

1 House BILL NO. 276
2 INTRODUCED BY Keenan
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING A GOLF COURSE CADDIE FROM COVERAGE
5 UNDER THE STATE MINIMUM WAGE, OVERTIME, UNEMPLOYMENT INSURANCE, WORKERS'
6 COMPENSATION, AND CHILD LABOR LAWS; AMENDING SECTIONS 39-3-406, 39-51-204, 39-71-401,
7 AND 41-2-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

10
11 **Section 1.** Section 39-3-406, MCA, is amended to read:

12 **"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect
13 to:

14 (a) students participating in a distributive education program established under the auspices of an
15 accredited educational agency;

16 (b) persons employed in private homes whose duties consist of menial chores, such as babysitting,
17 mowing lawns, and cleaning sidewalks;

18 (c) persons employed directly by the head of a household to care for children dependent upon the
19 head of the household;

20 (d) immediate members of the family of an employer or persons dependent upon an employer for
21 half or more of their support in the customary sense of being a dependent;

22 (e) any persons not regular employees of a nonprofit organization who voluntarily offer their
23 services to a nonprofit organization on a fully or partially reimbursed basis;

24 (f) handicapped workers engaged in work that is incidental to training or evaluation programs or
25 whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

26 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed
27 30 days of their employment;

28 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion
29 may not exceed 180 days from their initial date of employment and further provided that during this
30 exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established

1 in this part;

2 (i) retired or semiretired persons performing part-time incidental work as a condition of their
3 residence on a farm or ranch;

4 (j) any individual employed in a bona fide executive, administrative, or professional capacity as
5 these terms are defined by regulations of the commissioner;

6 (k) any individual employed by the United States of America;

7 (l) resident managers employed in lodging establishments or personal care facilities who, under the
8 terms of their employment, live in the establishment or facility;

9 (m) an outside salesperson or marketing representative paid on a commission, contract, or salary
10 basis who is primarily employed in selling or marketing products or services in the food distribution industry
11 for a food broker, wholesaler, or association;

12 (n) an individual who acts as a caddie in assisting a golf player during a round of golf primarily by
13 handling the player's clubs, when paid directly by the player or indirectly by an entity acting as an agent
14 for the player.

15 (2) The provisions of 39-3-405 do not apply to:

16 (a) an employee with respect to whom the United States ~~Secretary~~ secretary of ~~Transportation~~
17 transportation has power to establish qualifications and maximum hours of service pursuant to the
18 provisions of 49 U.S.C. 304;

19 (b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

20 (c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or
21 natural state;

22 (d) an outside salesperson paid on a commission or contract basis who is primarily employed in
23 selling advertising for a newspaper;

24 (e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily
25 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements
26 if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily
27 engaged in the business of selling the vehicles or implements to ultimate purchasers;

28 (f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is
29 employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats,
30 or aircraft to ultimate purchasers;

1 (g) an outside salesperson paid on a commission or contract basis who is primarily employed in
2 selling office supplies, computers, or other office equipment for an office equipment dealer;

3 (h) a salesperson paid on a commission or contract basis who is primarily engaged in selling
4 advertising for a radio or television station employer;

5 (i) an employee employed as a driver or driver's helper making local deliveries who is compensated
6 for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that
7 the plan has the general purpose and effect of reducing hours worked by the employees to or below the
8 maximum workweek applicable to them under 39-3-405;

9 (j) an employee employed in agriculture or in connection with the operation or maintenance of
10 ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop
11 basis and that are used exclusively for supply and storing of water for agricultural purposes;

12 (k) an employee employed in agriculture by a farmer, notwithstanding other employment of the
13 employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to
14 the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

15 (i) primarily employed during a workweek in agriculture by a farmer; and

16 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less
17 than that prescribed by 39-3-404;

18 (l) an employee of an establishment commonly recognized as a country elevator, including an
19 establishment that sells products and services used in the operation of a farm, if no more than five
20 employees are employed by the establishment;

21 (m) a driver employed by an employer engaged in the business of operating taxicabs;

22 (n) an employee who is employed with the employee's spouse by a nonprofit educational institution
23 to serve as the parents of children who are orphans or one of whose natural parents is deceased or who
24 are enrolled in the institution and reside in residential facilities of the institution so long as the children are
25 in residence at the institution and so long as the employee and the employee's spouse reside in the facilities
26 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
27 basis, at an annual rate of not less than \$10,000;

28 (o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
29 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
30 terminal if the number of employees employed by the employer in the forestry or lumbering operations does

1 not exceed eight;

2 (p) an employee of a sheriff's department who is working under an established work period in lieu
3 of a workweek pursuant to 7-4-2509(1);

4 (q) an employee of a municipal or county government who is working under a work period not
5 exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a
6 collective bargaining unit represents the employee or by mutual agreement of the employer and employee
7 when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work
8 period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

9 (r) an employee of a hospital or other establishment primarily engaged in the care of the sick,
10 disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in
11 a 14-day period established through either a collective bargaining agreement when a collective bargaining
12 unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit
13 is not recognized. Employment in excess of 8 hours ~~per a~~ day or 80 hours in a 14-day period must be
14 compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

15 (s) a firefighter who is working under a work period established in a collective bargaining agreement
16 entered into between a public employer and a firefighters' organization or its exclusive representative;

17 (t) an officer or other employee of a police department in a city of the first or second class who
18 is working under a work period established by the chief of police under 7-32-4118;

19 (u) an employee of a department of public safety working under a work period established pursuant
20 to 7-32-115;

21 (v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times
22 the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more
23 than half of the employee's compensation for a period of not less than 1 month is derived from
24 commissions on goods and services."

