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INTRODUCED BY

SENATE BILL NO. 354

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CONTRACTOR REGISTRATION; PROVIDING FOR FEES TO FUND THE ADMINISTRATION AND ENFORCEMENT OF THE REGISTRATION; SETTING REQUIREMENTS FOR REGISTRATION; REQUIRING SURETY BONDS; PROVIDING EXEMPTIONS; PROVIDING RESTRICTIONS ON ADVERTISING; PROVIDING FOR ADMINISTRATIVE HEARINGS; PROVIDING FOR VIOLATIONS AND PENALTIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF LABOR AND INDUSTRY; AMENDING SECTIONS 37-71-211, 39-3-703, AND 39-3-705, MCA; AND REPEALING SECTION 39-3-704, MCA."

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## STATEMENT OF INTENT

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A statement of intent is required for this bill because the bill gives the department of labor and industry authority to adopt administrative rules. It is the intent of the legislature that the department adopt rules to implement a self-funding registration program for contractors to ensure that:

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(1) contractors are in compliance with the laws governing workers' compensation coverage, unemployment insurance coverage, and other state laws;

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(2) the consumers of construction services are protected; and

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(3) all persons in the construction business are operating on a "level playing field" with regard to compliance with state laws.

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

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NEW SECTION. **Section 1. Purpose.** It is the purpose of [sections 1 through 28] to:

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(1) afford protection to the public, including all persons, firms, and corporations furnishing labor, materials, or equipment to a contractor, from unreliable, fraudulent, financially irresponsible, or incompetent contractors; and

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(2) ensure that all contractors are competing fairly and in compliance with state laws.

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NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 28], the following

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1 definitions apply:

2 (1) "Contractor" means a person, firm, or corporation that:

3 (a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to  
4 construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building,  
5 highway, road, railroad, excavation, or other structure, project, development, or improvement attached to  
6 real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other  
7 structures or works, or the installation or repair of roofing or siding; or

8 (b) in order to do work similar to that described in subsection (1)(a) upon the contractor's property,  
9 employs members of more than one trade on a single job or under a single building permit, except as  
10 otherwise provided.

11 (2) "Department" means the department of labor and industry.

12 (3) (a) "General contractor" means a contractor whose business operations require the use of more  
13 than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole  
14 or in part.

15 (b) The term does not include an individual who performs all work personally, without employees  
16 or other specialty contractors, as defined in this section.

17 (4) "Specialty contractor" means a contractor whose operations do not fall within the definition  
18 of general contractor.

19 (5) "Verification" means the receipt and duplication by a political subdivision of a contractor  
20 registration card that is current on its face.

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22 **NEW SECTION. Section 3. Registration required -- prohibited acts -- criminal penalty.** (1) On or  
23 before July 1, 1996, each contractor shall register with the department.

24 (2) It is a misdemeanor for a contractor to:

25 (a) advertise, offer to perform work, submit a bid, or perform work as a contractor:

26 (i) without being registered as required by [sections 1 through 28]; or

27 (ii) when the contractor's registration is suspended;

28 (b) use a false or expired registration number in purchasing or offering to purchase an  
29 advertisement for which a contractor registration number is required; or

30 (c) transfer a valid registration to an unregistered contractor to work under a registration issued

1 to another contractor.

2 (3) A misdemeanor action under [sections 1 through 28] must be prosecuted in the county where  
3 the infraction occurs.

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5 **NEW SECTION. Section 4. Application for registration -- grounds for denial.** (1) An applicant for  
6 registration as a contractor shall submit an application under oath on a form to be provided by the  
7 department that must include the following information:

8 (a) the applicant's social security number;

9 (b) proof of workers' compensation coverage;

10 (c) proof of unemployment insurance;

11 (d) the I.R.S. employer identification number, if any;

12 (e) the type of contracting activity, such as general or specialty, and, if applicable, the type of  
13 specialty; and

14 (f) the name and address of:

15 (i) each partner if the applicant is a firm or partnership;

16 (ii) the owner if the applicant is an individual proprietorship; or

17 (iii) the corporate officers and statutory agent, if any, if the applicant is a corporation.

18 (2) The information contained in the application is a matter of public record and is open to public  
19 inspection.

20 (3) The department may verify the workers' compensation coverage information provided by the  
21 applicant in subsection (1)(b), including but not limited to information regarding the coverage of an  
22 individual employee of the applicant. If coverage is provided under the laws of another state, the  
23 department may notify the other state that the applicant is employing employees in Montana.

24 (4) Registration must be denied if:

25 (a) the applicant has been previously registered as a sole proprietor, partnership, or corporation and  
26 was a principal or officer of the corporation; and

27 (b) the applicant has an unsatisfied final judgment in an action based on Title 39, chapter 3, part  
28 7, that was incurred during a previous registration under [sections 1 through 28].

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30 **NEW SECTION. Section 5. Bond or other security required.** Each applicant shall, at the time of

1 registration or reregistration, file with the department a surety bond or other security as provided in Title  
2 39, chapter 3, part 7.

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4 **NEW SECTION. Section 6. Certificate of registration -- issuance -- duration -- renewal --**  
5 **suspension.** (1) The department shall issue to the applicant a certificate of registration upon compliance  
6 with the registration requirements of [sections 1 through 28].

7 (2) If the department approves an application, it shall issue a certificate of registration to the  
8 applicant. The department shall place the expiration date on the certificate. The certificate is valid until  
9 the earliest date of:

- 10 (a) 1 year;
- 11 (b) the date the bond expires; or
- 12 (c) the date the insurance expires.

13 (3) A contractor may supply a short-term bond or insurance policy to bring its registration period  
14 to the full 1 year.

15 (4) If a contractor’s surety bond or other security has an unsatisfied judgment against it or it is  
16 canceled, the contractor’s registration is automatically suspended on the effective date of the impairment  
17 or cancellation. The department shall give notice of the suspension to the contractor.

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19 **NEW SECTION. Section 7. When partnership or joint venture considered registered.** A partnership  
20 or joint venture is considered registered under [sections 1 through 28] if one of the general partners or  
21 venturers whose name under which the partnership or venture does business is registered.

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23 **NEW SECTION. Section 8. Fees.** (1) The department shall charge fees for:

- 24 (a) issuance, renewal, and reinstatement of certificates of registration; and
- 25 (b) changes of name, address, or business structure.

26 (2) The department shall set the fees by administrative rule. The fees shall cover the full cost of  
27 issuing certificates, filing papers and notices, and administering and enforcing [sections 1 through 28]. The  
28 costs include reproduction, travel, per diem, and administrative and legal support costs.

29 (3) The fees charged in subsection (1)(a) may not exceed \$50.

30 (4) The fees collected under this section must be deposited in the state special revenue account

1 to the credit of the department for the administration and enforcement of [sections 1 through 28].

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3 **NEW SECTION. Section 9. Registration prerequisite to suit.** (1) A person engaged in the business  
4 or acting in the capacity of a contractor may not bring or maintain an action in any court of this state for  
5 the collection of compensation for the performance of any work or for breach of contract for which  
6 registration is required under [sections 1 through 28] without alleging and proving that the contractor was  
7 a registered contractor and held a current and valid certificate of registration at the time the contractor  
8 entered the contract for the performance of work.

9 (2) For the purposes of this section, the court may not find a contractor in substantial compliance  
10 with the registration requirements of [sections 1 through 28] unless:

11 (a) the department has on file the information required by [section 4]; and

12 (b) the contractor has a current bond or other security as required by [section 5].

13 (3) In determining whether a contractor is in substantial compliance with the registration  
14 requirements of [sections 1 through 28], the court shall consider the length of time during which the  
15 contractor did not hold a valid certificate of registration.

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17 **NEW SECTION. Section 10. Exemptions.** [Sections 1 through 28] do not apply:

18 (1) to an authorized representative of the United States government, the state of Montana, or any  
19 incorporated municipality, county, alternative form of local government, irrigation district, reclamation  
20 district, or other municipal or political corporation or subdivision of this state;

21 (2) to an officer of a court acting within the scope of office;

22 (3) to a public utility operating under the regulations of the public service commission in  
23 construction, maintenance, or development work incidental to its own business;

24 (4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to  
25 the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine  
26 or mineral deposit when performed by an owner or lessee;

27 (5) to the sale or installation of finished products, materials, or articles of merchandise that are not  
28 actually fabricated into and do not become a permanent fixed part of a structure;

29 (6) to the construction, alteration, improvement, or repair carried on within the limits and  
30 boundaries of a site or reservation under the legal jurisdiction of the federal government;

1 (7) to a person who only furnished materials, supplies, or equipment without fabricating them into  
2 or consuming them in the performance of the work of the contractor;

3 (8) to work or operation on one undertaking or project considered of a casual, minor, or  
4 inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and  
5 materials and all other items, is less than \$500. The exemption prescribed in this subsection does not apply  
6 when the work or construction is only a part of a larger or major operation, whether undertaken by the  
7 same or different contractor, or in which a division of the operation is made into contracts of amounts of  
8 less than \$500 for the purpose of evasion of [sections 1 through 28] or otherwise. The exemption  
9 prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or  
10 other device that might indicate to the public that the person is a contractor or is qualified to engage in the  
11 business of a contractor.

12 (9) except when work is performed by a registered contractor, to a construction or operation  
13 incidental to the construction or repair:

14 (a) of irrigation and drainage ditches of an irrigation district or reclamation district;

15 (b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or

16 (c) related to clearing or other work upon land in rural districts for fire prevention purposes;

17 (10) to an owner who contracts for a project with a registered contractor;

18 (11) to a person working on the person's property, whether occupied by the person or not, and a  
19 person working on the person's residence, whether owned by the person or not, but this exemption does  
20 not apply to a person otherwise covered by [sections 1 through 28] who constructs an improvement on  
21 the person's property with the intention and for the purpose of selling the improved property;

22 (12) to owners of commercial properties who use their own employees to do maintenance, repair,  
23 and alteration work in or upon their own properties;

24 (13) to a licensed architect or civil or professional engineer acting solely in a professional capacity;

25 (14) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

26 (15) to a person who engages in the activities regulated as an employee of a registered contractor  
27 with wages as the sole compensation or as an employee with wages as the sole compensation.

28  
29 **NEW SECTION. Section 11. Business practices -- advertising -- penalty.** (1) Except as provided  
30 in [section 7], a person who has registered under one name as provided in [sections 1 through 28] may not

1 engage in the business or act in the capacity of a contractor under any other name unless that name also  
2 is registered under [sections 1 through 28].

3 (2) All advertising, contracts, correspondence, cards, signs, posters, papers, and documents that  
4 show a contractor's name or address must show the contractor's name and address as registered under  
5 [sections 1 through 28].

6 (3) (a) The alphabetized listing of contractors appearing in the advertising section of telephone  
7 books or other directories and all advertising must show the contractor's current registration number.  
8 However, signs on motor vehicles and on-premises signs do not constitute advertising under this section.

