

House BILL NO. 168

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INTRODUCED BY ORR \_\_\_\_\_

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT WORKERS' COMPENSATION INSURANCE PREMIUMS FOR VOLUNTEER FIREFIGHTERS BE BASED ON THE MINIMUM ANNUAL PREMIUM, THE NUMBER OF TRAINING HOURS, AND THE NUMBER OF RUNS MADE IN THE PREVIOUS YEAR; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Premium rates for volunteer firefighters.** Subject to the minimum annual premium, workers' compensation rates for volunteer firefighters, as defined in 39-71-118, who are not covered by a self-insurer, must be determined by the number of training hours and the number of runs made in the previous year by the fire company of which the firefighter is a member.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 1].

NEW SECTION. **Section 3. Applicability.** [This act] applies to policies issued on or after January 1, 1996.

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0168, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill requiring workers' compensation insurance premiums for volunteer firefighters be subject to the minimum annual premium, and based on the number of training hours, and the number of runs made in the previous year.

ASSUMPTIONS:

1. The State Fund is required by statute to "...charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting." (39-71-2316, MCA). HB0168 does not exempt the State Fund from this requirement with regard to volunteer firefighters.
2. The bill title indicates that premiums are to be based on the minimum premium, implying that the average premium for volunteer firefighters would be the minimum premium. However, the body of the bill specifies that premiums are to be subject to the minimum, which is interpreted for purposes of this fiscal note to mean that premiums for volunteer firefighters shall not be less than the minimum premium. This interpretation takes into consideration the requirement under existing statute for rate adequacy for each classification.
3. The State Fund would attempt to develop a fee-based rate structure for volunteer firefighters in order to incorporate training hours and number of firefighting runs into the rate structure. Each volunteer firefighter company would have a unique "rate" as opposed to the normal payroll-based rates applicable to most policyholders. However, as discussed in assumptions #1 & #2 above, the target revenue requirement for coverage of volunteer firefighters would be established at a level to insure rate adequacy as required by 39-71-2316, MCA.
4. Volunteer firefighters are currently eligible to elect workers' compensation coverage. Volunteer firefighter companies are generally not electing coverage for volunteer firefighters with the State Fund.

FISCAL IMPACT:

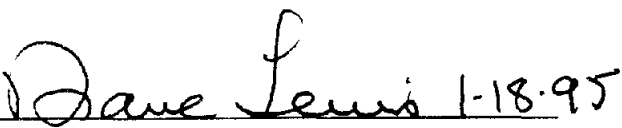
Total premium revenue collected from volunteer firefighter districts would not change from what otherwise would be collected if insured by the State Fund.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Total premiums paid by volunteer fire districts would not change from what would otherwise be paid if insured by the State Fund under current rate-setting policies although the impact among specific districts may vary.

TECHNICAL NOTES:

1. There are 196 volunteer firefighter districts in Montana. The State Fund is aware of 14 districts which are believed to have the required historical data.
2. As discussed under assumption #2 above, the intent implied by the bill title appears to conflict with the body of the bill and other existing statutes not amended by this bill.

  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

SCOTT ORR, PRIMARY SPONSOR      DATE

Fiscal Note for HB0168, as introduced

**HB 168**

APPROVED BY COMMITTEE  
ON BUSINESS AND LABOR

HOUSE BILL NO. 168

INTRODUCED BY ORR

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT WORKERS' COMPENSATION INSURANCE PREMIUMS AND WEEKLY COMPENSATION BENEFITS FOR VOLUNTEER FIREFIGHTERS BE BASED ON ~~THE MINIMUM ANNUAL PREMIUM~~, THE NUMBER OF TRAINING HOURS, ~~AND THE NUMBER OF RUNS MADE IN THE PREVIOUS YEAR~~ RESPONSE TIME, AND TIME AT THE EMPLOYER'S PREMISES TIMES THE AVERAGE WEEKLY WAGE DIVIDED BY 40 HOURS; DEFINING VOLUNTEER HOURS; AMENDING SECTIONS 39-71-118 AND 39-71-123, MCA; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

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

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

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

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

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

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

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

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

19 (g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

20 (2) The terms defined in subsection (1) do not include a person who is:

21 (a) participating in recreational activity and who at the time is relieved of and is not performing  
22 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,  
23 permit, device, or other emolument of employment; or

24 (b) performing voluntary service at a recreational facility and who receives no compensation for  
25 those services other than meals, lodging, or the use of the recreational facilities.