25

26 **Section 2.** Section 39-51-204, MCA, is amended to read:

27 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not
28 include:

29 (a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to
30 this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded

1 from coverage under this chapter if the employer:

2 (i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the
3 monetary amount or number of employees and days worked, for the subject wages attributable to
4 agricultural labor; and

5 (ii) keeps separate books and records to account for the employment of persons in agricultural
6 labor.

7 (b) household and domestic service in a private home, local college club, or local chapter of a
8 college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to
9 this chapter and has domestic service employment, all employees engaged in domestic service must be
10 excluded from coverage under this chapter if the employer:

11 (i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the
12 subject wages attributable to domestic service; and

13 (ii) keeps separate books and records to account for the employment of persons in domestic
14 service.

15 (c) service performed as an officer or member of the crew of a vessel on the navigable waters of
16 the United States;

17 (d) service performed by an individual in the employ of that individual's son, daughter, or spouse
18 and service performed by a child under the age of 21 in the employ of the child's father or mother;

19 (e) service performed in the employ of any other state or its political subdivisions or of the United
20 States government or of an instrumentality of any other state or states or their political subdivisions or of
21 the United States, except that national banks organized under the national banking law may not be entitled
22 to exemption under this subsection and are subject to this chapter the same as state banks, provided that
23 the service is excluded from employment as defined in the Federal Unemployment Tax Act by section
24 3306(c)(7) of that act;

25 (f) service with respect to which unemployment insurance is payable under an unemployment
26 insurance system established by an act of congress, provided that the department shall enter into
27 agreements with the proper agencies under an act of congress, which agreements become effective in the
28 manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide
29 reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter,
30 acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential

1 rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

2 (g) services performed as a newspaper carrier or free-lance correspondent if the person performing
3 the services or a parent or guardian of the person performing the services in the case of a minor has
4 acknowledged in writing that the person performing the services and the services are not covered. As used
5 in this subsection:

6 (i) "free-lance correspondent" is a person who submits articles or photographs for publication and
7 is paid by the article or by the photograph; and

8 (ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering
9 newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to
10 the employee's main duties, carries or delivers papers.

11 (h) services performed by real estate, securities, and insurance salespeople paid solely by
12 commissions and without guarantee of minimum earnings;

13 (i) service performed in the employ of a school, college, or university if the service is performed
14 by a student who is enrolled and is regularly attending classes at a school, college, or university or by the
15 spouse of a student if the spouse is advised, at the time that the spouse commences to perform the
16 service, that the employment of the spouse to perform the service is provided under a program to provide
17 financial assistance to the student by the school, college, or university and that the employment will not
18 be covered by any program of unemployment insurance;

19 (j) service performed by an individual who is enrolled at a nonprofit or public educational institution,
20 which normally maintains a regular faculty and curriculum and normally has a regularly organized body of
21 students in attendance at the place where its educational activities are carried on, as a student in a full-time
22 program taken for credit at an institution that combines academic instruction with work experience if the
23 service is an integral part of the program and the institution has certified that fact to the employer, except
24 that this subsection does not apply to service performed in a program established for or on behalf of an
25 employer or group of employers;

26 (k) service performed in the employ of a hospital if the service is performed by a patient of the
27 hospital;

28 (l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber
29 who is licensed under Title 37, chapter 30, and:

30 (i) who has acknowledged in writing that the cosmetologist or barber is not covered by

1 unemployment insurance and workers' compensation;

2 (ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined
3 in 37-30-101, which contract must show that the cosmetologist or barber:

4 (A) is free from all control and direction of the owner in the contract;

5 (B) receives payment for services from individual clientele; and

6 (C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or
7 knowledge; and

8 (iii) whose contract gives rise to an action for breach of contract in the event of contract
9 termination (the existence of a single license for the cosmetology salon or barbershop may not be construed
10 as a lack of freedom from control or direction under this subsection);

11 (m) casual labor not in the course of an employer's trade or business performed in any calendar
12 quarter, unless the cash remuneration paid for the service is \$50 or more and the service is performed by
13 an individual who is regularly employed by the employer to perform the service. "Regularly employed"
14 means the services are performed during at least 24 days in the same quarter.

