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INTRODUCED BY SENATE BILL NO. 125
Leating Gilman

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN PETROLEUM LAND PROFESSIONALS FROM THE REQUIREMENTS OF UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION LAWS; AMENDING SECTIONS 39-51-204 AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 39-51-204, MCA, is amended to read:

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

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

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

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

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

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

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

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of

1 the United States;

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

4 (e) service performed in the employ of any other state or its political subdivisions or of the United
5 States government or of an instrumentality of any other state or states or their political subdivisions or of
6 the United States, except that national banks organized under the national banking law may not be entitled
7 to exemption under this subsection and are subject to this chapter the same as state banks, provided that
8 the service is excluded from employment as defined in the Federal Unemployment Tax Act by section
9 3306(c)(7) of that act;

10 (f) service ~~with respect to~~ in which unemployment insurance is payable under an unemployment
11 insurance system established by an act of congress, ~~provided that if the department shall enter~~ enters into
12 agreements with the proper agencies under an act of congress, ~~which and those~~ agreements become
13 effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules,
14 to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under
15 this chapter, acquired rights to unemployment insurance under an act of congress or who have, after
16 acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits
17 under this chapter;

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

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

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

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

29 (i) service performed in the employ of a school, college, or university if the service is performed
30 by a student who is enrolled and is regularly attending classes at a school, college, or university or by the

1 spouse of a student if the spouse is advised, at the time that the spouse commences to perform the
2 service, that the employment of the spouse to perform the service is provided under a program to provide
3 financial assistance to the student by the school, college, or university and that the employment will not
4 be covered by any program of unemployment insurance;

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

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

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

16 (i) who has acknowledged in writing that the cosmetologist or barber is not covered by
17 unemployment insurance and workers' compensation;

18 (ii) who contracts with a cosmetology salon₂ as defined in 37-31-101₂ or a barbershop₂ as defined
19 in 37-30-101, which contract must show that the cosmetologist or barber:

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

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

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

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

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

- 1 (n) employment of sole proprietors or working members of a partnership;
- 2 (o) services performed for the installation of floor coverings if the installer:
- 3 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;
- 4 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
- 5 (iii) may perform services for anyone without limitation;
- 6 (iv) may accept or reject any job;
- 7 (v) furnishes substantially all tools and equipment necessary to provide the services; and
- 8 (vi) works under a written contract that:
- 9 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
- 10 contract obligations;
- 11 (B) states that the installer is not covered by unemployment insurance; and
- 12 (C) requires the installer to provide a current workers' compensation policy or to obtain an
- 13 exemption from workers' compensation requirements-;
- 14 (p) services performed by a petroleum land professional. As used in this subsection, "petroleum
- 15 land professional" means a person who:
- 16 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
- 17 negotiating a business agreement for the exploration or development of minerals;
- 18 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
- 19 than on an hourly wage basis; and
- 20 (iii) performs all services as an independent contractor pursuant to a written contract.
- 21 (2) "Employment" does not include elected public officials.
- 22 (3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:
- 23 (a) in the employ of a church or convention or association of churches or an organization that is
- 24 operated primarily for religious purposes and that is operated, supervised, controlled, or principally
- 25 supported by a church or convention or association of churches;
- 26 (b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the
- 27 church's ministry or by a member of a religious order in the exercise of duties required by the order;
- 28 (c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals
- 29 whose earning capacity is impaired by age or physical or mental deficiency or injury or providing
- 30 remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily

1 absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;

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

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

7 (4) An individual found to be an independent contractor by the department under the terms of
8 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
9 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
10 39-51-2402.

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

14
15 **Section 2.** Section 39-71-401, MCA, is amended to read:

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

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

26 (a) household and domestic employment;

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

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

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

1 subsection (3);

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

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

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

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

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

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

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

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

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

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

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

26 (n) a person who performs services as a petroleum land professional. As used in this subsection,
27 a "petroleum land professional" is a person who:

28 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
29 negotiating a business agreement for the exploration or development of minerals;

30 (ii) is paid for services that are directly related to the completion of a contracted specific task rather

1 than on an hourly wage basis; and

2 (iii) performs all services as an independent contractor pursuant to a written contract.

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

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

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

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

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

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

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

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

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

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

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

15

16 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

17

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0125, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act exempting certain petroleum land professionals from the requirements of unemployment insurance and workers' compensation laws.

