate with the costs of administering and enforcing this subsection (4).

~~†††~~(5) (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 ~~†††~~(5)(a) under oath or affirmation, and he is subject to the penalties for false swearing under 45-7-202 if he the officer falsifies the notice.

~~†††~~(6) 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

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

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

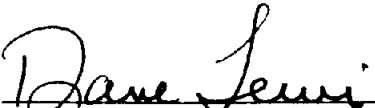
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0367, as introduced.

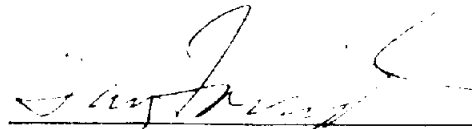
DESCRIPTION OF PROPOSED LEGISLATION: An act requiring a person representing to the public that the person is an independent contractor to obtain an independent contractor status card from the Department of Labor and Industry; providing that a person or entity contracting with an independent contractor cardholder is not obligated to provide workers' compensation coverage for the cardholder; and amending section 39-71-401, MCA.

ASSUMPTIONS:

1. The proposed legislation requires that all persons representing themselves to the public as independent contractors (IC) must obtain IC status cards from the department. Almost 4,000 applications are received and processed through the IC exemption program each year, and twice as many applicants are disapproved (2,700) as approved (1,300) each year. The existing body of over 6000 ICs would have to be issued the status cards described in this legislation. Additionally, approximately 4,000 applicants would have to be processed annually. The intent of this legislation is to clearly differentiate ICs from employees for tax and other purposes, a process which would very likely increase applicants as well as increase actual numbers of ICs. Historic ICs, "normal" IC applicants and "additional" IC applicants would create a larger case load requiring an additional FTE to process applications and issue IC cards. Due to the requirement that all ICs have to apply for a card, the number of appeals coming to the Legal Services Hearings Unit will increase. These types of hearings can be complicated.
2. One entry level grade 12, Compliance Officer II will be required to manage the additional workload associated with this proposed legislation.
3. One entry level grade 16, Hearings Officer III will be required to conduct the additional administrative contested case hearings.
4. Entry level grade 9, .50 FTE Legal Secretary will be needed to support the additional Hearings Officer.
5. Employment Relations Div assumes that Labor Standards Div will provide staff time to assist in rules preparation.
6. Operating costs for the support of the Compliance Officer would be equivalent to the FTE cost in the Investigations work unit. Operating costs for support of the Hearings Officer and legal secretary would be equal to the Legal Division's average annual cost. Administrative Rules promulgation is estimated to cost \$350 (\$35/page x 10 pages), but other portions of the IC administrative rules might also have to be updated, thereby creating a cost in excess of \$350. Printing costs associated with new rules and distribution of informational brochures on this change are estimated based on actual costs for equivalent wage & hour brochures. Printing costs for the IC status cards are estimated.
7. One time start up costs for the positions include office equipment and a PC.

(Continued)

 2-17-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/17/93
GARY FORRESTER, PRIMARY SPONSOR DATE

Fiscal Note for SB0367, as introduced

SB 367

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	0	2.50	2.50	0	2.50	2.50
Personal Services	0	72,726	72,726	0	73,926	73,926
Operating Costs	0	36,378	36,378	0	27,575	27,575
Equipment	<u>0</u>	<u>13,500</u>	<u>13,500</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	0	122,604	122,604	0	101,501	101,501

FUNDING:

Work Comp Assmt	0	122,604	122,604	0	101,501	101,501
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Net Impact: Workers' Compensation Assessments would increase by \$122,604 in FY94 and by \$101,501 in FY95. 65% of the amount is the increased assessment to State Fund.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: Self insured local governments will have increased costs due to assessment.