15 (n) employment of sole proprietors or working members of a partnership;

16 (o) services performed for the installation of floor coverings if the installer:

17 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;

18 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

19 (iii) may perform services for anyone without limitation;

20 (iv) may accept or reject any job;

21 (v) furnishes substantially all tools and equipment necessary to provide the services; and

22 (vi) works under a written contract that:

23 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
24 contract obligations;

25 (B) states that the installer is not covered by unemployment insurance; and

26 (C) requires the installer to provide a current workers' compensation policy or to obtain an
27 exemption from workers' compensation requirements;

28 (p) services performed by an individual who acts as a caddie in assisting a golf player during a
29 round of golf primarily by handling the player's clubs when paid directly by the player or indirectly by an
30 entity acting as an agent for the player.

1 (2) "Employment" does not include elected public officials.

2 (3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

3 (a) in the employ of a church or convention or association of churches or an organization that is
4 operated primarily for religious purposes and that is operated, supervised, controlled, or principally
5 supported by a church or convention or association of churches;

6 (b) by ~~a~~ duly an ordained, commissioned, or licensed minister of a church in the exercise of the
7 church's ministry or by a member of a religious order in the exercise of duties required by the order;

8 (c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals
9 whose earning capacity is impaired by age or physical or mental deficiency or injury or providing
10 remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily
11 absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;

12 (d) as part of an unemployment work-relief or work-training program assisted or financed in whole
13 or in part by a federal agency or any agency of a state or political subdivision of the state by an individual
14 receiving work relief or work training; or

15 (e) for a state prison or other state correctional or custodial institution by an inmate of that
16 institution.

17 (4) An individual found to be an independent contractor by the department under the terms of
18 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
19 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
20 39-51-2402.

21 (5) This section does not apply to a state or local governmental entity or a nonprofit organization
22 defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from
23 employment as defined in the Federal Unemployment Tax Act."
24

25 **Section 3.** Section 39-71-401, MCA, is amended to read:

26 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
27 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
28 all employees, as defined in 39-71-118. An employer who has any employee in service under any
29 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
30 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'

1 Compensation Act is subject to and bound by the compensation plan that has been elected by the
2 employer.

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

6 (a) household and domestic employment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (n) an individual who acts as a caddie in assisting a golf player during a round of golf primarily by
7 handling the player's clubs, when paid directly by the player or indirectly by an entity acting as an agent
8 for the player.

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

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

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

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

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

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

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

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

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

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

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

22 **Section 4.** Section 41-2-104, MCA, is amended to read:

23 **"41-2-104. Exemptions.** The provisions of this part do not apply to a minor who is employed:

24 (1) in an agricultural occupation not otherwise prohibited by this part and who has received written
25 consent from the minor's parents or a person standing in place of the parent who works on a farm or ranch
26 where the parent or person is also employed;

27 (2) in domestic service or an agricultural pursuit performed outside school hours in connection with
28 a home or a farm owned or operated by the minor's parent or by a person standing in place of the parent;

29 (3) by the parent or a person standing in place of the parent;

30 (4) during periods of school vacations on a campsite of a nonprofit corporation engaged in

1 citizenship training and character building;

2 (5) as an actor, model, or performer;

3 (6) outside school hours by a homeowner in casual work usual to the home of the homeowner and
4 not in connection with the homeowner's business, trade, or profession;

5 (7) by the legislature as a legislative aide or page; ~~or~~

6 (8) in the distribution or sale of or in the collection for newspapers, periodicals, or circulars; or

7 (9) as a caddie who assists a golf player during a round of golf primarily by handling the player's
8 clubs, when paid directly by the player or indirectly by an entity acting as an agent for the player."

9

10 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

11

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0276, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act exempting golf course caddies from coverage under the state minimum wage, overtime, unemployment insurance, workers' compensation, and child labor laws.

ASSUMPTIONS:

State Compensation Insurance Fund:

1. All individuals who act as caddies, when paid directly by the player or an agent of the player, will be exempt from workers' compensation laws unless their employer elects workers' compensation coverage.
2. The State Fund is unable to segregate the premium of this group to estimate the potential loss of revenue.
3. The State Fund is unable to segregate the premium of this group to estimate the potential savings in benefit payments.
4. Notification of all employers affected by this exemption would be required. Since this group can not be determined costs can not be determined.
5. Forms would be required to be changed at an estimated cost of \$13,186.
6. All policyholders would need to be notified of forms updates at an estimated cost of \$8,437.
7. Computer programs would need to be modified at an estimated cost of \$15,045.

Department of Labor & Industry:

8. The department does not keep data on this specific employment category, but it is assumed that the number of golf caddies in this category is minimal.

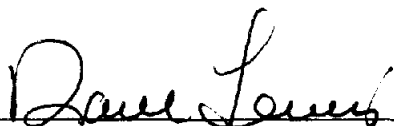
FISCAL IMPACT:

State Compensation Insurance Fund:

Although the fiscal impact can not be determined, the implementation cost will be about \$37,000.

Department of Labor & Industry:

No fiscal impact.

 1-24-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BOB KEENAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0276, as introduced

HB 276