9 (b) All materials used to directly solicit business from retail customers who are not businesses must  
10 show a contractor's current registration number. A contractor may not use a false or expired registration  
11 number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not  
12 subject to this subsection.

13 (4) A contractor may not advertise that the contractor is bonded because of the bond required to  
14 be filed provided in [section 5].

15 (5) A contractor may not falsify a registration number and use it in connection with a solicitation  
16 or identification as a contractor. An individual contractor, partner, associate, agent, salesperson, solicitor,  
17 officer, or employee of a contractor shall use a true name and address at all times while engaged in the  
18 business or capacity of a contractor or in activities related to a contractor.

19 (6) (a) The finding of a violation of this section by the department at a hearing held in accordance  
20 with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty  
21 of not more than \$5,000, as determined by the department. A penalty collected under this section must  
22 be deposited in the general fund.

23 (b) Penalties under this section do not apply to a violation that is determined to be an inadvertent  
24 error.

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26 **NEW SECTION. Section 12. Unlawful advertising -- liability -- citations.** (1) When determining  
27 a violation under [section 11], the person who purchased or offered to purchase the advertising must be  
28 held responsible.

29 (2) If the department, upon investigation, has probable cause to believe that a person holding a  
30 registration, an applicant for registration, or an unregistered person acting in the capacity of a contractor

1 who is not otherwise exempted from [sections 1 through 28] has violated [section 11] by unlawfully  
2 advertising for work covered by [sections 1 through 28] in an alphabetical or classified directory, the  
3 department may issue a citation containing an order of correction. The order must require the violator to  
4 cease the unlawful advertising.

5 (3) If the person to whom a citation is issued under subsection (2) notifies the department in  
6 writing that the person contests the citation, the department shall offer an opportunity for an adjudicative  
7 proceeding under the Montana Administrative Procedure Act within 30 days after receiving the notification.  
8

9 **NEW SECTION. Section 13. Disclosure statement required -- prerequisite to lien claim.** (1) A  
10 contractor who agrees to perform a contracting project for the repair, alteration, or construction of four or  
11 fewer residential units or accessory structures on residential property in which the bid or contract price  
12 totals \$1,000 or more or of a commercial building in which the contract price totals \$1,000 or more but  
13 less than \$60,000 shall provide the customer with the following disclosure statement prior to starting work  
14 on the project:

15 "NOTICE TO CUSTOMER

16 This contractor is registered with the state of Montana, registration number \_\_\_\_\_, as a general or specialty  
17 contractor and has posted with the state a bond or cash deposit of \$6,000 or \$4,000 pursuant to 39-3-703  
18 for the purpose of satisfying claims against the contractor for negligent or improper work or breach of  
19 contract in the conduct of the contractor's business. The expiration date of this contractor's registration  
20 is \_\_\_\_\_. This bond or cash deposit may not be sufficient to cover a claim that might arise from the  
21 work done under your contract. If a supplier of materials used in your construction project or an employee  
22 of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property  
23 may be subject to a lien to force payment. If you wish additional protection, you may request the  
24 contractor to provide you with original "lien release" documents from each supplier or subcontractor on  
25 your project. The contractor is required to provide you with further information about lien release  
26 documents if you request it. General information is also available from the department of labor and  
27 industry."

28 (2) A contractor subject to this section shall notify a consumer to whom notice is given under  
29 subsection (1) if the contractor's registration has expired or is revoked or suspended by the department  
30 prior to completion or other termination of the contract with the consumer.



1 (3) A contractor subject to this section may not bring or maintain a lien claim under Title 71,  
2 chapter 3, part 5, based on a contract to which this section applies without alleging and proving that the  
3 contractor has provided the customer with a copy of the disclosure statement required in subsection (1).

4 (4) This section does not apply to contracts authorized under Title 18, chapter 2, or to contractors  
5 contracting with other contractors.

6 (5) Failure to comply with this section constitutes an infraction under the provisions of [sections  
7 1 through 28].

8 (6) The department shall produce model disclosure statements and public service announcements  
9 detailing the information needed to assist contractors and contractors' customers to comply with this  
10 section. The department shall periodically update the materials as needed.

11  
12 **NEW SECTION. Section 14. Department to compile and update list of registered contractors --**  
13 **availability -- fee.** (1) The department shall compile a list of all contractors registered under [sections 1  
14 through 28] and update the list at least bimonthly. The list is public information and must be available to  
15 the public upon request for a reasonable fee.

16 (2) The department shall inform a person, firm, or corporation whether a contractor is registered  
17 and whether a contractor is bonded. The department shall provide the information without charge, except  
18 for a reasonable fee for any copies made.

19  
20 **NEW SECTION. Section 15. Provisions exclusive -- certain local authority not limited or abridged.**  
21 The provisions of [sections 1 through 28] relating to the registration or licensing of a person, firm, or  
22 corporation, including the requirement of a bond with the state of Montana named as obligee and the  
23 collection of a fee, are exclusive. A political subdivision of the state may not require or issue any  
24 registrations, licenses, or bonds for the same or a similar purpose. However, this section does not limit or  
25 abridge the authority of a local government to levy and collect a general and nondiscriminatory license fee  
26 levied upon all businesses. This section does not limit the authority of a local government with respect to  
27 contractors not required to be registered under [sections 1 through 28].

28  
29 **NEW SECTION. Section 16. Violation -- infraction.** (1) It is a violation of [sections 1 through 28]  
30 and an infraction for any contractor to:

1 (a) advertise, offer to perform work, submit a bid, or perform work as a contractor without being  
2 registered as required by [sections 1 through 28];

3 (b) advertise, offer to perform work, submit a bid, or perform work as a contractor when the  
4 contractor's registration is suspended; or

5 (c) transfer a valid registration to an unregistered contractor or allow an unregistered contractor  
6 to work under a registration issued to another contractor.

7 (2) Each day that a contractor works without being registered as required by [sections 1 through  
8 28], works while the contractor's registration is suspended, or works under a registration issued to another  
9 contractor is a separate infraction. Each worksite at which a contractor works without being registered as  
10 required by [sections 1 through 28], works while the contractor's registration is suspended, or works under  
11 a registration issued to another contractor is a separate infraction.

12  
13 **NEW SECTION. Section 17. Violations -- investigations -- evidence -- restraining orders --**  
14 **injunctions.** (1) The department shall appoint compliance inspectors to investigate alleged or apparent  
15 violations of [sections 1 through 28]. An authorized compliance inspector, upon presentation of appropriate  
16 credentials, may inspect and investigate worksites at which a contractor had bid or is presently working  
17 to determine whether the contractor is registered in accordance with [sections 1 through 28] or rules  
18 adopted under [section 28] or whether there is a violation of [section 16]. Upon request of the compliance  
19 inspector, a contractor or an employee of the contractor shall provide information identifying the contractor.

20 (2) If the employee of an unregistered contractor is cited by a compliance inspector, that employee  
21 is cited as the agent of the unregistered contractor, and issuance of the citation to the employee is notice  
22 to the contractor that the contractor is in violation of [sections 1 through 28]. An employee who is cited  
23 by a compliance inspector is not liable for any of the alleged violations contained in the citation unless the  
24 employee is also the contractor.

25  
26 **NEW SECTION. Section 18. Failure to provide information to identifying contractor --**  
27 **misdemeanor.** Willful refusal to provide information identifying a contractor as required by [section 17] is  
28 a misdemeanor.

29  
30 **NEW SECTION. Section 19. Restraining orders -- injunctions.** (1) If the authorized compliance

1 inspector, upon investigation or inspection, reasonably believes that a contractor has failed to register in  
2 accordance with [sections 1 through 28] or the rules adopted under [section 28], the department shall issue  
3 an order immediately restraining further construction work at the worksite by the contractor. The order  
4 shall describe the specific violation that necessitated the issuance of the restraining order. The contractor  
5 or representative to whom the restraining order is directed may request a hearing to be conducted pursuant  
6 to the Montana Administrative Procedure Act. A request for hearing may not stay the effect of the  
7 restraining order.

8 (2) In addition to and after having invoked the powers of restraint vested in the department as  
9 provided in subsection (1), the department, through the attorney general, may petition the district court to  
10 enjoin any activity in violation of [sections 1 through 28]. A prima facie case for issuance of an injunction  
11 must be established by affidavits and supporting documentation that a restraining order was served upon  
12 the contractor and that the contractor continued to work after service of the order. Upon the filing of the  
13 petition, the district court has jurisdiction to grant injunctive or other appropriate relief, pending the  
14 outcome of enforcement proceedings under [sections 1 through 28], or to enforce restraining orders issued  
15 by the department. If the contractor fails to comply with a court order, the department shall request the  
16 attorney general to petition the district court for an order holding the contractor in contempt of court and  
17 for any other appropriate relief.

18  
19 **NEW SECTION. Section 20. Notice of infraction -- service.** The department may issue a notice  
20 of infraction if the department reasonably believes that the contractor required to be registered by [sections  
21 1 through 28] has failed to do so or has otherwise committed a violation under [section 16]. A notice of  
22 infraction issued under this section may be personally served on the contractor named in the notice by the  
23 department's compliance inspectors or service may be made by certified mail directed to the contractor  
24 named in the notice of infraction. If the contractor named in the notice of infraction is a firm or corporation,  
25 the notice may be personally served on any employee of the firm or corporation. If a notice of infraction  
26 is personally served upon an employee of a firm or corporation, the department shall send a copy of the  
27 notice by certified mail within 4 days of service to the contractor if the department is able to obtain the  
28 contractor's address.

29  
30 **NEW SECTION. Section 21. Notice of infraction -- form.** The form of the notice of the infraction

1 issued under [sections 1 through 28] must include a statement:

2 (1) that the notice represents a determination that the infraction has been committed by the  
3 contractor named in the notice and that the determination is final unless contested as provided in [sections  
4 1 through 28];

5 (2) that the infraction is a civil offense;

6 (3) of the specific violation that necessitated the issuance of the notice of infraction;

7 (4) of penalty involved if the infraction is established;

8 (5) of the options provided in [sections 1 through 28] for responding to the notice and the  
9 procedures necessary to exercise these options;

10 (6) that at a hearing to contest the notice of infraction, the state has the burden of proving, by a  
11 preponderance of the evidence, that the infraction was committed and that the contractor may subpoena  
12 witnesses, including the compliance inspector who issued and served the notice of infraction;

13 (7) signed by the person who has been served with the notice of infraction that the contractor  
14 promises to respond to the notice of infraction in one of the ways provided in [sections 1 through 28];

15 (8) that refusal to sign the notice of infraction as directed in subsection (7) is a misdemeanor and  
16 may be punished by a fine, imprisonment in jail, or both; and

17 (9) that the contractor's failure to respond to a notice of infraction as promised is a misdemeanor  
18 and may be punished by a fine, imprisonment in jail, or both.

19

20 **NEW SECTION. Section 22. Notice of infraction -- appeal -- determination -- failure to respond.**

21 (1) A violation designated as an infraction under [sections 1 through 28] must be heard and determined  
22 in an administrative hearing. If a party desires to contest the notice of infraction, the party shall file a  
23 notice of appeal with the department within 20 days of the issuance of the notice of infraction. The  
24 department shall conduct the hearing in the county where the infraction occurred.

