

1 INTRODUCED BY Kitzie Berg House BILL NO. 469

2 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TAX CREDIT TO ENCOURAGE EMPLOYER
3 PARTICIPATION IN A SCHOOL DISTRICT SCHOOL-TO-WORK PROGRAM; CLARIFYING WORKER
4 COMPENSATION LAWS WITH REGARD TO STUDENTS WHO PARTICIPATE IN A SCHOOL-TO-WORK
5 PROGRAM; AMENDING SECTION 39-71-118, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND
6 AN APPLICABILITY DATE."
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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 Section 1. Section 39-71-118, MCA, is amended to read:

13 "39-71-118. Employee, worker, and volunteer firefighter defined. (1) The terms "employee" or
14 "worker" means mean:

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

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

26 (c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under
27 a state or federal vocational training program, whether or not under an appointment or contract of hire with
28 an employer as defined in this chapter and whether or not receiving payment from a third party. However,
29 this subsection does not apply to students enrolled in vocational training programs as outlined in this
30 subsection while they are on the premises of a public school or community college.

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

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

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

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

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

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

16 (h) a student participating in a school-to-work program or other workplace preparation program of
17 a school district, whether or not under appointment or contract of hire with an employer as defined in this
18 chapter and whether or not receiving payment from a third party. For a person covered by the definition
19 in this subsection (1)(h):

20 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an
21 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,
22 chapter 3, part 4, for the number of hours of work at the time of injury; and

23 (ii) premiums must be paid by the school district that is considered to be the employer, as defined
24 in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part
25 4, for the number of hours of work.

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

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

30 (b) performing voluntary service at a recreational facility and who receives no compensation for

1 those services other than meals, lodging, or the use of the recreational facilities.

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

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

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

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

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

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

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 **NEW SECTION. Section 2. Credit for participation in school-to-work programs.** (1) There is a credit
13 against the taxes otherwise due under this chapter allowable to an employer for amounts paid during the
14 tax year by the employer as the result of participation in a school district school-to-work program or other
15 workplace preparation program.

16 (2) The amount of the credit allowed under subsection (1) is the amount of wages paid to
17 participating students by the sponsoring employer during the tax year, but the credit may not exceed
18 \$2,500 in a tax year.

19 (3) If the credit allowed under subsection (1) is claimed, the amount of any deduction allowed or
20 allowable under this chapter for the amount that qualifies for the credit, or upon which the credit is based,
21 must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under
22 this section must be made at the time of filing the tax return.

23 (4) Any tax credit otherwise allowable under this section that is not used by a taxpayer in a
24 particular year may be carried forward and offset against the taxpayer's tax liability for the succeeding tax
25 year. Any credit remaining unused in the succeeding tax year may be carried forward and used in the
26 second succeeding tax year but may not be carried forward for any other year.

27 (5) For purposes of the credit allowed under subsection (1), "employer" means an employer
28 carrying on a business, trade, occupation, or profession in this state.

29
30 **NEW SECTION. Section 3. Department duties.** The department of revenue shall determine the

1 eligibility of a corporation for the credit in [section 2], promulgate rules, prepare forms, maintain records,
2 and perform other duties necessary to carry out the provisions of [section 2].

3
4 NEW SECTION. **Section 4. Codification instruction.** [Sections 2 and 3] are intended to be codified
5 as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 2
6 and 3].

7
8 NEW SECTION. **Section 5. Effective date -- applicability.** [This act] is effective July 1, 1996, and
9 applies to tax years beginning after December 31, 1996.

10 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0469, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A act providing a tax credit to encourage employer participation in a school district school-to-work program; clarifying worker compensation laws with regard to students who participate in a school-to-work program.

ASSUMPTIONS:

1. The school district will be considered the employer of a student participating in a school-to-work program or other workplace preparation program of a school district.
2. Premiums paid by the school district considered to be the employer must be based on minimum wage for the number of hours worked.
3. Premiums will be calculated based upon the governing code of the school district.
4. Rates charged to the school districts will be commensurate to the risk.
5. There will be no wage loss benefits paid to students.
6. Impairment awards will be based upon minimum wage and the number of hours of work at the time of injury.
7. Losses will be charged the school district considered the employer of the student and will impact their rates and their experience modification factor.

FISCAL IMPACT:

It is anticipated that there will be increased benefit expenditures. The level of the increased expenditures cannot be determined.

Since the State Fund is neither more nor less than self supporting the overall State Fund rate will fluctuate to offset the overall losses.

TECHNICAL NOTE:

Section 1. 39-71-118(h)(ii) of the bill incorrectly cites current law as "39-71-117(3)" /the appropriate cite for the intent of this legislation is "39-71-117(1)".

Dave Lewis 2-12-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

SAM KITZENBERG, PRIMARY SPONSOR DATE
Fiscal Note for HB0469, as introduced
HB 469