ASSUMPTIONS:

State Compensation Insurance Fund:


1. Petroleum land professionals who are sole proprietors or partners in a business with no employees, and in accordance with statute, are not covered under the workers' compensation act unless they specifically elect to be covered.
2. Petroleum land professionals who hold themselves out as independent contractors are required, pursuant to 39-71-401, MCA, to purchase a workers' compensation policy or get an exemption as an independent contractor from the Department of Labor.
3. Petroleum land professionals performing their duties for a single employer are covered under the employer's workers' compensation policy. Coverage may be through Plan 1, Plan 2, or Plan 3.
4. The State Fund is unable to segregate the premium of this group to estimate the potential loss of revenue.
5. The State Fund is unable to segregate the premium of this group to estimate the potential savings from claims loss experience.
6. If the bill is passed, the State Fund would need to notify affected employers of the exemption. Since the number of policyholders can not be determined, notification cost can not be determined.


Department of Labor and Industry:

1. The Department of Labor and Industry does not keep data on this specific employment category, but it is assumed that the number of petroleum land professionals in this category are minimal.
2. The cases presented to the department in past years have been found to be independent contractor status and, therefore, were not subject to Unemployment Insurance taxes.

FISCAL IMPACT:

None

 1-18-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1-19-95
TOM KEATING, PRIMARY SPONSOR DATE

Fiscal Note for SB0125, as introduced

SB 125

SENATE BILL NO. 125

INTRODUCED BY KEATING, FELAND

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN PETROLEUM LAND PROFESSIONALS FROM THE REQUIREMENTS OF UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION LAWS; AMENDING SECTIONS 39-51-204 AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 39-51-204, MCA, is amended to read:

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

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

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

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

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

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

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

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of

1 the United States;

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

4 (e) service performed in the employ of any other state or its political subdivisions or of the United
5 States government or of an instrumentality of any other state or states or their political subdivisions or of
6 the United States, except that national banks organized under the national banking law may not be entitled
7 to exemption under this subsection and are subject to this chapter the same as state banks, provided that
8 the service is excluded from employment as defined in the Federal Unemployment Tax Act by section
9 3306(c)(7) of that act;

10 (f) service ~~with respect to~~ in which unemployment insurance is payable under an unemployment
11 insurance system established by an act of congress, ~~provided that if the department shall enter~~ enters into
12 agreements with the proper agencies under an act of congress, ~~which~~ and those agreements become
13 effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules,
14 to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under
15 this chapter, acquired rights to unemployment insurance under an act of congress or who have, after
16 acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits
17 under this chapter;

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

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

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

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

29 (i) service performed in the employ of a school, college, or university if the service is performed
30 by a student who is enrolled and is regularly attending classes at a school, college, or university or by the

1 spouse of a student if the spouse is advised, at the time that the spouse commences to perform the
2 service, that the employment of the spouse to perform the service is provided under a program to provide
3 financial assistance to the student by the school, college, or university and that the employment will not
4 be covered by any program of unemployment insurance;

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

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

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

16 (i) who has acknowledged in writing that the cosmetologist or barber is not covered by
17 unemployment insurance and workers' compensation;

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

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

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

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

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

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

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

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

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

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

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

6 (iv) may accept or reject any job;

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

8 (vi) works under a written contract that:

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

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

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

14 (p) services performed by a petroleum land professional. As used in this subsection, "petroleum
15 land professional" means a person who:

16 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
17 negotiating a business agreement for the exploration or development of minerals;

18 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
19 than on an hourly wage basis; and

20 (iii) performs all services as an independent contractor pursuant to a written contract.

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

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

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

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

28 (c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals
29 whose earning capacity is impaired by age or physical or mental deficiency or injury or providing
30 remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily

1 absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;
 2 (d) as part of an unemployment work-relief or work-training program assisted or financed in whole
 3 or in part by a federal agency or any agency of a state or political subdivision of the state by an individual
 4 receiving work relief or work training; or

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

7 (4) An individual found to be an independent contractor by the department under the terms of
 8 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
 9 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
 10 39-51-2402.

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

14

15 **Section 2.** Section 39-71-401, MCA, is amended to read:

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

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

26 (a) household and domestic employment;

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

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

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

1 subsection (3);

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

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

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

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

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

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

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

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

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

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

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

26 (n) a person who performs services as a petroleum land professional. As used in this subsection,
27 a "petroleum land professional" is a person who:

28 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
29 negotiating a business agreement for the exploration or development of minerals;

30 (ii) is paid for services that are directly related to the completion of a contracted specific task rather

1 ~~than on an hourly wage basis; and~~

2 ~~(iii) performs all services as an independent contractor pursuant to a written contract.~~

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

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

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

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

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

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

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

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

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

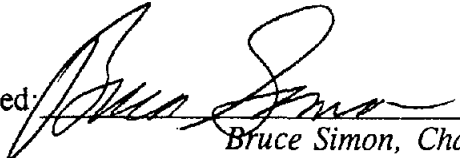


HOUSE STANDING COMMITTEE REPORT

February 7, 1995

Page 1 of 2

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 125** (third reading copy -- blue) be concurred in as amended.