25 (2) Unless contested, the notice of infraction represents a determination that the contractor to  
26 whom the notice was issued committed the infraction.

27 (3) A contractor who is issued a notice of infraction shall respond within 20 days of the date of  
28 issuance of the notice of infraction.

29 (4) If a contractor named in the notice does not elect to contest the notice of infraction, the  
30 contractor shall pay to the department the amount of the penalty prescribed for the infraction. When

1 payment of the appropriate penalty is received by the department, the department shall make the  
2 appropriate entry in its records.

3 (5) If a contractor named in the notice elects to contest the notice of infraction, the contractor shall  
4 respond by filing an answer of protest with the department, specifying the grounds of protest.

5

6 **NEW SECTION. Section 23. Notice of infraction -- failure to respond -- refusal to sign -- penalty.**

7 (1) If a contractor issued a notice of infraction fails to respond within the prescribed response period, the  
8 contractor is guilty of a misdemeanor and must be prosecuted in the county where the infraction occurred.

9 (2) After a final determination by the department that an infraction has been committed, a  
10 contractor who fails to pay a penalty within 30 days, unless waived, reduced, or suspended pursuant to  
11 [section 26], and who fails to file an appeal pursuant to [section 25] is guilty of a misdemeanor and must  
12 be prosecuted in the county in which the infraction occurred.

13 (3) A contractor who fails to pay a penalty within 30 days after exhausting appellate remedies  
14 pursuant to [section 25] is guilty of a misdemeanor and must be prosecuted in the county where the  
15 infraction occurred.

16 (4) It is a misdemeanor for a person who has been personally served with a notice of infraction to  
17 refuse to sign a written promise to respond to the notice.

18 (5) It is a misdemeanor for a contractor who has been personally served with a notice of infraction  
19 to willfully violate the written promise to respond to a notice of infraction as provided in [sections 1 through  
20 28], regardless of the ultimate disposition of the infraction.

21

22 **NEW SECTION. Section 24. Representation by attorney -- department represented by attorney**  
23 **general.** A contractor subject to proceedings under [sections 1 through 28] may appear or be represented  
24 by counsel. The department must be represented by the attorney general in the administrative proceeding  
25 and in any subsequent appeals under [sections 1 through 28].

26

27 **NEW SECTION. Section 25. Infraction -- administrative hearing -- procedure -- burden of proof --**  
28 **order -- appeal.** (1) The department shall conduct a case related to a contractor's notice of infraction  
29 pursuant to Title 2, chapter 4.

30 (2) The burden of proof is on the department to establish the commission of the infraction by a

1 preponderance of the evidence. The notice of infraction must be dismissed if the defendant establishes  
2 that, at the time the notice was issued, the defendant was registered by the department, was not  
3 suspended, or was exempt from registration.

4 (3) The hearings officer shall dismiss the notice of infraction at any time upon written notification  
5 from the department that the contractor named in the notice of infraction was registered, was not  
6 suspended, or was exempt from registration at the time the notice of infraction was issued.

7 (4) After consideration of the evidence and argument, the hearings officer shall determine whether  
8 the infraction was committed. If it has not been established that the infraction was committed, an order  
9 dismissing the notice must be entered in the record of the proceedings. If it has been established that the  
10 infraction was committed, the hearings officer shall issue findings of fact and conclusions of law in the  
11 decision and order determining whether the infraction was committed.

12 (5) An appeal from the hearings officer's determination or order must be to the district court.  
13

14 **NEW SECTION. Section 26. Infraction -- penalty.** (1) A contractor found to have committed an  
15 infraction under [section 16] must be assessed a penalty of \$150 for each day for each infraction in which  
16 the contractor conducted business without being registered, beginning with the date the notice of infraction  
17 was served to the contractor or to the contractor's agent.

18 (2) The hearings officer may waive, reduce, or suspend the penalty imposed for the infraction only  
19 upon a showing of good cause that the penalty would be unduly burdensome to the contractor.

20 (3) A penalty collected under this section must be deposited in the general fund.  
21

22 **NEW SECTION. Section 27. Violations -- consumer protection act.** The consumers of this state  
23 have a right to be protected from unfair or deceptive acts or practices when they enter into contracts with  
24 contractors. The fact that a contractor is found to have committed a misdemeanor or infraction under  
25 [sections 1 through 28] is considered to affect the public interest and constitutes a violation of Title 30,  
26 chapter 14, part 1. The surety bond is not liable for penalties or for violations of Title 30, chapter 14, part  
27 1.  
28

29 **NEW SECTION. Section 28. Rulemaking authority.** The department may adopt rules to implement  
30 [sections 1 through 28].

1           **Section 29.** Section 37-71-211, MCA, is amended to read:

2           **"37-71-211. Application for license -- contents.** (1) To obtain a license under this chapter, the  
3 applicant shall submit on ~~such forms as that~~ the department ~~shall prescribe~~ prescribes an application, under  
4 oath, ~~which shall~~ that must contain:

5           (a) proof of registration under [sections 1 through 28];

6           (b) a statement of the applicant's experience and qualifications as a contractor;

7           (c) the value and character of contract work completed and for whom performed during 5 years  
8 prior to the filing of ~~such the~~ application; and

9           (d) a complete financial statement on ~~such the~~ forms and disclosing ~~such the~~ information ~~as shall~~  
10 be ~~that is~~ required by the department.

11           (2) ~~Such The~~ application ~~shall must~~ also contain ~~such any~~ other information ~~as that~~ may be  
12 requested by the department under ~~such the~~ rules ~~as may be~~ adopted by the department and ~~which that~~  
13 will assist the department in determining the applicant's fitness to act in the capacity of a public contractor  
14 as defined in this chapter.

15           (3) ~~Such The~~ application ~~shall must~~ also contain a statement that the applicant desires the issuance  
16 of a license under the terms of this chapter and ~~shall must~~ specify the field of contracting and the class of  
17 license applied for."

18  
19           **Section 30.** Section 39-3-703, MCA, is amended to read:

20           **"39-3-703. Contractor to furnish bond for wages and fringe benefits -- bond requirements --**  
21 **deposit.** (1) ~~Any~~ Except as provided in subsection (3), a contractor who contracts with another to do any  
22 work or perform any services for the other, except personal services of the contractor not involving work  
23 of hired employees, shall furnish a surety bond or other form of security to the other ~~which shall~~ that must  
24 be:

25           (a) approved by the commissioner;

26           (b) in an amount ~~equal to the contractor's average monthly payroll as estimated by the~~  
27 commissioner of \$6,000 for a general contractor and \$4,000 for a specialty contractor;

28           (c) in the name of the state of Montana;

29           (d) for the purpose of insuring;

30           (i) the wages and fringe benefits of all workers employed by the contractor for the contracted

1 work;

2 (ii) all taxes and contributions due to the state;

3 (iii) payment to persons furnishing labor or material and renting or supplying equipment to the  
4 contractor;

5 (iv) all amounts that may be adjudged against the contractor by reason of negligent or improper  
6 work or breach of contract;

7 (e) filed with the commissioner within 1 week of the making of the contract or the commencement  
8 of work ~~thereunder~~ under the contract, whichever comes first.

9 (2) Only one bond ~~shall be~~ is required on any contractor for each year, and when the bond is filed  
10 with and approved by the commissioner, the commissioner shall certify to any person contracting with a  
11 contractor that the bond is in full force and effect.

12 (3) In lieu of the surety bond required by subsection (1), the contractor may file with the  
13 department a deposit consisting of cash or other security acceptable to the department.

14 (4) A change in the name of a business or a change in the type of business may not impair a bond  
15 for the purposes of this section as long as one of the original applicants for the bond maintains partial  
16 ownership in the business covered by the bond."

17

18 **Section 31.** Section 39-3-705, MCA, is amended to read:

19 **"39-3-705. Suit on bond.** (1) Any ~~employee employed by a contractor~~ person, firm, or corporation  
20 having a claim against the contractor for any of the items referred to in 39-3-703 may bring an action on  
21 the surety bond in ~~his own name for unpaid wages and fringe benefits~~ in the district court in the county  
22 in which the work was performed or in any county that has jurisdiction over the contractor.

23 (2) The surety issuing the bond must be named as a party to any suit upon the bond. Action upon  
24 the bond or deposit must be commenced by filing the summons and complaint with the clerk of the  
25 appropriate district court within 1 year from the date of expiration of the certificate of registration that was  
26 in force at the time the claimed labor was performed and benefits accrued, the taxes and contribution owing  
27 the state became due, the materials and equipment were furnished, or the claimed contract work was  
28 completed. Service of process in an action against the contractor, the contractor's bond, or the deposit  
29 must be exclusively by service upon the department. Three copies of the summons and complaint and a  
30 fee of \$10 for handling costs must be served by certified mail upon the department at the time suit is



1 started. The \$10 fee must be deposited in the state special revenue fund to the credit of the department.  
2 The department shall maintain a record, available for public inspection, of all suits served. Service is not  
3 complete until the department receives the \$10 fee and three copies of the summons and complaint. The  
4 service constitutes service on the registrant and the surety for suit upon the bond or deposit. The  
5 department shall transmit the summons and complaint or a copy of the summons and complaint to the  
6 registrant listed in the application and to the surety within 48 hours after it has been received.

7 (3) The surety is not liable in an aggregate amount in excess of the amount named in the bond or  
8 for any penalty assessed pursuant to [sections 1 through 28]. The liability for the surety may not  
9 accumulate when the bond has been renewed, continued, reinstated, reissued, or otherwise extended. The  
10 surety may, upon notice to the department and the parties, tender to the clerk of the court that has  
11 jurisdiction over the claim an amount equal to the claims under the bond or the amount of the bond less  
12 any judgments, if any, previously satisfied from the bond and exonerate the bond to the extent of the  
13 tender. However, if the actions commenced and pending at any one time exceed the amount of the bond  
14 then unimpaired, claims must be satisfied from the bond in the following order:

15 (a) labor, including employee benefits;

16 (b) claims for breach of contract by a party to the construction contract;

17 (c) materials and equipment;

18 (d) taxes and contributions due to the state; and

19 (e) any court costs, interest, and attorney fees that a plaintiff may be entitled to recover.

20 (4) If a final judgment impairs the liability of the surety to the extent that the bond is no longer in  
21 effect in the full amount required in 39-3-703, the department shall suspend the registration of the  
22 contractor until the bond liability has been furnished in the required amount, unimpaired by unsatisfied  
23 judgment claims. If the bond becomes fully impaired, a new bond must be furnished in the amount  
24 prescribed by 39-3-703.

