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INTRODUCED BY House BILL NO. 462  
~~Carol Johnson~~ ~~William Harp~~ ~~Benedict Wilson~~  
 Anderson

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN WORKERS' COMPENSATION LAWS; DEFINING "VOLUNTEER"; INCLUDING CERTAIN VOLUNTEER FIREFIGHTERS AND AMBULANCE SERVICE WORKERS IN THE DEFINITION OF EMPLOYEE; EXEMPTING A VOLUNTEER FROM THE COVERAGE UNDER THE WORKERS' COMPENSATION LAWS UNLESS COVERAGE IS ELECTED; AUTHORIZING THE BOARD OF INVESTMENTS TO INVEST STATE FUND MONEY IN COMMON STOCK UNDER CERTAIN CONDITIONS; AUTHORIZING THE STATE FUND TO USE EXISTING DEBT COLLECTION PROCEDURES AS AN OPTION; AMENDING SECTIONS 39-71-118, 39-71-2320, AND 39-71-2363, MCA; AND PROVIDING EFFECTIVE DATES."

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

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

**"39-71-118. Employee, worker, volunteer, 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 a state or federal vocational training program, whether or not under an appointment or contract of hire with

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

4 (d) students enrolled and in attendance in programs of vocational-technical education at a  
 5 designated vocational-technical ~~centers~~ program within a unit of the university system;

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

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

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

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

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

20 (h) a person who is an enrolled member of a volunteer fire department as described in 7-33-4109  
 21 or a person who provides ambulance services under Title 7, chapter 34, part 1.

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

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

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

28 (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage  
 29 under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs  
 30 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined

1 in 39-71-123.

2 (3) With the approval of the insurer, an employer may elect to include as an employee under the  
3 provisions of this chapter any volunteer as defined in subsection (2)(c).

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

6 ~~(4)~~(5) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include  
7 as an employee within the provisions of this chapter any member of the partnership or the owner of the  
8 sole proprietorship devoting full time to the partnership or proprietorship business.

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

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

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

20 ~~(5)~~(6) The trustees of a rural fire district, a county governing body providing rural fire protection,  
21 or the county commissioners or trustees for a fire service area may elect to include as an employee within  
22 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'  
23 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

24 ~~(6)~~(7) An employee or worker in this state whose services are furnished by a person, association,  
25 contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in  
26 39-71-117 is presumed to be under the control and employment of the employer. This presumption may  
27 be rebutted as provided in 39-71-117(3).

28 ~~(7)~~(8) For purposes of this section, an "employee or worker in this state" means:

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

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

3 (c) a nonresident employee of an employer from another state engaged in the construction industry,  
4 as defined in 39-71-116, within this state; or

5 (d) a nonresident of Montana who does not meet the requirements of subsection ~~(7)(b)~~ (8)(b) and  
6 whose employer elects coverage with an insurer that allows an election for an employer whose:

7 (i) nonresident employees are hired in Montana;

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

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

10 (iv) business records are maintained in Montana.

11 ~~(8)(9)~~ An insurer may require coverage for all nonresident employees of a Montana employer who  
12 do not meet the requirements of subsection ~~(7)(b)~~ (8)(b) or ~~(7)(d)~~ (8)(d) as a condition of approving the  
13 election under subsection ~~(7)(d)~~ (8)(d)."

14

15 **Section 2.** Section 39-71-2320, MCA, is amended to read:

16 "**39-71-2320. Property of the state fund -- investment required -- exception for common stock.** (1)

17 All premiums and other money paid to the state fund, all property and securities acquired through the use  
18 of money belonging to the state fund, and all interest and dividends earned upon money belonging to the  
19 state fund are the sole property of the state fund and must be used exclusively for the operations and  
20 obligations of the state fund. The money collected by the state fund may not be used for any other  
21 purpose. However, state fund money must be invested by the board of investments provided for in  
22 2-15-1808. Except as provided in subsection (2), state fund money may be invested in common stocks  
23 of any corporation.