Signed: 
Bruce Simon, Chair

Carried by: Rep. Feland

And, that such amendments read:

1. Page 4, line 16.

Following: "~~(i)~~"

Insert: ": (i)"

2. Page 4, line 20.

Following: "~~contract~~"

Insert: "; (ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and (iii) performs all services as an independent contractor pursuant to a written contract"

3. Page 6, line 28.


Following: "~~(i)~~"

Insert: ": (i)"

4. Page 7, line 2.

Following: "~~contract~~"

Insert: "; (ii) is paid for services that are directly related to


Committee Vote:
Yes 18, No 0.

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the completion of a contracted specific task rather than on an hourly wage basis; and (iii) performs all services as an independent contractor pursuant to a written contract"

-END-

321448SC.Hbk

1 SENATE BILL NO. 125

2 INTRODUCED BY KEATING, FELAND

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN PETROLEUM LAND PROFESSIONALS
5 FROM THE REQUIREMENTS OF UNEMPLOYMENT INSURANCE AND WORKERS' COMPENSATION LAWS;
6 AMENDING SECTIONS 39-51-204 AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
7 DATE."

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

10
11 **Section 1.** Section 39-51-204, MCA, is amended to read:

12 "39-51-204. **Exclusions from definition of employment.** (1) The term "employment" does not
13 include:

14 (a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to
15 this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded
16 from coverage under this chapter if the employer:

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

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

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

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

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

30 (c) service performed as an officer or member of the crew of a vessel on the navigable waters of

1 the United States;

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

4 (e) service performed in the employ of any other state or its political subdivisions or of the United
5 States government or of an instrumentality of any other state or states or their political subdivisions or of
6 the United States, except that national banks organized under the national banking law may not be entitled
7 to exemption under this subsection and are subject to this chapter the same as state banks, provided that
8 the service is excluded from employment as defined in the Federal Unemployment Tax Act by section
9 3306(c)(7) of that act;

10 (f) service ~~with respect to~~ in which unemployment insurance is payable under an unemployment
11 insurance system established by an act of congress, ~~provided that if the department shall enter~~ enters into
12 agreements with the proper agencies under an act of congress, ~~which~~ and those agreements become
13 effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules,
14 to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under
15 this chapter, acquired rights to unemployment insurance under an act of congress or who have, after
16 acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits
17 under this chapter;

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

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

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

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

29 (i) service performed in the employ of a school, college, or university if the service is performed
30 by a student who is enrolled and is regularly attending classes at a school, college, or university or by the

1 spouse of a student if the spouse is advised, at the time that the spouse commences to perform the
2 service, that the employment of the spouse to perform the service is provided under a program to provide
3 financial assistance to the student by the school, college, or university and that the employment will not
4 be covered by any program of unemployment insurance;

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

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

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

16 (i) who has acknowledged in writing that the cosmetologist or barber is not covered by
17 unemployment insurance and workers' compensation;

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

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

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

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

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

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

- 1 (n) employment of sole proprietors or working members of a partnership;
- 2 (o) services performed for the installation of floor coverings if the installer:
 - 3 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;
 - 4 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;
 - 5 (iii) may perform services for anyone without limitation;
 - 6 (iv) may accept or reject any job;
 - 7 (v) furnishes substantially all tools and equipment necessary to provide the services; and
 - 8 (vi) works under a written contract that:
 - 9 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the
 - 10 contract obligations;
 - 11 (B) states that the installer is not covered by unemployment insurance; and
 - 12 (C) requires the installer to provide a current workers' compensation policy or to obtain an
 - 13 exemption from workers' compensation requirements;
 - 14 (p) services performed by a petroleum land professional. As used in this subsection, "petroleum
 - 15 land professional" means a person who:
 - 16 (i): (I) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
 - 17 negotiating a business agreement for the exploration or development of minerals;
 - 18 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
 - 19 than on an hourly wage basis; and
 - 20 (iii) performs all services as an independent contractor pursuant to a written contract; (II) IS PAID
 - 21 FOR SERVICES THAT ARE DIRECTLY RELATED TO THE COMPLETION OF A CONTRACTED SPECIFIC TASK
 - 22 RATHER THAN ON AN HOURLY WAGE BASIS; AND
 - 23 (III) PERFORMS ALL SERVICES AS AN INDEPENDENT CONTRACTOR PURSUANT TO A WRITTEN
 - 24 CONTRACT.
- 25 (2) "Employment" does not include elected public officials.
- 26 (3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:
 - 27 (a) in the employ of a church or convention or association of churches or an organization that is
 - 28 operated primarily for religious purposes and that is operated, supervised, controlled, or principally
 - 29 supported by a church or convention or association of churches;
 - 30 (b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the