25 (5) A person who filed and served a summons and complaint as required by this section and who  
26 has an unsatisfied final judgment against the registrant for any items referred to in 39-3-703 may execute  
27 upon the security held by the department by serving a certified copy of the unsatisfied final judgment within  
28 1 year of the date of the entry of the judgment. Upon the receipt of service of the certified copy, the  
29 department shall pay or order to be paid from the deposit, through the district court that rendered the  
30 judgment, a payment toward the unsatisfied judgment. The priority of payment by the department must

1 be the order of receipt by the department, but the department has no liability for payment in excess of the  
2 amount of the deposit.”

3

4 NEW SECTION. Section 32. Repealer. Section 39-3-704, MCA, is repealed.

5

6 NEW SECTION. Section 33. Codification instruction. [Sections 1 through 28] are intended to be  
7 codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through 28].

8

9 NEW SECTION. Section 34. Severability. If a part of [this act] is invalid, all valid parts that are  
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
11 applications, the part remains in effect in all valid applications that are severable from the invalid  
12 applications.

13

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0354, as introduced


DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for contractor registration; providing for fees to fund the administration and enforcement of the registration; setting requirements for registration; requiring surety bonds; providing exemptions; providing restrictions on advertising; providing for administrative hearings; providing for violations and penalties.

ASSUMPTIONS:

1. The workload activities in the proposed bill are similar to those in the Employment Relations Division for the Uninsured Employers' Fund (UEF) enforcement.
2. The Department of Commerce POL estimates there are 8,000 contractors in the state and the bill allows fees up to \$50. This would generate maximum revenue of \$400,000 (8,000 x \$50 license fees = \$400,000). This further assumes 100% of the 8,000 contractors are registered by July 1, 1996 and that 100% of estimated fees are collected.
3. Based on a survey of other states that have similar programs and based on Montana's estimated 8,000 contractors, the following costs are projected: 1.00 FTE program specialist (grade 16), 5.00 FTE compliance specialists (grade 13), and 3.00 FTE administrative support staff (grade 8). Operating costs for the program would be similar to the UEF program costs of \$10,882 per FTE in FY94 (10,882 x 9 = \$97,939). Administrative rule making (35 pages x \$70 = \$2,450); 9 sets of office desks, chairs, file cabinets, book cases, computer hutches, computer software for \$26,631; PCs and a printer would total \$30,404. Operating costs in FY96 are calculated at 75% of this assumption because of the October 1, 1995 effective date with the exception of the one time only costs.
4. Hearings and legal proceedings must be timely because the contracted work stops until a resolution is reached. The hearings must be held in the county where the infraction occurred.
5. The Legal/Centralized Services Division within the Department of Labor and Industry assumes that an additional 60 hearings per year would occur. This workload requires 2.00 FTE hearings officers (grade 16) and 1.00 FTE attorney (grade 17). Operating costs for the legal area would be \$25,706 in FY96 and \$27,767 in FY97 plus one-time operating costs of \$7,623 in FY96 only and equipment of \$17,854 in FY96 only. Operating costs in FY96 are calculated at 75% of this assumption because of the October 1, 1995 effective date with the exception of the one time only costs.
6. While some revenue would occur from the \$10 handling charge with claims against the surety bonds, this revenue is not quantifiable and is not included as revenue in this fiscal note.
7. Although this legislation is effective 10-1-95, some program costs will begin 10-1-95 so that all aspects are operational on 7-1-96.
8. Each contractor will register with the department on or before July 1, 1996, which is the first day of FY97.

(continued)

 2-17-95  
DAVID LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

GARY FORRESTER, PRIMARY SPONSOR DATE

Fiscal Note for SB0354, as introduced

**SB 354**

(continued)

9. With an implementation date of July 1, 1996, fees needed for program costs may not be available early in FY96, thereby leaving the department with insufficient state special revenue for implementation of this act during FY96. Costs identified in the following tables reflect total program costs to fully implement the provisions of this act. With insufficient fees projected to be collected, the department will attempt to reduce expenditures and to meet the requirements of this act within available resources.
10. There will be an indeterminate effect on the Unemployment Insurance Trust Fund, due to voluntary compliance.

FISCAL IMPACT:Expenditures:

Dept of Labor & Industry	<u>FY96</u>	<u>FY97</u>
Employment Relations Division (04)	<u>Difference</u>	<u>Difference</u>
FTE	6.75	9.00
Personal Services	179,597	239,462
Operating	102,535	97,939
Equipment	<u>30,404</u>	<u>0</u>
Total	312,536	337,401

Legal Services Program (06)

FTE	2.25	3.00
Personal Services	83,948	111,931
Operating	27,203	27,767
Equipment	<u>17,854</u>	<u>0</u>
Total	129,005	139,698

TOTAL FOR DEPARTMENT

FTE	9.00	12.00
Expenditures	441,541	477,099

Funding:

State Special Revenue (02)	400,000	400,000
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Revenues:

State Special Revenue (02)	400,000	400,000
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Net Impact:

State Special Revenue (02)	(41,541)	(77,099)
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TECHNICAL NOTES:

- Section 4 (f) (iii). Application for registration - grounds for denial. This section identifies the type of entity, but does not include limited liability companies. Limited liability companies should be included because LLCs are a legal business entity not listed in this section.
- Section 8 and Section 11. If there are about 8,000 contractors in Montana, based on Dept of Commerce data, \$50 is not adequate to cover the costs of this program, especially if all penalties accrue to the general fund. The department recommends that the registration fees be increased to \$70, which would be enough revenue to cover the program based on the assumption that there are 8,000 contractors in the state.
- Section 31. Would state agencies (i.e. UI Division within Dept of Labor & Industry, Dept of Revenue) be required to post the \$10 handling fee?

(continued)

DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)

No.

- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

To keep the funds distinct from other funds so that the money collected would be spent only for these specific purposes.

- c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? \_\_\_\_ Yes \_\_\_\_ No (if no, explain)

This source of revenue is JUST being established.

- d) Does the need for this state special revenue provision still exist? \_\_\_\_ Yes \_\_\_\_ No (Explain)

This state special revenue is JUST being established.

- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

No.

- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

This dedicated revenue falls short of fulfilling the purpose of a Contractor Registration program.

- g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

Statewide Budgeting and Accounting System would account for this program and its dedicated revenue.

APPROVED BY COM ON LABOR  
& EMPLOYMENT RELATIONS

1 SENATE BILL NO. 354

2 INTRODUCED BY FORRESTER, SIMON, HARP, QUILICI, GALVIN, KEATING

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CONTRACTOR REGISTRATION; PROVIDING  
5 FOR FEES TO FUND THE ADMINISTRATION AND ENFORCEMENT OF THE REGISTRATION; SETTING  
6 REQUIREMENTS FOR REGISTRATION; REQUIRING SURETY BONDS; PROVIDING EXEMPTIONS;  
7 PROVIDING RESTRICTIONS ON ADVERTISING; PROVIDING FOR ADMINISTRATIVE HEARINGS; PROVIDING  
8 FOR VIOLATIONS AND PENALTIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF  
9 LABOR AND INDUSTRY; AMENDING SECTIONS 37-71-211, 39-3-703, AND 39-3-705, MCA; AND  
10 REPEALING SECTION 39-3-704, MCA."

11  
12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because the bill gives the department of labor and  
14 industry authority to adopt administrative rules. It is the intent of the legislature that the department adopt  
15 rules to implement a self-funding registration program for contractors to ensure that:

16 (1) contractors are in compliance with the laws governing workers' compensation coverage,  
17 unemployment insurance coverage, and other state laws;

18 (2) the consumers of construction services are protected; and

19 (3) all persons in the construction business are operating on a "level playing field" with regard to  
20 compliance with state laws.

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23  
24 NEW SECTION. **Section 1. Purpose.** It is the purpose of [sections 1 through 28] to:

25 (1) afford protection to the public, including all persons, firms, and corporations furnishing labor,  
26 materials, or equipment to a contractor, from unreliable, fraudulent, financially irresponsible, or incompetent  
27 contractors; and

28 (2) ensure that all contractors are competing fairly and in compliance with state laws.

29  
30 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 28], the following

1 definitions apply:

2 (1) "Contractor" means a person, firm, or corporation that:

3 (a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to  
4 construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building,  
5 highway, road, railroad, excavation, or other structure, project, development, or improvement attached to  
6 real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other  
7 structures or works, or the installation or repair of roofing or siding; or

8 (b) in order to do work similar to that described in subsection (1)(a) upon the contractor's property,  
9 employs members of more than one trade on a single job or under a single building permit, except as  
10 otherwise provided.

11 (2) "Department" means the department of labor and industry.

12 (3) (a) "General contractor" means a contractor whose business operations require the use of more  
13 than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole  
14 or in part.

15 (b) The term does not include an individual who performs all work personally, without employees  
16 or other specialty contractors, as defined in this section.

17 (4) "Specialty contractor" means a contractor whose operations do not fall within the definition  
18 of general contractor.

19 (5) "Verification" means the receipt and duplication by a political subdivision of a contractor  
20 registration card that is current on its face.

21

22 **NEW SECTION. Section 3. Registration required -- prohibited acts -- criminal penalty.** (1) On or  
23 before July 1, 1996, each contractor shall register with the department.

24 (2) It is a misdemeanor for a contractor to:

25 (a) advertise, offer to perform work, submit a bid, or perform work as a contractor:

26 (i) without being registered as required by [sections 1 through 28]; or

27 (ii) when the contractor's registration is suspended;

28 (b) use a false or expired registration number in purchasing or offering to purchase an  
29 advertisement for which a contractor registration number is required; or

30 (c) transfer a valid registration to an unregistered contractor to work under a registration issued

1 to another contractor.

2 (3) A misdemeanor action under [sections 1 through 28] must be prosecuted in the county where  
3 the infraction occurs.

4  
5 **NEW SECTION. Section 4. Application for registration -- grounds for denial.** (1) An applicant for  
6 registration as a contractor shall submit an application under oath on a form to be provided by the  
7 department that must include the following information:

8 (a) the applicant's social security number;

9 (b) proof of COMPLIANCE WITH workers' compensation ~~coverage~~ LAWS;

10 (c) proof of COMPLIANCE WITH unemployment insurance LAWS;

11 (d) the I.R.S. employer identification number, if any;

12 (e) the type of contracting activity, such as general or specialty, and, if applicable, the type of  
13 specialty; and

14 (f) the name and address of:

15 (i) each partner if the applicant is a firm or partnership;

16 (ii) the owner if the applicant is an individual proprietorship; ~~or~~

17 (iii) the corporate officers and ~~statutory~~ REGISTERED agent, ~~if any,~~ if the applicant is a corporation;

18 OR

19 (IV) THE MANAGER OF A MANAGER-MANAGED LIMITED LIABILITY COMPANY OR THE MEMBERS  
20 OF A MEMBER-MANAGED LIMITED LIABILITY COMPANY AND THE REGISTERED AGENT IF THE  
21 APPLICANT IS A LIMITED LIABILITY COMPANY.

22 (2) The information contained in the application is a matter of public record and is open to public  
23 inspection.

24 (3) The department may verify the workers' compensation coverage information provided by the  
25 applicant in subsection (1)(b), including but not limited to information regarding the coverage of an  
26 individual employee of the applicant. If coverage is provided under the laws of another state, the  
27 department may notify the other state that the applicant is employing employees in Montana.