24 (2) State fund money may be invested in common stocks of a corporation if the investment does  
25 not cause the book value of state fund investments to exceed 15% of the book value of the fund or does  
26 not cause the stock of one corporation to exceed 2% of the book value of the state fund."

27

28 **Section 3.** Section 39-71-2363, MCA, is amended to read:

29 "**39-71-2363. Agency law -- submission of budget -- annual report.** (1) The state fund is subject  
30 to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the

1 provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7,  
2 parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4,  
3 part 1.

4 (2) The executive director shall annually submit to the board for its approval an estimated budget  
5 of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the  
6 business interests and contract obligations of the state fund. The administrative expenditures approved by  
7 the board may not exceed 15% of the earned annual premium of the prior fiscal year. A copy of the  
8 approved budget must be delivered to the governor and the legislature.

9 (3) The board shall submit an annual financial report to the governor and to the legislature as  
10 provided in 5-11-210, indicating the business done by the state fund during the previous year and  
11 containing a statement of the estimated liabilities of the state fund as determined by an independent  
12 actuary."

13  
14 **NEW SECTION. Section 4. Coordination instruction.** If \_ Bill No. \_ [LC 648] is not passed and  
15 approved by the electorate, then [section 2 of this act] is void.

16  
17 **NEW SECTION. Section 5. Effective dates.** [Sections 1, 3, and 4 and this section] are effective  
18 on passage and approval.

19 (2) [Section 2] is effective July 1, 1997.

20 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0462, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising certain workers' compensation laws; defining "volunteer"; including certain volunteer firefighters and ambulance service workers in the definition of employee; exempting a volunteer from the coverage under the workers' compensation laws unless coverage is elected; authorizing the board of Investments to invest State Fund money in common stock under certain conditions; authorizing the State Fund to use existing debt collection procedures as an option.

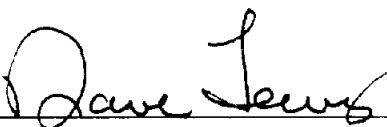
ASSUMPTIONS:

1. State fund investment in common stock is contingent upon passage of HB463 which would place a constitutional amendment on the ballot allowing the State Fund to invest in private corporate capital stock.
2. The State Fund Annual Report, as of 6/30/94, placed the "book value" of State Fund invested assets at \$347,039,447; 15% of the book value fiscal year 1994's total invested assets is \$52,055,917.
3. The fiscal year 1994 Montana common stock pool return was 6.42%. The fiscal year 1994 State Fund rate of return on investments was 5.02%.
4. The State Fund would not be eligible to invest in common stock until July 1, 1997.
5. The definition of "employee" or "worker" will include enrolled members of volunteer fire departments under 7-33-4109, MCA (second class cities) and ambulance services under 7-34-1, MCA (any county, city or town).
6. A person performing service as a "volunteer" is not entitled to workers' compensation coverage for injuries resulting from the service, unless this person would otherwise be entitled to coverage. "Volunteer" is defined specifically for this purpose as a person who performs services on behalf of an employer, as defined in 39-71-117, MCA, but who does not receive wages as defined in 39-71-123, MCA.
7. With the approval of the insurer and employer may elect to include as an employee volunteers, as defined by 39-71-118(2)(c), MCA.
8. The State Fund will continue to use the services of the State Auditor's Office for debt collection. The State Fund may also use the debt collection services of private vendors as necessary.

FISCAL IMPACT:

If the State Fund had the option of investing in common stock in FY94, an additional \$728,000 in investment income would have been generated. Additional investment income would tend to reduce premium rates in the long term.

The changes in the definitions of volunteer are for clarification purposes and have no fiscal impact. There would be no fiscal impact result from the State Fund being allowed to use the debt collection services of the private sector.

