

1
 2 INTRODUCED BY Cashinella Richard Emm
 3 Butt House BILL NO. 216

4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING EMPLOYMENT OF AN EMPLOYER'S SPOUSE FOR
 5 WHOM AN EXEMPTION BASED ON MARITAL STATUS MAY BE CLAIMED UNDER FEDERAL TAX LAW
 6 FROM COVERAGE UNDER THE WORKERS' COMPENSATION ACT UNLESS COVERAGE IS ELECTED;
 7 AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

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

12 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
 13 subsection (2), the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to
 14 all employees as defined in 39-71-118. An employer who has any employee in service under any
 15 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
 16 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
 17 Compensation Act is subject to and bound by the compensation plan that has been elected by the
 18 employer.

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

- 22 (a) household and domestic employment;
- 23 (b) casual employment as defined in 39-71-116;
- 24 (c) employment of a dependent member of an employer's family for whom an exemption may be
 25 claimed by the employer under the federal Internal Revenue Code;
- 26 (d) employment of sole proprietors or working members of a partnership, except as provided in
 27 subsection (3);
- 28 (e) employment of a broker or salesman performing under a license issued by the board of realty
 29 regulation;
- 30 (f) employment of a direct seller engaged in the sale of consumer products, primarily in the

1 customer's home;

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

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

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

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

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

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

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

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

20 (m) a person who is employed by an enrolled tribal member who operates solely within the exterior
21 boundaries of an Indian reservation;

22 (n) employment of an employer's spouse for whom an exemption based on marital status may be
23 claimed by the employer under 26 U.S.C. 7703.

24 (3) (a) A sole proprietor or a working member of a partnership who represents to the public that
25 the person is an independent contractor shall elect to be bound personally and individually by the provisions
26 of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers'
27 Compensation Act.

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

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2 independent contractor and precludes the applicant from obtaining benefits under this chapter.

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5 contractor notifies the department of any change in status and provides a description of present work
6 status.

7 (e) If the department denies the application for exemption, the applicant may contest the denial by
8 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
9 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with
10 the procedure established in 39-51-2403 and 39-51-2404.

11 (4) (a) A private corporation shall provide coverage for its officers and other employees under the
12 provisions of compensation plan No. 1, 2, or 3. However, pursuant to rules the department promulgates
13 and subject in all cases to approval by the department, an officer of a private corporation may elect not to
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17 delivering the notice to the board of directors of the employer and to the department; or

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23 excluding the employee from coverage under this chapter does not entitle the officer to elect not to be
24 bound as an employee under this chapter. In any case, the officer shall sign the notice required by
25 subsection (4)(a) under oath or affirmation and is subject to the penalties for false swearing under 45-7-202
26 if the officer falsifies the notice.

27 (5) Each employer shall post a sign in the workplace at the locations where notices to employees
28 are normally posted, informing employees about the employer's current provision of compensation
29 insurance. A workplace is any location where an employee performs any work-related act in the course of
30 employment, regardless of whether the location is temporary or permanent, and includes the place of

1 business or property of a third person while the employer has access to or control over the place of
2 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
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4 and posted by employers in accordance with rules adopted by the department. An employer who purposely
5 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

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7 NEW SECTION. **Section 2. Effective date.** [This act] is effective July 1, 1995.

8

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0216, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill exempting employment of an employer's spouse for whom an exemption based on marital status may be claimed under federal tax law from coverage under the workers' compensation act unless coverage is elected.

ASSUMPTIONS:

1. All employed spouses of employers who are exempt under 26 U.S.C. 7703 would be exempt from the workers' compensation act. All employers qualifying for this exemption will be able to elect coverage through the State Fund.
2. Potential exists for decreased premium revenue which would be dependent upon the number of employers no longer electing coverage for an employed spouse with the State Fund. Benefit payments would decrease commensurately.

FISCAL IMPACT:

Inestimable. There would be no impact on the adequacy of State Fund rates.

TECHNICAL NOTES:

Section 39-71-116(2)(c) is a current exemption of dependents of an employer's family and is a similar exemption to the one proposed in this bill. Current statute uses "federal Internal Revenue Code" as the terminology versus "26 U.S.C. 7703" used in the bill. For consistency, the State Fund would recommend similar terminology in the two exemptions. For simplicity the State Fund would recommend amending 39-71-116(2)(c) to provide for the spouse and dependent exemption and eliminating the new line 39-71-116(2)(n).

*According to Legislative Council
this is an appropriate way
to make a final citation.*

Dave Lewis 1-20-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

V. Cocchiarella
VICKI COCCHIARELLA, PRIMARY SPONSOR DATE

HB 216

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

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INTRODUCED BY Boyd House BILL NO. 216
Boyd

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

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

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(f) employment of a direct seller engaged in the sale of consumer products, primarily in the

1 customer's home;

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House BILL NO. 216

INTRODUCED BY

Cashinella *Richard* *Em*

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HB 216

THIRD READING

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7 **NEW SECTION. Section 2. Effective date.** [This act] is effective July 1, 1995.

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2 INTRODUCED BY COCCHIARELLA, HIBBARD, EWER, BARTLETT

3
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