28 (4) Registration must be denied if:

29 (a) the applicant has been previously registered as a sole proprietor, partnership, or corporation and  
30 was a principal or officer of the corporation; and



1 (b) the applicant has an unsatisfied final judgment in an action based on Title 39, chapter 3, part  
2 7, that was incurred during a previous registration under [sections 1 through 28].

3  
4 **NEW SECTION. Section 5. Bond or other security required.** Each applicant shall, at the time of  
5 registration or reregistration, file with the department a surety bond or other security as provided in Title  
6 39, chapter 3, part 7.

7  
8 **NEW SECTION. Section 6. Certificate of registration -- issuance -- duration -- renewal --  
9 suspension.** (1) The department shall issue to the applicant a certificate of registration upon compliance  
10 with the registration requirements of [sections 1 through 28].

11 (2) If the department approves an application, it shall issue a certificate of registration to the  
12 applicant. The department shall place the expiration date on the certificate. The certificate is valid until  
13 the earliest date of:

14 (a) 1 year;

15 (b) the date the bond expires; or

16 (c) the date the insurance expires OR ANY APPLICABLE EXEMPTION TERMINATES.

17 (3) A contractor may supply a short-term bond or insurance policy to bring its registration period  
18 to the full 1 year.

19 (4) If a contractor's surety bond or other security has an unsatisfied judgment against it or it is  
20 canceled, the contractor's registration is automatically suspended on the effective date of the impairment  
21 or cancellation. The department shall give notice of the suspension to the contractor.

22  
23 **NEW SECTION. Section 7. When partnership or joint venture considered registered.** A partnership  
24 or joint venture is considered registered under [sections 1 through 28] if one of the general partners or  
25 venturers whose name under which the partnership or venture does business is registered.

26  
27 **NEW SECTION. Section 8. Fees.** (1) The department shall charge fees for:

28 (a) issuance, renewal, and reinstatement of certificates of registration; and

29 (b) changes of name, address, or business structure.

30 (2) The department shall set the fees by administrative rule. The fees shall cover the full cost of

1 issuing certificates, filing papers and notices, and administering and enforcing [sections 1 through 28]. The  
2 costs include reproduction, travel, per diem, and administrative and legal support costs.

3 (3) The fees charged in subsection (1)(a) may not exceed ~~\$50~~ \$70.

4 (4) The fees collected under this section must be deposited in the state special revenue account  
5 to the credit of the department for the administration and enforcement of [sections 1 through 28].

6

7 **NEW SECTION. Section 9. Registration prerequisite to suit.** (1) A person engaged in the business  
8 or acting in the capacity of a contractor may not bring or maintain an action in any court of this state for  
9 the collection of compensation for the performance of any work or for breach of contract for which  
10 registration is required under [sections 1 through 28] without alleging and proving that the contractor was  
11 a registered contractor and held a current and valid certificate of registration at the time the contractor  
12 entered the contract for the performance of work.

13 (2) For the purposes of this section, the court may not find a contractor in substantial compliance  
14 with the registration requirements of [sections 1 through 28] unless:

15 (a) the department has on file the information required by [section 4]; and

16 (b) the contractor has a current bond or other security as required by [section 5].

17 (3) In determining whether a contractor is in substantial compliance with the registration  
18 requirements of [sections 1 through 28], the court shall consider the length of time during which the  
19 contractor did not hold a valid certificate of registration.

20

21 **NEW SECTION. Section 10. Exemptions.** [Sections 1 through 28] do not apply:

22 (1) to an authorized representative of the United States government, the state of Montana, or any  
23 incorporated municipality, county, alternative form of local government, irrigation district, reclamation  
24 district, or other municipal or political corporation or subdivision of this state;

25 (2) to an officer of a court acting within the scope of office;

26 (3) to a public utility operating under the regulations of the public service commission in  
27 construction, maintenance, or development work incidental to its own business;

28 (4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to  
29 the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine  
30 or mineral deposit when performed by an owner or lessee;

1 (5) to the sale or installation of finished products, materials, or articles of merchandise that are not  
2 actually fabricated into and do not become a permanent fixed part of a structure;

3 (6) to the construction, alteration, improvement, or repair carried on within the limits and  
4 boundaries of a site or reservation under the legal jurisdiction of the federal government;

5 (7) to a person who only furnished materials, supplies, or equipment without fabricating them into  
6 or consuming them in the performance of the work of the contractor;

7 (8) to work or operation on one undertaking or project considered of a casual, minor, or  
8 inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and  
9 materials and all other items, is less than \$500. The exemption prescribed in this subsection does not apply  
10 when the work or construction is only a part of a larger or major operation, whether undertaken by the  
11 same or different contractor, or in which a division of the operation is made into contracts of amounts of  
12 less than \$500 for the purpose of evasion of [sections 1 through 28] or otherwise. The exemption  
13 prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or  
14 other device that might indicate to the public that the person is a contractor or is qualified to engage in the  
15 business of a contractor.

16 (9) except when work is performed by a registered contractor, to a construction or operation  
17 incidental to the construction or repair:

18 (a) of irrigation and drainage ditches of an irrigation district or reclamation district;

19 (b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or

20 (c) related to clearing or other work upon land in rural districts for fire prevention purposes;

21 (10) to an owner who contracts for a project with a registered contractor;

22 (11) to a person working on the person's property, whether occupied by the person or not, and a  
23 person working on the person's residence, whether owned by the person or not, but this exemption does  
24 not apply to a person otherwise covered by [sections 1 through 28] who constructs an improvement on  
25 the person's property with the intention and for the purpose of selling the improved property;

26 (12) to owners of commercial properties who use their own employees to do maintenance, repair,  
27 and alteration work in or upon their own properties;

28 (13) to a licensed architect or civil or professional engineer acting solely in a professional capacity;

29 (14) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

30 (15) to a person who engages in the activities regulated as an employee of a registered contractor

1 with wages as the sole compensation or as an employee with wages as the sole compensation.

2

3 **NEW SECTION. Section 11. Business practices -- advertising -- penalty.** (1) Except as provided  
4 in [section 7], a person who has registered under one name as provided in [sections 1 through 28] may not  
5 engage in the business or act in the capacity of a contractor under any other name unless that name also  
6 is registered under [sections 1 through 28].

7 (2) All advertising, contracts, correspondence, cards, signs, posters, papers, and documents that  
8 show a contractor's name or address must show the contractor's name and address as registered under  
9 [sections 1 through 28].

10 (3) (a) The alphabetized listing of contractors appearing in the advertising section of telephone  
11 books or other directories and all advertising must show the contractor's current registration number.  
12 However, signs on motor vehicles and on-premises signs do not constitute advertising under this section.

13 (b) All materials used to directly solicit business from retail customers who are not businesses must  
14 show a contractor's current registration number. A contractor may not use a false or expired registration  
15 number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not  
16 subject to this subsection.

17 (4) A contractor may not advertise that the contractor is bonded because of the bond required to  
18 be filed provided in [section 5].

19 (5) A contractor may not falsify a registration number and use it in connection with a solicitation  
20 or identification as a contractor. An individual contractor, partner, associate, agent, salesperson, solicitor,  
21 officer, or employee of a contractor shall use a true name and address at all times while engaged in the  
22 business or capacity of a contractor or in activities related to a contractor.

23 (6) (a) The finding of a violation of this section by the department at a hearing held in accordance  
24 with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty  
25 of not more than \$5,000, as determined by the department. A penalty collected under this section must  
26 be deposited in the general fund.

27 (b) Penalties under this section do not apply to a violation that is determined to be an inadvertent  
28 error.

29

30 **NEW SECTION. Section 12. Unlawful advertising -- liability -- citations.** (1) When determining

1 a violation under [section 11], the person who purchased or offered to purchase the advertising must be  
2 held responsible.

3 (2) If the department, upon investigation, has probable cause to believe that a person holding a  
4 registration, an applicant for registration, or an unregistered person acting in the capacity of a contractor  
5 who is not otherwise exempted from [sections 1 through 28] has violated [section 11] by unlawfully  
6 advertising for work covered by [sections 1 through 28] in an alphabetical or classified directory, the  
7 department may issue a citation containing an order of correction. The order must require the violator to  
8 cease the unlawful advertising.

9 (3) If the person to whom a citation is issued under subsection (2) notifies the department in  
10 writing that the person contests the citation, the department shall offer an opportunity for an adjudicative  
11 proceeding under the Montana Administrative Procedure Act within 30 days after receiving the notification.

12

13 **NEW SECTION. Section 13. Disclosure statement required -- prerequisite to lien claim.** (1) A  
14 contractor who agrees to perform a contracting project for the repair, alteration, or construction of four or  
15 fewer residential units or accessory structures on residential property in which the bid or contract price  
16 totals \$1,000 or more or of a commercial building in which the contract price totals \$1,000 or more but  
17 less than \$60,000 shall provide the customer with the following disclosure statement prior to starting work  
18 on the project:

19

"NOTICE TO CUSTOMER

20 This contractor is registered with the state of Montana, registration number \_\_\_\_\_, as a general or specialty  
21 contractor and has posted with the state a bond or cash deposit of \$6,000 or \$4,000 pursuant to 39-3-703  
22 for the purpose of satisfying claims against the contractor for negligent or improper work or breach of  
23 contract in the conduct of the contractor's business. The expiration date of this contractor's registration  
24 is \_\_\_\_\_. This bond or cash deposit may not be sufficient to cover a claim that might arise from the  
25 work done under your contract. If a supplier of materials used in your construction project or an employee  
26 of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property  
27 may be subject to a lien to force payment. If you wish additional protection, you may request the  
28 contractor to provide you with original "lien release" documents from each supplier or subcontractor on  
29 your project. The contractor is required to provide you with further information about lien release  
30 documents if you request it. General information is also available from the department of labor and

1 industry."

2 (2) A contractor subject to this section shall notify a consumer to whom notice is given under  
3 subsection (1) if the contractor's registration has expired or is revoked or suspended by the department  
4 prior to completion or other termination of the contract with the consumer.

5 (3) A contractor subject to this section may not bring or maintain a lien claim under Title 71,  
6 chapter 3, part 5, based on a contract to which this section applies without alleging and proving that the  
7 contractor has provided the customer with a copy of the disclosure statement required in subsection (1).

8 (4) This section does not apply to contracts authorized under Title 18, chapter 2, or to contractors  
9 contracting with other contractors.

10 (5) Failure to comply with this section constitutes an infraction under the provisions of [sections  
11 1 through 28].

12 (6) The department shall produce model disclosure statements and public service announcements  
13 detailing the information needed to assist contractors and contractors' customers to comply with this  
14 section. The department shall periodically update the materials as needed.

15

16 **NEW SECTION. Section 14. Department to compile and update list of registered contractors --**  
17 **availability -- fee.** (1) The department shall compile a list of all contractors registered under [sections 1  
18 through 28] and update the list at least bimonthly. The list is public information and must be available to  
19 the public upon request for a reasonable fee.