 2-11-95

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



DAVID EWER, PRIMARY SPONSOR      DATE

Fiscal Note for HB0462, as introduced

**HB 462**

## 1 HOUSE BILL NO. 462

2 INTRODUCED BY EWER, R. JOHNSON, HIBBARD, HARP, BENEDICT, WILSON, ANDERSON

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN WORKERS' COMPENSATION LAWS;  
5 DEFINING "VOLUNTEER"; INCLUDING CERTAIN VOLUNTEER FIREFIGHTERS AND AMBULANCE SERVICE  
6 WORKERS IN THE DEFINITION OF EMPLOYEE; EXEMPTING A VOLUNTEER FROM THE COVERAGE UNDER  
7 THE WORKERS' COMPENSATION LAWS UNLESS COVERAGE IS ELECTED; AUTHORIZING THE BOARD  
8 OF INVESTMENTS TO INVEST STATE FUND MONEY IN COMMON STOCK UNDER CERTAIN CONDITIONS;  
9 AUTHORIZING THE STATE FUND TO USE EXISTING DEBT COLLECTION PROCEDURES AS AN OPTION;  
10 AMENDING SECTIONS 39-71-118, 39-71-743, 39-71-2320, AND 39-71-2363, MCA; AND PROVIDING  
11 EFFECTIVE DATES."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14  
15 **Section 1.** Section 39-71-118, MCA, is amended to read:16 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The terms  
17 "employee" or "worker" means:18 (a) each person in this state, including a contractor other than an independent contractor, who is  
19 in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,  
20 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully  
21 employed, and all of the elected and appointed paid public officers and officers and members of boards of  
22 directors of quasi-public or private corporations while rendering actual service for the corporations for pay.  
23 Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered  
24 by workers' compensation and if an employer has elected to be bound by the provisions of the  
25 compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic  
26 service is excluded.27 (b) any juvenile performing work under authorization of a district court judge in a delinquency  
28 prevention or rehabilitation program;29 (c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under  
30 a state or federal vocational training program, whether or not under an appointment or contract of hire with

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

4 (d) students enrolled and in attendance in programs of vocational-technical education at a  
 5 designated vocational-technical ~~centers~~ program within a unit of the university system;

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

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

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

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

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

20 (h) a person who is an enrolled member of a volunteer fire department as described in 7-33-4109  
 21 or a person who provides ambulance services under Title 7, chapter 34, part 1.

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

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

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

28 (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage  
 29 under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs  
 30 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined



1 in 39-71-123.

2 (3) With the approval of the insurer, an employer may elect to include as an employee under the  
3 provisions of this chapter any volunteer as defined in subsection (2)(c).

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

6 ~~(4)~~(5) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include  
7 as an employee within the provisions of this chapter any member of the partnership or the owner of the  
8 sole proprietorship devoting full time to the partnership or proprietorship business.

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

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

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

20 ~~(5)~~(6) The trustees of a rural fire district, a county governing body providing rural fire protection,  
21 or the county commissioners or trustees for a fire service area may elect to include as an employee within  
22 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'  
23 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

24 ~~(6)~~(7) An employee or worker in this state whose services are furnished by a person, association,  
25 contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in  
26 39-71-117 is presumed to be under the control and employment of the employer. This presumption may  
27 be rebutted as provided in 39-71-117(3).

28 ~~(7)~~(8) For purposes of this section, an "employee or worker in this state" means:

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

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

3 (c) a nonresident employee of an employer from another state engaged in the construction industry,  
4 as defined in 39-71-116, within this state; or

5 (d) a nonresident of Montana who does not meet the requirements of subsection ~~(7)(b)~~ (8)(b) and  
6 whose employer elects coverage with an insurer that allows an election for an employer whose:

7 (i) nonresident employees are hired in Montana;

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

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

10 (iv) business records are maintained in Montana.

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

14

15 **SECTION 2. SECTION 39-71-743, MCA, IS AMENDED TO READ:**

16 "**39-71-743. Assignment or attachment of payments.** (1) ~~No payments~~ Payments under this  
17 chapter ~~shall~~ may not be assignable, subject to attachment or garnishment, or ~~be~~ held liable in any way for  
18 debts, except:

19 (a) as provided in 71-3-1118; ~~or~~

20 (b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current  
21 or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is  
22 established by order of a court of competent jurisdiction or by order rendered in an administrative process  
23 authorized by state law; or

24 (c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to chapter 71 or 72  
25 of this title.

