

1 SENATE BILL NO. 22

2 INTRODUCED BY GAGE

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM WORKERS' COMPENSATION COVERAGE
6 A JOCKEY OR PONY RIDER WHO IS LICENSED BY THE BOARD OF HORSERACING; AMENDING SECTION
7 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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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 a jockey or pony rider performing under a license issued by the board of
23 horseracing.

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.

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

3 (d) When an election of an exemption is approved by the department, the election remains effective
4 and the independent contractor retains the status as an independent contractor until the independent
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
14 be bound as an employee under this chapter by giving a written notice, on a form provided by the
15 department, served in the following manner:

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

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

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

22 (c) The appointment or election of an employee as an officer of a corporation for the purpose of
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 workers' 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.
3 The sign must be provided by the department, distributed through insurers or directly by the department,
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 on passage and approval.

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-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0022, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to exempt from workers' compensation coverage a jockey or pony rider who is licensed by the board of horse racing.

ASSUMPTIONS:

1. All jockeys and pony riders would be exempt from the workers' compensation act. However, SB22 would not prevent jockeys or pony riders from re-entering the workers' compensation system as a sole proprietor, partner, or corporate officer who elects coverage for themselves or as an exempt employee who is endorsed on to an employers policy.
2. The extent to which coverage would be reduced for jockeys or pony riders performing under a license issued by the Board of Horse Racing is unknown.
3. The State Fund's loss to premium ratio for jockeys or pony riders performing under a license issued by the Board of Horse Racing is highly volatile and is therefore inestimable in the short term. In the long term, premiums are presumed to be established at levels consistent with losses. The State Funds' experience to date is as follows:

Summary of Industry Premium and Loss Experience (Horse Racing Association)

Policy Period	Premium	Total Industry Ultimate Loss Estimate	Jockey in Races Ultimate Loss Estimate
1/94-10/94	\$267,894	\$229,603	\$184,954
1/93-1/94	\$75,790	\$2,961,456	\$2,842,763
1/92-1/93	\$164,440	\$460,138	\$25,764
1/91-1/92	\$160,480	\$364,761	\$75,014
1/90-1/91	<u>\$186,870</u>	<u>\$307,754</u>	<u>\$134,591</u>
Total	\$855,474	\$4,323,712	\$3,263,086

Notes:

- 1) 1/90-1/91 year - Information on specific accidents does not allow identification of claims during races.
- 2) 1/94-10/94 year - 2 claims believed to be race related, but unclear.
- 3) Loss data updated for most recent loss information (Dec. 1994).
- 4) Ultimate loss estimates are not discounted.
- 5) Incurred Losses as of December 15, 1994.

FISCAL IMPACT:

SB22 would likely result in a reduction in both premium revenue and loss expenditures for the State Fund. The net effect on the State Fund is inestimable in the short term.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The long-range net impact of SB22 on the State Fund is presumed to be generally neutral. A reduction in the State Fund's "book of business" generally causes overhead expenses to be allocated to a smaller base, putting upward pressure on premiums--all other factors being constant. However, this impact of SB22 would be relatively insignificant.

David Lewis 1-5-95

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

Delwyn Gabe 1-6-95

 DELWYN GABE, PRIMARY SPONSOR DATE

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

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

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

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

1 if the officer falsifies the notice.

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

11

12 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

13

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