20 (2) The department shall inform a person, firm, or corporation whether a contractor is registered  
21 and whether a contractor is bonded. The department shall provide the information without charge, except  
22 for a reasonable fee for any copies made.

23

24 **NEW SECTION. Section 15. Provisions exclusive -- certain local authority not limited or abridged.**  
25 The provisions of [sections 1 through 28] relating to the registration or licensing of a person, firm, or  
26 corporation, including the requirement of a bond with the state of Montana named as obligee and the  
27 collection of a fee, are exclusive. A political subdivision of the state may not require or issue any  
28 registrations, licenses, or bonds for the same or a similar purpose. However, this section does not limit or  
29 abridge the authority of a local government to levy and collect a general and nondiscriminatory license fee  
30 levied upon all businesses. This section does not limit the authority of a local government with respect to

1 contractors not required to be registered under [sections 1 through 28].

2

3 **NEW SECTION. Section 16. Violation -- infraction.** (1) It is a violation of [sections 1 through 28]  
4 and an infraction for any contractor to:

5 (a) advertise, offer to perform work, submit a bid, or perform work as a contractor without being  
6 registered as required by [sections 1 through 28];

7 (b) advertise, offer to perform work, submit a bid, or perform work as a contractor when the  
8 contractor's registration is suspended; or

9 (c) transfer a valid registration to an unregistered contractor or allow an unregistered contractor  
10 to work under a registration issued to another contractor.

11 (2) Each day that a contractor works without being registered as required by [sections 1 through  
12 28], works while the contractor's registration is suspended, or works under a registration issued to another  
13 contractor is a separate infraction. Each worksite at which a contractor works without being registered as  
14 required by [sections 1 through 28], works while the contractor's registration is suspended, or works under  
15 a registration issued to another contractor is a separate infraction.

16

17 **NEW SECTION. Section 17. Violations -- investigations -- evidence -- restraining orders --**  
18 **injunctions.** (1) The department shall appoint compliance inspectors to investigate alleged or apparent  
19 violations of [sections 1 through 28]. An authorized compliance inspector, upon presentation of appropriate  
20 credentials, may inspect and investigate worksites at which a contractor had bid or is presently working  
21 to determine whether the contractor is registered in accordance with [sections 1 through 28] or rules  
22 adopted under [section 28] or whether there is a violation of [section 16]. Upon request of the compliance  
23 inspector, a contractor or an employee of the contractor shall provide information identifying the contractor.

24 (2) If the employee of an unregistered contractor is cited by a compliance inspector, that employee  
25 is cited as the agent of the unregistered contractor, and issuance of the citation to the employee is notice  
26 to the contractor that the contractor is in violation of [sections 1 through 28]. An employee who is cited  
27 by a compliance inspector is not liable for any of the alleged violations contained in the citation unless the  
28 employee is also the contractor.

29

30 **NEW SECTION. Section 18. Failure to provide information to identifying contractor --**

1     **misdemeanor.** Willful refusal to provide information identifying a contractor as required by [section 17] is  
2     a misdemeanor.

3

4             **NEW SECTION.** **Section 19. Restraining orders -- injunctions.** (1) If the authorized compliance  
5     inspector, upon investigation or inspection, reasonably believes that a contractor has failed to register in  
6     accordance with [sections 1 through 28] or the rules adopted under [section 28], the department shall issue  
7     an order immediately restraining further construction work at the worksite by the contractor. The order  
8     shall describe the specific violation that necessitated the issuance of the restraining order. The contractor  
9     or representative to whom the restraining order is directed may request a hearing to be conducted pursuant  
10    to the Montana Administrative Procedure Act. A request for hearing may not stay the effect of the  
11    restraining order.

12            (2) In addition to and after having invoked the powers of restraint vested in the department as  
13    provided in subsection (1), the department, through the attorney general, may petition the district court to  
14    enjoin any activity in violation of [sections 1 through 28]. A prima facie case for issuance of an injunction  
15    must be established by affidavits and supporting documentation that a restraining order was served upon  
16    the contractor and that the contractor continued to work after service of the order. Upon the filing of the  
17    petition, the district court has jurisdiction to grant injunctive or other appropriate relief, pending the  
18    outcome of enforcement proceedings under [sections 1 through 28], or to enforce restraining orders issued  
19    by the department. If the contractor fails to comply with a court order, the department shall request the  
20    attorney general to petition the district court for an order holding the contractor in contempt of court and  
21    for any other appropriate relief.

22

23            **NEW SECTION.** **Section 20. Notice of infraction -- service.** The department may issue a notice  
24    of infraction if the department reasonably believes that the contractor required to be registered by [sections  
25    1 through 28] has failed to do so or has otherwise committed a violation under [section 16]. A notice of  
26    infraction issued under this section may be personally served on the contractor named in the notice by the  
27    department's compliance inspectors or service may be made by certified mail directed to the contractor  
28    named in the notice of infraction. If the contractor named in the notice of infraction is a firm or corporation,  
29    the notice may be personally served on any employee of the firm or corporation. If a notice of infraction  
30    is personally served upon an employee of a firm or corporation, the department shall send a copy of the



1 notice by certified mail within 4 days of service to the contractor if the department is able to obtain the  
2 contractor's address.

3

4 **NEW SECTION. Section 21. Notice of infraction -- form.** The form of the notice of the infraction  
5 issued under [sections 1 through 28] must include a statement:

6 (1) that the notice represents a determination that the infraction has been committed by the  
7 contractor named in the notice and that the determination is final unless contested as provided in [sections  
8 1 through 28];

9 (2) that the infraction is a civil offense;

10 (3) of the specific violation that necessitated the issuance of the notice of infraction;

11 (4) of penalty involved if the infraction is established;

12 (5) of the options provided in [sections 1 through 28] for responding to the notice and the  
13 procedures necessary to exercise these options;

14 (6) that at a hearing to contest the notice of infraction, the state has the burden of proving, by a  
15 preponderance of the evidence, that the infraction was committed and that the contractor may subpoena  
16 witnesses, including the compliance inspector who issued and served the notice of infraction;

17 (7) signed by the person who has been served with the notice of infraction that the contractor  
18 promises to respond to the notice of infraction in one of the ways provided in [sections 1 through 28];

19 (8) that refusal to sign the notice of infraction as directed in subsection (7) is a misdemeanor and  
20 may be punished by a fine, imprisonment in jail, or both; and

21 (9) that the contractor's failure to respond to a notice of infraction as promised is a misdemeanor  
22 and may be punished by a fine, imprisonment in jail, or both.

23

24 **NEW SECTION. Section 22. Notice of infraction -- appeal -- determination -- failure to respond.**

25 (1) A violation designated as an infraction under [sections 1 through 28] must be heard and determined  
26 in an administrative hearing. If a party desires to contest the notice of infraction, the party shall file a  
27 notice of appeal with the department within 20 days of the issuance of the notice of infraction. The  
28 department shall conduct the hearing in the county where the infraction occurred.

29 (2) Unless contested, the notice of infraction represents a determination that the contractor to  
30 whom the notice was issued committed the infraction.

1 (3) A contractor who is issued a notice of infraction shall respond within 20 days of the date of  
2 issuance of the notice of infraction.

3 (4) If a contractor named in the notice does not elect to contest the notice of infraction, the  
4 contractor shall pay to the department the amount of the penalty prescribed for the infraction. When  
5 payment of the appropriate penalty is received by the department, the department shall make the  
6 appropriate entry in its records.

7 (5) If a contractor named in the notice elects to contest the notice of infraction, the contractor shall  
8 respond by filing an answer of protest with the department, specifying the grounds of protest.

9  
10 **NEW SECTION. Section 23. Notice of infraction -- failure to respond -- refusal to sign -- penalty.**

11 (1) If a contractor issued a notice of infraction fails to respond within the prescribed response period, the  
12 contractor is guilty of a misdemeanor and must be prosecuted in the county where the infraction occurred.

13 (2) After a final determination by the department that an infraction has been committed, a  
14 contractor who fails to pay a penalty within 30 days, unless waived, reduced, or suspended pursuant to  
15 [section 26], and who fails to file an appeal pursuant to [section 25] is guilty of a misdemeanor and must  
16 be prosecuted in the county in which the infraction occurred.

17 (3) A contractor who fails to pay a penalty within 30 days after exhausting appellate remedies  
18 pursuant to [section 25] is guilty of a misdemeanor and must be prosecuted in the county where the  
19 infraction occurred.

20 (4) It is a misdemeanor for a person who has been personally served with a notice of infraction to  
21 refuse to sign a written promise to respond to the notice.

22 (5) It is a misdemeanor for a contractor who has been personally served with a notice of infraction  
23 to willfully violate the written promise to respond to a notice of infraction as provided in [sections 1 through  
24 28], regardless of the ultimate disposition of the infraction.

25  
26 **NEW SECTION. Section 24. Representation by attorney -- department represented by attorney**  
27 **general.** A contractor subject to proceedings under [sections 1 through 28] may appear or be represented  
28 by counsel. The department must be represented by the attorney general in the administrative proceeding  
29 and in any subsequent appeals under [sections 1 through 28].  
30

1           **NEW SECTION. Section 25. Infraction -- administrative hearing -- procedure -- burden of proof --**  
2 **order -- appeal.** (1) The department shall conduct a case related to a contractor's notice of infraction  
3 pursuant to Title 2, chapter 4.

4           (2) The burden of proof is on the department to establish the commission of the infraction by a  
5 preponderance of the evidence. The notice of infraction must be dismissed if the defendant establishes  
6 that, at the time the notice was issued, the defendant was registered by the department, was not  
7 suspended, or was exempt from registration.

8           (3) The hearings officer shall dismiss the notice of infraction at any time upon written notification  
9 from the department that the contractor named in the notice of infraction was registered, was not  
10 suspended, or was exempt from registration at the time the notice of infraction was issued.

11           (4) After consideration of the evidence and argument, the hearings officer shall determine whether  
12 the infraction was committed. If it has not been established that the infraction was committed, an order  
13 dismissing the notice must be entered in the record of the proceedings. If it has been established that the  
14 infraction was committed, the hearings officer shall issue findings of fact and conclusions of law in the  
15 decision and order determining whether the infraction was committed.

16           (5) An appeal from the hearings officer's determination or order must be to the district court.  
17

18           **NEW SECTION. Section 26. Infraction -- penalty.** (1) A contractor found to have committed an  
19 infraction under [section 16] must be assessed a penalty of \$150 for each day for each infraction in which  
20 the contractor conducted business without being registered, beginning with the date the notice of infraction  
21 was served to the contractor or to the contractor's agent.

22           (2) The hearings officer may waive, reduce, or suspend the penalty imposed for the infraction only  
23 upon a showing of good cause that the penalty would be unduly burdensome to the contractor.