26 (2) Payments under this chapter are subject to assignment, attachment, or garnishment for child  
27 support as follows:

28 (a) for any periodic payment, an amount up to the percentage amount established in the guidelines  
29 promulgated by the department of social and rehabilitation services pursuant to 40-5-209; or

30 (b) for any lump-sum award, an amount up to that portion of the award that is approved for

1 payment on the basis of a past-due child support obligation.

2 (3) After determination that the claim is covered under the Workers' Compensation Act or  
3 Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the  
4 appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not  
5 payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

6

7 **Section 3.** Section 39-71-2320, MCA, is amended to read:

8 **"39-71-2320. Property of the state fund -- investment required -- exception for common stock.** (1)

9 All premiums and other money paid to the state fund, all property and securities acquired through the use  
10 of money belonging to the state fund, and all interest and dividends earned upon money belonging to the  
11 state fund are the sole property of the state fund and must be used exclusively for the operations and  
12 obligations of the state fund. The money collected by the state fund may not be used for any other  
13 purpose. However, state fund money must be invested by the board of investments provided for in  
14 2-15-1808. Except as provided in subsection (2), state fund money may be invested in common stocks  
15 of any corporation.

16 (2) State fund money may be invested in common stocks of a corporation if the investment does  
17 not cause the book value of state fund COMMON STOCK investments to exceed 15% of the book value  
18 of the STATE fund TOTAL INVESTED ASSETS or does not cause the ~~stock~~ of BOOK VALUE OF COMMON  
19 STOCK INVESTMENTS IN one corporation to exceed 2% of the book value of the state fund TOTAL  
20 INVESTED ASSETS ON THE DATE OF PURCHASE."

21

22 **Section 4.** Section 39-71-2363, MCA, is amended to read:

23 **"39-71-2363. Agency law -- submission of budget -- annual report.** (1) The state fund is subject  
24 to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the  
25 provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7,  
26 parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4,  
27 part 1.

28 (2) The executive director shall annually submit to the board for its approval an estimated budget  
29 of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the  
30 business interests and contract obligations of the state fund. The administrative expenditures approved by

1 the board may not exceed 15% of the earned annual premium of the prior fiscal year. A copy of the  
2 approved budget must be delivered to the governor and the legislature.

3 (3) The board shall submit an annual financial report to the governor and to the legislature as  
4 provided in 5-11-210, indicating the business done by the state fund during the previous year and  
5 containing a statement of the estimated liabilities of the state fund as determined by an independent  
6 actuary."

7  
8 **NEW SECTION. Section 5. Coordination instruction.** If \_ Bill No. \_ [LC 648] is not passed and  
9 approved by the electorate, then [section 2 of this act] is void.

10  
11 **NEW SECTION. Section 6. Effective dates.** [Sections 1, 3, and 4 and this section] are effective  
12 on passage and approval.

13 (2) [Section 2] is effective July 1, 1997.

14 -END-

## 1 HOUSE BILL NO. 462

2 INTRODUCED BY EWER, R. JOHNSON, HIBBARD, HARP, BENEDICT, WILSON, ANDERSON

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN WORKERS' COMPENSATION LAWS;  
5 DEFINING "VOLUNTEER"; INCLUDING CERTAIN VOLUNTEER FIREFIGHTERS AND AMBULANCE SERVICE  
6 WORKERS IN THE DEFINITION OF EMPLOYEE; EXEMPTING A VOLUNTEER FROM THE COVERAGE UNDER  
7 THE WORKERS' COMPENSATION LAWS UNLESS COVERAGE IS ELECTED; AUTHORIZING THE BOARD  
8 OF INVESTMENTS TO INVEST STATE FUND MONEY IN COMMON STOCK UNDER CERTAIN CONDITIONS;  
9 AUTHORIZING THE STATE FUND TO USE EXISTING DEBT COLLECTION PROCEDURES AS AN OPTION;  
10 AMENDING SECTIONS 39-71-118, 39-71-743, 39-71-2320, AND 39-71-2363, MCA; AND PROVIDING  
11 EFFECTIVE DATES."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL  
NOT BE REPRINTED. PLEASE REFER TO SECOND  
READING COPY (YELLOW) FOR COMPLETE TEXT.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 3, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration HB 462 (third reading copy -- blue), respectfully report that HB 462 be amended as follows and as so amended be concurred in.