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

28 (b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service  
29 of an employer, including but not limited to training time, response time, and time spent at the employer's  
30 premises.

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

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

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

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

14 (5) (a) The trustees of a rural fire district, a county governing body providing rural fire protection,  
15 or the county commissioners or trustees for a fire service area may elect to include as an employee within  
16 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'  
17 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

18 (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for  
19 premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the  
20 average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

21 (6) An employee or worker in this state whose services are furnished by a person, association,  
22 contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in  
23 39-71-117 is presumed to be under the control and employment of the employer. This presumption may  
24 be rebutted as provided in 39-71-117(3).

25 (7) For purposes of this section, an "employee or worker in this state" means:

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

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

30 (c) a nonresident employee of an employer from another state engaged in the construction industry,

1 as defined in 39-71-116, within this state; or

2 (d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose  
3 employer elects coverage with an insurer that allows an election for an employer whose:

4 (i) nonresident employees are hired in Montana;

5 (ii) nonresident employees' wages are paid in Montana;

6 (iii) nonresident employees are supervised in Montana; and

7 (iv) business records are maintained in Montana.

8 (8) An insurer may require coverage for all nonresident employees of a Montana employer who do  
9 not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under  
10 subsection (7)(d)."

11

12 **Section 2.** Section 39-71-123, MCA, is amended to read:

13 **"39-71-123. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a  
14 substitute for money, for services rendered by an employee, or income provided for in subsection (1)(d).

15 Wages include but are not limited to:

16 (a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays,  
17 vacations, and sickness periods;

18 (b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is  
19 based on its actual value;

20 (c) payments made to an employee on any basis other than time worked, including but not limited  
21 to piecework, an incentive plan, or profit-sharing arrangement; and

22 (d) income or payment in the form of a draw, wage, net profit, or substitute for money received  
23 or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed  
24 work or provided services for that remuneration.

25 (2) Wages do not include:

26 (a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and  
27 other expenses, as set forth in department rules;

28 (b) special rewards for individual invention or discovery;

29 (c) tips and other gratuities received by the employee in excess of those documented to the  
30 employer for tax purposes;

1 (d) contributions made by the employer to a group insurance or pension plan; or

2 (e) vacation or sick leave benefits accrued but not paid.

3 (3) For compensation benefit purposes, the average actual earnings for the four pay periods  
4 immediately preceding the injury are the employee's wages, except if:

5 (a) the term of employment for the same employer is less than four pay periods, in which case the  
6 employee's wages are the hourly rate times the number of hours in a week for which the employee was  
7 hired to work; or

8 (b) for good cause shown by the claimant, the use of the four pay periods does not accurately  
9 reflect the claimant's employment history with the employer, in which case the insurer may use additional  
10 pay periods.

11 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent  
12 employments, the average actual wages must be calculated as provided in subsection (3).

13 (b) The compensation benefits for a covered volunteer must be based on the average actual wages  
14 in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected  
15 not to be covered, from which the volunteer is disabled by the injury incurred.

16 (c) The compensation benefits for an employee working at two or more concurrent remunerated  
17 employments must be based on the aggregate of average actual wages of all employments, except  
18 self-employment as a sole proprietor or partner who elected not to be covered, from which the employee  
19 is disabled by the injury incurred.

20 ~~(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter~~  
21 ~~covered pursuant to 39-71-118 must be based upon a wage of not less than \$900 a month and not more~~  
22 ~~than 1 1/2 times the average weekly wage as defined in this chapter."~~

23  
24 **NEW SECTION. Section 3. Effective date.** [This act] is effective July 1, 1995.

25 -END-

## 1 HOUSE BILL NO. 168

2 INTRODUCED BY ORR

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT WORKERS' COMPENSATION INSURANCE  
5 PREMIUMS AND WEEKLY COMPENSATION BENEFITS FOR VOLUNTEER FIREFIGHTERS BE BASED ON ~~THE~~  
6 ~~MINIMUM ANNUAL PREMIUM~~, THE NUMBER OF TRAINING HOURS, ~~AND THE NUMBER OF RUNS MADE~~  
7 ~~IN THE PREVIOUS YEAR~~ RESPONSE TIME, AND TIME AT THE EMPLOYER'S PREMISES TIMES THE  
8 AVERAGE WEEKLY WAGE DIVIDED BY 40 HOURS; DEFINING VOLUNTEER HOURS; AMENDING SECTIONS  
9 39-71-118 AND 39-71-123, MCA; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE ~~AND AN~~  
10 ~~APPLICABILITY DATE.~~"