24           (3) A penalty collected under this section must be deposited in the general fund.  
25

26           **NEW SECTION. Section 27. Violations -- consumer protection act.** The consumers of this state  
27 have a right to be protected from unfair or deceptive acts or practices when they enter into contracts with  
28 contractors. The fact that a contractor is found to have committed a misdemeanor or infraction under  
29 [sections 1 through 28] is considered to affect the public interest and constitutes a violation of Title 30,  
30 chapter 14, part 1. The surety bond is not liable for penalties or for violations of Title 30, chapter 14, part

1 1.

2

3 NEW SECTION. Section 28. Rulemaking authority. The department may adopt rules to implement  
4 [sections 1 through 28].

5

6 **Section 29.** Section 37-71-211, MCA, is amended to read:

7 "**37-71-211. Application for license -- contents.** (1) To obtain a license under this chapter, the  
8 applicant shall submit on ~~such~~ forms as that the department ~~shall prescribe~~ prescribes an application, under  
9 oath, ~~which shall that must~~ contain:

10 (a) proof of registration under [sections 1 through 28];

11 (b) a statement of the applicant's experience and qualifications as a contractor;

12 (c) the value and character of contract work completed and for whom performed during 5 years  
13 prior to the filing of ~~such~~ the application; and

14 (d) a complete financial statement on ~~such~~ the forms and disclosing ~~such~~ the information ~~as shall~~  
15 be that is required by the department.

16 (2) ~~Such~~ The application ~~shall~~ must also contain ~~such~~ any other information ~~as~~ that may be  
17 requested by the department under ~~such~~ the rules ~~as may be~~ adopted by the department and ~~which~~ that  
18 will assist the department in determining the applicant's fitness to act in the capacity of a public contractor  
19 as defined in this chapter.

20 (3) ~~Such~~ The application ~~shall~~ must also contain a statement that the applicant desires the issuance  
21 of a license under the terms of this chapter and ~~shall~~ must specify the field of contracting and the class of  
22 license applied for."

23

24 **Section 30.** Section 39-3-703, MCA, is amended to read:

25 "**39-3-703. Contractor to furnish bond for wages and fringe benefits -- bond requirements --**  
26 **deposit.** (1) ~~Any~~ Except as provided in subsection (3), a contractor who contracts with another, to do any  
27 work or perform any services for the other, except personal services of the contractor not involving work  
28 of hired employees, shall furnish a surety bond or other form of security to the other ~~which shall~~ that must  
29 be:

30 (a) approved by the commissioner;

1 (b) in an amount ~~equal to the contractor's average monthly payroll as estimated by the~~  
 2 ~~commissioner~~ of \$6,000 for a general contractor and \$4,000 for a specialty contractor;

3 (c) in the name of the state of Montana;

4 (d) for the purpose of insuring:

5 (i) the wages and fringe benefits of all workers employed by the contractor for the contracted  
 6 work;

7 (ii) all taxes and contributions due to the state;

8 (iii) payment to persons furnishing labor or material and renting or supplying equipment to the  
 9 contractor;

10 (iv) all amounts that may be adjudged against the contractor by reason of negligent or improper  
 11 work or breach of contract;

12 (e) filed with the commissioner within 1 week of the making of the contract or the commencement  
 13 of work ~~thereunder~~ under the contract, whichever comes first.

14 (2) Only one bond ~~shall be~~ is required on any contractor for each year, and when the bond is filed  
 15 with and approved by the commissioner, the commissioner shall certify to any person contracting with a  
 16 contractor that the bond is in full force and effect.

17 (3) In lieu of the surety bond required by subsection (1), the contractor may file with the  
 18 department a deposit consisting of cash or other security acceptable to the department.

19 (4) A change in the name of a business or a change in the type of business may not impair a bond  
 20 for the purposes of this section as long as one of the original applicants for the bond maintains partial  
 21 ownership in the business covered by the bond."

22  
 23 **Section 31.** Section 39-3-705, MCA, is amended to read:

24 **"39-3-705. Suit on bond.** (1) Any employee employed by a contractor person, firm, or corporation  
 25 having a claim against the contractor for any of the items referred to in 39-3-703 may bring an action on  
 26 the surety bond in his own name for unpaid wages and fringe benefits in the district court in the county  
 27 in which the work was performed or in any county that has jurisdiction over the contractor.

28 (2) The surety issuing the bond must be named as a party to any suit upon the bond. Action upon  
 29 the bond or deposit must be commenced by filing the summons and complaint with the clerk of the  
 30 appropriate district court within 1 year from the date of expiration of the certificate of registration that was

1 in force at the time the claimed labor was performed and benefits accrued, the taxes and contribution owing  
2 the state became due, the materials and equipment were furnished, or the claimed contract work was  
3 completed. Service of process in an action against the contractor, the contractor's bond, or the deposit  
4 must be exclusively by service upon the department. Three copies of the summons and complaint and a  
5 fee of \$10 for handling costs must be served by certified mail upon the department at the time suit is  
6 started. The \$10 fee must be deposited in the state special revenue fund to the credit of the department.  
7 The department shall maintain a record, available for public inspection, of all suits served. Service is not  
8 complete until the department receives the \$10 fee and three copies of the summons and complaint. The  
9 service constitutes service on the registrant and the surety for suit upon the bond or deposit. The  
10 department shall transmit the summons and complaint or a copy of the summons and complaint to the  
11 registrant listed in the application and to the surety within 48 hours after it has been received.

12 (3) The surety is not liable in an aggregate amount in excess of the amount named in the bond or  
13 for any penalty assessed pursuant to [sections 1 through 28]. The liability for the surety may not  
14 accumulate when the bond has been renewed, continued, reinstated, reissued, or otherwise extended. The  
15 surety may, upon notice to the department and the parties, tender to the clerk of the court that has  
16 jurisdiction over the claim an amount equal to the claims under the bond or the amount of the bond less  
17 any judgments, if any, previously satisfied from the bond and exonerate the bond to the extent of the  
18 tender. However, if the actions commenced and pending at any one time exceed the amount of the bond  
19 then unimpaired, claims must be satisfied from the bond in the following order:

20 (a) labor, including employee benefits;

21 (b) claims for breach of contract by a party to the construction contract;

22 (c) materials and equipment;

23 (d) taxes and contributions due to the state; and

24 (e) any court costs, interest, and attorney fees that a plaintiff may be entitled to recover.

25 (4) If a final judgment impairs the liability of the surety to the extent that the bond is no longer in  
26 effect in the full amount required in 39-3-703, the department shall suspend the registration of the  
27 contractor until the bond liability has been furnished in the required amount, unimpaired by unsatisfied  
28 judgment claims. If the bond becomes fully impaired, a new bond must be furnished in the amount  
29 prescribed by 39-3-703.

30 (5) A person who filed and served a summons and complaint as required by this section and who

1 has an unsatisfied final judgment against the registrant for any items referred to in 39-3-703 may execute  
2 upon the security held by the department by serving a certified copy of the unsatisfied final judgment within  
3 1 year of the date of the entry of the judgment. Upon the receipt of service of the certified copy, the  
4 department shall pay or order to be paid from the deposit, through the district court that rendered the  
5 judgment, a payment toward the unsatisfied judgment. The priority of payment by the department must  
6 be the order of receipt by the department, but the department has no liability for payment in excess of the  
7 amount of the deposit."

8  
9 **NEW SECTION. Section 32. Repealer.** Section 39-3-704, MCA, is repealed.

10  
11 **NEW SECTION. Section 33. Codification instruction.** [Sections 1 through 28] are intended to be  
12 codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through 28].

13  
14 **NEW SECTION. Section 34. Severability.** If a part of [this act] is invalid, all valid parts that are  
15 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
16 applications, the part remains in effect in all valid applications that are severable from the invalid  
17 applications.

18 -END-

## 1 SENATE BILL NO. 354

2 INTRODUCED BY FORRESTER, SIMON, HARP, QUILICI, GALVIN, KEATING

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CONTRACTOR REGISTRATION; PROVIDING  
 5 FOR FEES TO FUND THE ADMINISTRATION AND ENFORCEMENT OF THE REGISTRATION; SETTING  
 6 REQUIREMENTS FOR REGISTRATION; REQUIRING SURETY BONDS; PROVIDING EXEMPTIONS;  
 7 PROVIDING RESTRICTIONS ON ADVERTISING; PROVIDING FOR ADMINISTRATIVE HEARINGS; PROVIDING  
 8 FOR VIOLATIONS AND PENALTIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF  
 9 LABOR AND INDUSTRY; REQUIRING INDEPENDENT CONTRACTORS TO OBTAIN AN EXEMPTION;  
 10 AMENDING SECTIONS 37-71-211, 39-3-703, ~~AND 39-3-705,~~ AND 39-71-120, MCA; AND REPEALING  
 11 SECTION 39-3-704, MCA."

12  
13 STATEMENT OF INTENT

14 A statement of intent is required for this bill because the bill gives the department of labor and  
 15 industry authority to adopt administrative rules. It is the intent of the legislature that the department adopt  
 16 rules to implement a self-funding registration program for contractors to ensure that:

17 (1) contractors are in compliance with the laws governing workers' compensation coverage,  
 18 unemployment insurance coverage, and other state laws;

19 ~~(2) the consumers of construction services are protected; and~~

20 ~~(3)~~(2) all persons in the construction business are operating on a "level playing field" with regard  
 21 to compliance with state laws.

22  
 23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24  
 25 NEW SECTION. Section 1. Purpose. It is the purpose of [sections 1 through ~~28~~ 25] to:

26 ~~(1) afford protection to the public, including all persons, firms, and corporations furnishing labor,~~  
 27 ~~materials, or equipment to a contractor, from unreliable, fraudulent, financially irresponsible, or incompetent~~  
 28 ~~contractors; and~~

29 ~~(2)~~ ensure that all contractors are competing fairly and in compliance with state laws.  
 30



1           **NEW SECTION. Section 2. Definitions.** As used in [sections 1 through ~~28~~ 25], the following  
2 definitions apply:

3           (1) "Contractor" means a person, firm, or corporation that:

4           (a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to  
5 construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building,  
6 highway, road, railroad, excavation, or other structure, project, development, or improvement attached to  
7 real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other  
8 structures or works, or the installation or repair of roofing or siding; or

9           (b) in order to do work similar to that described in subsection (1)(a) upon the contractor's property,  
10 employs members of more than one trade on a single job or under a single building permit, except as  
11 otherwise provided.

12           (2) "Department" means the department of labor and industry.

13           (3) ~~(a)~~ "General contractor" means a contractor whose business operations require the use of more  
14 than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole  
15 or in part.

16           ~~(b) The term does not include an individual who performs all work personally, without employees  
17 or other specialty contractors, as defined in this section.~~

18           (4) "Specialty contractor" means a contractor whose operations do not fall within the definition  
19 of general contractor.

20           (5) "Verification" means the receipt and duplication by a political subdivision of a contractor  
21 registration card that is current on its face.

22

23           **NEW SECTION. Section 3. Registration required -- prohibited acts -- criminal penalty.** (1) On or  
24 before July 1, 1996, each contractor shall register with the department.