Signed:   
Senator Thomas F. Keating, Chair

That such amendments read:

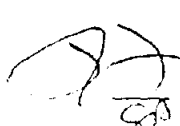
1. Page 6, line 8.  
Strike: "\_\_\_ Bill No. \_\_\_ [LC 648]"  
Insert: "House Bill No. 463"
2. Page 6, line 9.  
Strike: "2".  
Insert: "3"
3. Page 6, line 11.  
Strike: "3, and 4"  
Insert: "2, 4, 5,"
4. Page 6, line 13.  
Strike: "2"  
Insert: "3"


-END-

HB 462

SENATE

501125SC.SRF

  
Amd. Coord.  
Sec. of Senate

  
Senator Carrying Bill

## 1 HOUSE BILL NO. 462

2 INTRODUCED BY EWER, R. JOHNSON, HIBBARD, HARP, BENEDICT, WILSON, ANDERSON

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN WORKERS' COMPENSATION LAWS;  
5 DEFINING "VOLUNTEER"; INCLUDING CERTAIN VOLUNTEER FIREFIGHTERS AND AMBULANCE SERVICE  
6 WORKERS IN THE DEFINITION OF EMPLOYEE; EXEMPTING A VOLUNTEER FROM THE COVERAGE UNDER  
7 THE WORKERS' COMPENSATION LAWS UNLESS COVERAGE IS ELECTED; AUTHORIZING THE BOARD  
8 OF INVESTMENTS TO INVEST STATE FUND MONEY IN COMMON STOCK UNDER CERTAIN CONDITIONS;  
9 AUTHORIZING THE STATE FUND TO USE EXISTING DEBT COLLECTION PROCEDURES AS AN OPTION;  
10 AMENDING SECTIONS 39-71-118, 39-71-743, 39-71-2320, AND 39-71-2363, MCA; AND PROVIDING  
11 EFFECTIVE DATES."

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

14  
15 **Section 1.** Section 39-71-118, MCA, is amended to read:

16 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The terms  
17 "employee" or "worker" means:

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

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

29 (c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under  
30 a state or federal vocational training program, whether or not under an appointment or contract of hire with

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

4 (d) students enrolled and in attendance in programs of vocational-technical education at a  
 5 designated vocational-technical ~~center~~ program within a unit of the university system;

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

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

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

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

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

20 (h) a person who is an enrolled member of a volunteer fire department as described in 7-33-4109  
 21 or a person who provides ambulance services under Title 7, chapter 34, part 1.

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

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

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

28 (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage  
 29 under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs  
 30 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined



1 in 39-71-123.

2 (3) With the approval of the insurer, an employer may elect to include as an employee under the  
3 provisions of this chapter any volunteer as defined in subsection (2)(c).

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

6 ~~(4)~~(5) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include  
7 as an employee within the provisions of this chapter any member of the partnership or the owner of the  
8 sole proprietorship devoting full time to the partnership or proprietorship business.

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

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

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

20 ~~(6)~~(6) The trustees of a rural fire district, a county governing body providing rural fire protection,  
21 or the county commissioners or trustees for a fire service area may elect to include as an employee within  
22 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'  
23 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

24 ~~(6)~~(7) An employee or worker in this state whose services are furnished by a person, association,  
25 contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in  
26 39-71-117 is presumed to be under the control and employment of the employer. This presumption may  
27 be rebutted as provided in 39-71-117(3).

28 ~~(7)~~(8) For purposes of this section, an "employee or worker in this state" means:

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

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

3 (c) a nonresident employee of an employer from another state engaged in the construction industry,  
4 as defined in 39-71-116, within this state; or

5 (d) a nonresident of Montana who does not meet the requirements of subsection ~~(7)(b)~~ (8)(b) and  
6 whose employer elects coverage with an insurer that allows an election for an employer whose:

7 (i) nonresident employees are hired in Montana;

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

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

10 (iv) business records are maintained in Montana.