1 church's ministry or by a member of a religious order in the exercise of duties required by the order;

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

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

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

11 (4) An individual found to be an independent contractor by the department under the terms of
12 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent
13 contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to
14 39-51-2402.

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

18

19 **Section 2.** Section 39-71-401, MCA, is amended to read:

20 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
21 subsection (2), the Workers' Compensation Act applies to all employers₂ as defined in 39-71-117₂ and to
22 all employees₂ as defined in 39-71-118. An employer who has any employee in service under any
23 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
24 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
25 Compensation Act is subject to and bound by the compensation plan that has been elected by the
26 employer.

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

30 (a) household and domestic employment;

- 1 (b) casual employment as defined in 39-71-116;
- 2 (c) employment of a dependent member of an employer's family for whom an exemption may be
3 claimed by the employer under the federal Internal Revenue Code;
- 4 (d) employment of sole proprietors or working members of a partnership, except as provided in
5 subsection (3);
- 6 (e) employment of a broker or salesman performing under a license issued by the board of realty
7 regulation;
- 8 (f) employment of a direct seller engaged in the sale of consumer products, primarily in the
9 customer's home;
- 10 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
11 under the laws of the United States;
- 12 (h) employment of any person performing services in return for aid or sustenance only, except
13 employment of a volunteer under 67-2-105;
- 14 (i) employment with any railroad engaged in interstate commerce, except that railroad construction
15 work is included in and subject to the provisions of this chapter;
- 16 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
17 event, unless the person is otherwise employed by a school district;
- 18 (k) any person performing services as a newspaper carrier or free-lance correspondent if the person
19 performing the services or a parent or guardian of the person performing the services in the case of a minor
20 has acknowledged in writing that the person performing the services and the services are not covered. As
21 used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for
22 publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":
23 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
24 bundles; but
25 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
26 carries or delivers papers.
- 27 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);
- 28 (m) a person who is employed by an enrolled tribal member who operates solely within the exterior
29 boundaries of an Indian reservation;
- 30 (n) a person who performs services as a petroleum land professional. As used in this subsection,

1 a "petroleum land professional" is a person who:

2 ~~(i): (I) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in~~
 3 ~~negotiating a business agreement for the exploration or development of minerals;~~

4 ~~(ii) is paid for services that are directly related to the completion of a contracted specific task rather~~
 5 ~~than on an hourly wage basis; and~~

6 ~~(iii) performs all services as an independent contractor pursuant to a written contract; (II) IS PAID~~
 7 ~~FOR SERVICES THAT ARE DIRECTLY RELATED TO THE COMPLETION OF A CONTRACTED SPECIFIC TASK~~
 8 ~~RATHER THAN ON AN HOURLY WAGE BASIS; AND~~

9 (III) PERFORMS ALL SERVICES AS AN INDEPENDENT CONTRACTOR PURSUANT TO A WRITTEN
 10 CONTRACT.

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

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

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

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

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

28 (4) (a) A private corporation shall provide coverage for its officers and other employees under the
 29 provisions of compensation plan No. 1, 2, or 3. However, pursuant to rules that the department
 30 promulgates and subject in all cases to approval by the department, an officer of a private corporation may

1 elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by
2 the department, served in the following manner:

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

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

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

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

14 (5) Each employer shall post a sign in the workplace at the locations where notices to employees
15 are normally posted, informing employees about the employer's current provision of compensation
16 insurance. A workplace is any location where an employee performs any work-related act in the course of
17 employment, regardless of whether the location is temporary or permanent, and includes the place of
18 business or property of a third person while the employer has access to or control over the place of
19 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
20 The sign must be provided by the department, distributed through insurers or directly by the department,
21 and posted by employers in accordance with rules adopted by the department. An employer who purposely
22 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
23

24 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

25 -END-