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

13 (Refer to Introduced Bill)

14 Strike everything after the enacting clause and insert:

15  
16 **Section 1.** Section 39-71-118, MCA, is amended to read:17 **"39-71-118. Employee, worker, and volunteer firefighter defined.** (1) The terms "employee" or  
18 "worker" means:

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

28 (b) any juvenile performing work under authorization of a district court judge in a delinquency  
29 prevention or rehabilitation program;

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



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

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

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

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

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14 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,  
15 chapter 3, part 4, for a full-time employee at the time of the injury; and

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

19 (g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

20 (2) The terms defined in subsection (1) do not include a person who is:

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22 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,  
23 permit, device, or other emolument of employment; or

24 (b) performing voluntary service at a recreational facility and who receives no compensation for  
25 those services other than meals, lodging, or the use of the recreational facilities.

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27 of a fire company organized and funded by a county, a rural fire district, or a fire service area.

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30 premises.

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2 an employee within the provisions of this chapter any member of the partnership or the owner of the sole  
3 proprietorship devoting full time to the partnership or proprietorship business.

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

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

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

14 (5) (a) The trustees of a rural fire district, a county governing body providing rural fire protection,  
15 or the county commissioners or trustees for a fire service area may elect to include as an employee within  
16 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'  
17 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

18 (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for  
19 premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the  
20 average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

21 (6) An employee or worker in this state whose services are furnished by a person, association,  
22 contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in  
23 39-71-117 is presumed to be under the control and employment of the employer. This presumption may  
24 be rebutted as provided in 39-71-117(3).

25 (7) For purposes of this section, an "employee or worker in this state" means:

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

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

30 (c) a nonresident employee of an employer from another state engaged in the construction industry,

1 as defined in 39-71-116, within this state; or

2 (d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose  
3 employer elects coverage with an insurer that allows an election for an employer whose:

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17 vacations, and sickness periods;

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19 based on its actual value;

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21 to piecework, an incentive plan, or profit-sharing arrangement; and

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23 or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed  
24 work or provided services for that remuneration.

25 (2) Wages do not include:

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27 other expenses, as set forth in department rules;

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30 employer for tax purposes;

1 (d) contributions made by the employer to a group insurance or pension plan; or

2 (e) vacation or sick leave benefits accrued but not paid.

3 (3) For compensation benefit purposes, the average actual earnings for the four pay periods  
4 immediately preceding the injury are the employee's wages, except if:

5 (a) the term of employment for the same employer is less than four pay periods, in which case the  
6 employee's wages are the hourly rate times the number of hours in a week for which the employee was  
7 hired to work; or

8 (b) for good cause shown by the claimant, the use of the four pay periods does not accurately  
9 reflect the claimant's employment history with the employer, in which case the insurer may use additional  
10 pay periods.

11 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent  
12 employments, the average actual wages must be calculated as provided in subsection (3).

13 (b) The compensation benefits for a covered volunteer must be based on the average actual wages  
14 in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected  
15 not to be covered, from which the volunteer is disabled by the injury incurred.

16 (c) The compensation benefits for an employee working at two or more concurrent remunerated  
17 employments must be based on the aggregate of average actual wages of all employments, except  
18 self-employment as a sole proprietor or partner who elected not to be covered, from which the employee  
19 is disabled by the injury incurred.

20 ~~(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter~~  
21 ~~covered pursuant to 29-71-118 must be based upon a wage of not less than \$900 a month and not more~~  
22 ~~than 1 1/2 times the average weekly wage as defined in this chapter."~~

23  
24 **NEW SECTION. Section 3. Effective date.** [This act] is effective July 1, 1995.