11 ~~(8)(9)~~ An insurer may require coverage for all nonresident employees of a Montana employer who  
12 do not meet the requirements of subsection ~~(7)(b)~~ (8)(b) or ~~(7)(d)~~ (8)(d) as a condition of approving the  
13 election under subsection ~~(7)(d)~~ (8)(d)."

14  
15 **SECTION 2. SECTION 39-71-743, MCA, IS AMENDED TO READ:**

16 **"39-71-743. Assignment or attachment of payments.** (1) ~~No payments~~ Payments under this  
17 chapter ~~shall~~ may not be assignable, subject to attachment or garnishment, or ~~be~~ held liable in any way for  
18 debts, except:

19 (a) as provided in 71-3-1118; ~~or~~

20 (b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current  
21 or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is  
22 established by order of a court of competent jurisdiction or by order rendered in an administrative process  
23 authorized by state law; or

24 (c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to chapter 71 or 72  
25 of this title.

26 (2) Payments under this chapter are subject to assignment, attachment, or garnishment for child  
27 support as follows:

28 (a) for any periodic payment, an amount up to the percentage amount established in the guidelines  
29 promulgated by the department of social and rehabilitation services pursuant to 40-5-209; or

30 (b) for any lump-sum award, an amount up to that portion of the award that is approved for

1 payment on the basis of a past-due child support obligation.

2 (3) After determination that the claim is covered under the Workers' Compensation Act or  
3 Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the  
4 appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not  
5 payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."  
6

7 **Section 3.** Section 39-71-2320, MCA, is amended to read:

8 **"39-71-2320. Property of the state fund -- investment required -- exception for common stock. (1)**

9 All premiums and other money paid to the state fund, all property and securities acquired through the use  
10 of money belonging to the state fund, and all interest and dividends earned upon money belonging to the  
11 state fund are the sole property of the state fund and must be used exclusively for the operations and  
12 obligations of the state fund. The money collected by the state fund may not be used for any other  
13 purpose. However, state fund money must be invested by the board of investments provided for in  
14 2-15-1808. Except as provided in subsection (2), state fund money may be invested in common stocks  
15 of any corporation.

16 (2) State fund money may be invested in common stocks of a corporation if the investment does  
17 not cause the book value of state fund COMMON STOCK investments to exceed 15% of the book value  
18 of the STATE fund TOTAL INVESTED ASSETS or does not cause the ~~stock~~ of BOOK VALUE OF COMMON  
19 STOCK INVESTMENTS IN one corporation to exceed 2% of the book value of the state fund TOTAL  
20 INVESTED ASSETS ON THE DATE OF PURCHASE."  
21

22 **Section 4.** Section 39-71-2363, MCA, is amended to read:

23 **"39-71-2363. Agency law -- submission of budget -- annual report.** (1) The state fund is subject  
24 to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the  
25 provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7,  
26 parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4,  
27 part 1.

28 (2) The executive director shall annually submit to the board for its approval an estimated budget  
29 of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the  
30 business interests and contract obligations of the state fund. The administrative expenditures approved by

1 the board may not exceed 15% of the earned annual premium of the prior fiscal year. A copy of the  
2 approved budget must be delivered to the governor and the legislature.

3 (3) The board shall submit an annual financial report to the governor and to the legislature as  
4 provided in 5-11-210, indicating the business done by the state fund during the previous year and  
5 containing a statement of the estimated liabilities of the state fund as determined by an independent  
6 actuary."

7

8 NEW SECTION. **Section 5. Coordination instruction.** If ~~Bill No. LC 648~~ HOUSE BILL NO.  
9 463 is not passed and approved by the electorate, then [section ~~2~~ 3 of this act] is void.

10

11 NEW SECTION. **Section 6. Effective dates.** [Sections 1, ~~3~~, and ~~4~~ 2, 4, 5, and this section] are  
12 effective on passage and approval.

13 (2) [Section ~~2~~ 3] is effective July 1, 1997.

14

-END-