25 -END-

HOUSE BILL NO. 168

INTRODUCED BY ORR

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT WORKERS' COMPENSATION INSURANCE PREMIUMS AND WEEKLY COMPENSATION BENEFITS FOR VOLUNTEER FIREFIGHTERS BE BASED ON ~~THE MINIMUM ANNUAL PREMIUM,~~ THE NUMBER OF TRAINING HOURS, ~~AND THE NUMBER OF RUNS MADE IN THE PREVIOUS YEAR~~ RESPONSE TIME, AND TIME AT THE EMPLOYER'S PREMISES TIMES THE AVERAGE WEEKLY WAGE DIVIDED BY 40 HOURS; DEFINING VOLUNTEER HOURS; AMENDING SECTIONS 39-71-118 AND 39-71-123, MCA; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE ~~AND AN APPLICABILITY DATE."~~

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

(Refer to Introduced Bill)

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(b) 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

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

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

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

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

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14 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,  
15 chapter 3, part 4, for a full-time employee at the time of the injury; and

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

19 (g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

20 (2) The terms defined in subsection (1) do not include a person who is:

21 (a) participating in recreational activity and who at the time is relieved of and is not performing  
22 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,  
23 permit, device, or other emolument of employment; or

24 (b) performing voluntary service at a recreational facility and who receives no compensation for  
25 those services other than meals, lodging, or the use of the recreational facilities.

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

28 (b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service  
29 of an employer, including but not limited to training time, response time, and time spent at the employer's  
30 premises.

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

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

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

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

14 (5) (a) The trustees of a rural fire district, a county governing body providing rural fire protection,  
15 or the county commissioners or trustees for a fire service area may elect to include as an employee within  
16 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'  
17 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

18 (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for  
19 premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the  
20 average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

21 (6) An employee or worker in this state whose services are furnished by a person, association,  
22 contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in  
23 39-71-117 is presumed to be under the control and employment of the employer. This presumption may  
24 be rebutted as provided in 39-71-117(3).

25 (7) For purposes of this section, an "employee or worker in this state" means:

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

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

30 (c) a nonresident employee of an employer from another state engaged in the construction industry,

1 as defined in 39-71-116, within this state; or

2 (d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose  
3 employer elects coverage with an insurer that allows an election for an employer whose:

4 (i) nonresident employees are hired in Montana;

5 (ii) nonresident employees' wages are paid in Montana;

6 (iii) nonresident employees are supervised in Montana; and

7 (iv) business records are maintained in Montana.

8 (8) An insurer may require coverage for all nonresident employees of a Montana employer who do  
9 not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under  
10 subsection (7)(d)."

11

12 **Section 2.** Section 39-71-123, MCA, is amended to read:

13 **"39-71-123. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a  
14 substitute for money, for services rendered by an employee, or income provided for in subsection (1)(d).

15 Wages include but are not limited to:

16 (a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays,  
17 vacations, and sickness periods;

18 (b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is  
19 based on its actual value;

20 (c) payments made to an employee on any basis other than time worked, including but not limited  
21 to piecework, an incentive plan, or profit-sharing arrangement; and

22 (d) income or payment in the form of a draw, wage, net profit, or substitute for money received  
23 or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed  
24 work or provided services for that remuneration.

25 (2) Wages do not include:

26 (a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and  
27 other expenses, as set forth in department rules;

28 (b) special rewards for individual invention or discovery;

29 (c) tips and other gratuities received by the employee in excess of those documented to the  
30 employer for tax purposes;



1 (d) contributions made by the employer to a group insurance or pension plan; or

2 (e) vacation or sick leave benefits accrued but not paid.

3 (3) For compensation benefit purposes, the average actual earnings for the four pay periods  
4 immediately preceding the injury are the employee's wages, except if:

5 (a) the term of employment for the same employer is less than four pay periods, in which case the  
6 employee's wages are the hourly rate times the number of hours in a week for which the employee was  
7 hired to work; or

8 (b) for good cause shown by the claimant, the use of the four pay periods does not accurately  
9 reflect the claimant's employment history with the employer, in which case the insurer may use additional  
10 pay periods.

11 (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent  
12 employments, the average actual wages must be calculated as provided in subsection (3).

13 (b) The compensation benefits for a covered volunteer must be based on the average actual wages  
14 in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected  
15 not to be covered, from which the volunteer is disabled by the injury incurred.

16 (c) The compensation benefits for an employee working at two or more concurrent remunerated  
17 employments must be based on the aggregate of average actual wages of all employments, except  
18 self-employment as a sole proprietor or partner who elected not to be covered, from which the employee  
19 is disabled by the injury incurred.

20 ~~(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter  
21 covered pursuant to 39-71-118 must be based upon a wage of not less than \$900 a month and not more  
22 than 1 1/2 times the average weekly wage as defined in this chapter."~~

23

24 **NEW SECTION. Section 3. Effective date.** [This act] is effective July 1, 1995.

25

-END-