25           (2) It is a misdemeanor for a contractor to:

26           (a) advertise, offer to perform work, submit a bid, or perform work as a contractor:

27           (i) without being registered as required by [sections 1 through ~~28~~ 25]; or

28           (ii) when the contractor's registration is suspended;

29           (b) use a false or expired registration number in purchasing or offering to purchase an  
30 advertisement for which a contractor registration number is required; or

1 (c) transfer a valid registration to an unregistered contractor to work under a registration issued  
2 to another contractor.

3 (3) A THE DEPARTMENT MAY CAUSE THE CRIMINAL PROCEEDINGS FOR A misdemeanor action  
4 under [sections 1 through ~~28~~ 25] ~~must be prosecuted~~ TO BE INITIATED FOR PROSECUTION IN THE  
5 LOWEST COURT OF CONCURRENT JURISDICTION in the county where the infraction occurs.

6

7 NEW SECTION. Section 4. Application for registration -- grounds for denial. (1) An applicant for  
8 registration as a contractor shall submit an application under oath on a form to be provided by the  
9 department that must include the following information:

- 10 (a) the applicant's social security number;
- 11 (b) proof of COMPLIANCE WITH workers' compensation ~~coverage~~ LAWS;
- 12 (c) proof of COMPLIANCE WITH unemployment insurance LAWS;
- 13 (d) the I.R.S. employer identification number, if any;
- 14 (e) the type of contracting activity, such as general or specialty, and, if applicable, the type of  
15 specialty; and
- 16 (f) the name and address of:
- 17 (i) each partner if the applicant is a firm or partnership;
- 18 (ii) the owner if the applicant is an individual proprietorship; ~~or~~
- 19 (iii) the corporate officers and ~~statutory~~ REGISTERED agent, ~~if any,~~ if the applicant is a corporation;

20 OR

21 (IV) THE MANAGER OF A MANAGER-MANAGED LIMITED LIABILITY COMPANY OR THE MEMBERS  
22 OF A MEMBER-MANAGED LIMITED LIABILITY COMPANY AND THE REGISTERED AGENT IF THE  
23 APPLICANT IS A LIMITED LIABILITY COMPANY.

24 (2) The information contained in the application is a matter of public record and is open to public  
25 inspection.

26 (3) The department may verify the workers' compensation coverage information provided by the  
27 applicant in subsection (1)(b), including but not limited to information regarding the coverage of an  
28 individual employee of the applicant. If coverage is provided under the laws of another state, the  
29 department may notify the other state that the applicant is employing employees in Montana.

30 (4) Registration must be denied if:

1 (a) the applicant has been previously registered as a sole proprietor, partnership, LIMITED LIABILITY  
2 COMPANY, or corporation and was a principal or officer of the corporation; and

3 (b) the applicant has an unsatisfied final judgment in an action based on Title 39, chapter 3, part  
4 7, that was incurred during a previous registration under [sections 1 through ~~28~~ 25].

5  
6 NEW SECTION. Section 5. Bond or other security required. Each applicant shall, at the time of  
7 registration or reregistration, file with the department a surety bond or other security as provided in Title  
8 39, chapter 3, part 7.

9  
10 NEW SECTION. Section 6. Certificate of registration -- issuance -- duration -- renewal --  
11 suspension. (1) The department shall issue to the applicant a certificate of registration upon compliance  
12 with the registration requirements of [sections 1 through ~~28~~ 25].

13 (2) If the department approves an application, it shall issue a certificate of registration to the  
14 applicant. The department shall place the expiration date on the certificate. ~~The~~ EXCEPT AS PROVIDED  
15 IN SUBSECTION (3), THE certificate is valid until the earliest date of:

16 (a) 1 year;

17 (b) the date the bond expires; or

18 (c) the date the WORKERS' COMPENSATION OR UNEMPLOYMENT insurance expires OR ANY  
19 APPLICABLE EXEMPTION TERMINATES.

20 (3) THE CERTIFICATE ISSUED UNDER THIS SECTION TO AN INDEPENDENT CONTRACTOR IS  
21 INVALID ON THE DATE THE CONTRACTOR HIRES EMPLOYEES UNLESS THE CONTRACTOR PROVIDES  
22 PROOF TO THE DEPARTMENT OF WORKERS' COMPENSATION COVERAGE FOR THOSE EMPLOYEES.

23 ~~(3)(4)~~ (4) A contractor may supply a short-term bond or insurance policy to bring its registration period  
24 to the full 1 year.

25 ~~(4)(5)~~ (5) If a contractor's surety bond or other security has an unsatisfied judgment against it or it  
26 is canceled, the contractor's registration is automatically suspended on the effective date of the impairment  
27 or cancellation. The department shall give notice of the suspension to the contractor.

28  
29 NEW SECTION. Section 7. When partnership or joint venture considered registered. A partnership  
30 or joint venture is considered registered under [sections 1 through ~~28~~ 25] if one of the general partners or

1 venturers whose name under which the partnership or venture does business is registered.

2

3 **NEW SECTION. Section 8. Fees.** (1) The department shall charge fees for:

4 (a) issuance, renewal, and reinstatement of certificates of registration; and

5 (b) changes of name, address, or business structure.

6 (2) The department shall set the fees by administrative rule. The fees shall cover the full cost of  
7 issuing certificates, filing papers and notices, and administering and enforcing [sections 1 through ~~28~~ 25].

8 The costs include reproduction, travel, per diem, and administrative and legal support costs.

9 (3) The fees charged in subsection (1)(a) may not exceed ~~\$50~~ \$70.

10 (4) The fees collected under this section must be deposited in the state special revenue account  
11 to the credit of the department for the administration and enforcement of [sections 1 through ~~28~~ 25].

12

13 **NEW SECTION. Section 9. Registration prerequisite to suit OR LIEN CLAIM -- LIMITING LIABILITY.**

14 (1) A person engaged in the business or acting in the capacity of a contractor may not bring or maintain  
15 an action in any court of this state for the collection of compensation for the performance of any work or  
16 for breach of contract for which registration is required under [sections 1 through ~~28~~ 25] without alleging  
17 and proving that the contractor was a registered contractor and held a current and valid certificate of  
18 registration at the time the contractor entered the contract for the performance of work.

19 (2) For the purposes of this section, the court may not find a contractor in substantial compliance  
20 with the registration requirements of [sections 1 through ~~28~~ 25] unless:

21 (a) the department has on file the information required by [section 4]; and

22 (b) the contractor has a current bond or other security as required by [section 5].

23 (3) In determining whether a contractor is in substantial compliance with the registration  
24 requirements of [sections 1 through ~~28~~ 25], the court shall consider the length of time during which the  
25 contractor did not hold a valid certificate of registration.

26 **(4) A CONTRACTOR MAY NOT BRING OR MAINTAIN A LIEN CLAIM UNDER TITLE 71, CHAPTER**  
27 **3, PART 5, UNLESS THE CONTRACTOR IS REGISTERED AT THE TIME OF ENTERING INTO A CONTRACT.**

28 **(5) A PERSON ENGAGING THE SERVICES OF A CONTRACTOR IS NOT LIABLE AS AN EMPLOYER**  
29 **FOR WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE COVERAGE IF THE PERSON**  
30 **VERIFIES WITH THE DEPARTMENT THAT THE CONTRACTOR WITH WHOM THE PERSON IS**

1 CONTRACTING FOR SERVICES IS REGISTERED AS PROVIDED UNDER [SECTIONS 1 THROUGH 25].

2  
3 NEW SECTION. Section 10. Exemptions. [Sections 1 through ~~28~~ 25] do not apply:

4 (1) to an authorized representative of the United States government, the state of Montana, or any  
5 incorporated municipality, county, alternative form of local government, irrigation district, reclamation  
6 district, or other municipal or political corporation or subdivision of this state;

7 (2) to an officer of a court acting within the scope of office;

8 (3) to a public utility operating under the regulations of the public service commission in  
9 construction, maintenance, or development work incidental to its own business;

10 (4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to  
11 the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine  
12 or mineral deposit when performed by an owner or lessee;

13 (5) to the sale or installation of finished products, materials, or articles of merchandise that are not  
14 actually fabricated into and do not become a permanent fixed part of a structure;

15 (6) to the construction, alteration, improvement, or repair carried on within the limits and  
16 boundaries of a site or reservation under the legal jurisdiction of the federal government;

17 (7) to a person who only furnished materials, supplies, or equipment without fabricating them into  
18 or consuming them in the performance of the work of the contractor;

19 (8) to work or operation on one undertaking or project considered of a casual, minor, or  
20 inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and  
21 materials and all other items, is less than \$500. The exemption prescribed in this subsection does not apply  
22 when the work or construction is only a part of a larger or major operation, whether undertaken by the  
23 same or different contractor, or in which a division of the operation is made into contracts of amounts of  
24 less than \$500 for the purpose of evasion of [sections 1 through ~~28~~ 25] or otherwise. The exemption  
25 prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or  
26 other device that might indicate to the public that the person is a contractor or is qualified to engage in the  
27 business of a contractor.

28 (9) except when work is performed by a registered contractor, to a construction or operation  
29 incidental to the construction or repair:

30 (a) of irrigation and drainage ditches of an irrigation district or reclamation district;

1 (b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or

2 (c) related to clearing or other work upon land in rural districts for fire prevention purposes;

3 (10) to an owner who contracts for a project with a registered contractor;

4 (11) to a person working on the person's property, whether occupied by the person or not, and a  
5 person working on the person's residence, whether owned by the person or not, but this exemption does  
6 not apply to a person otherwise covered by [sections 1 through ~~28~~ 25] who constructs an improvement  
7 on the person's property with the intention and for the purpose of selling the improved property;

8 (12) to owners of commercial properties who use their own employees to do maintenance, repair,  
9 and alteration work in or upon their own properties;

10 (13) to a licensed architect or civil or professional engineer acting solely in a professional capacity;

11 (14) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

12 (15) to a person who engages in the activities regulated as an employee of a registered contractor  
13 with wages as the sole compensation or as an employee with wages as the sole compensation.

14  
15 **NEW SECTION. Section 11. Business practices -- advertising -- penalty.** (1) Except as provided  
16 in [section 7], a person who has registered under one name as provided in [sections 1 through ~~28~~ 25] may  
17 not engage in the business or act in the capacity of a contractor under any other name unless that name  
18 also is registered under [sections 1 through ~~28~~ 25].

19 (2) All advertising, contracts, correspondence, cards, signs, posters, papers, and documents that  
20 show a contractor's name or address must show the contractor's name and address as registered under  
21 [sections 1 through ~~28~~ 25].

22 (3) (a) The alphabetized listing of contractors appearing in the advertising section of telephone  
23 books or other directories and all advertising must show the contractor's current registration number.  
24 However, signs on motor vehicles and on-premises signs do not constitute advertising under this section.

25 (b) All materials used to directly solicit business from retail customers who are not businesses must  
26 show a contractor's current registration number. A contractor may not use a false or expired registration  
27 number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not  
28 subject to this subsection.

29 (4) A contractor may not advertise that the contractor is bonded because of the bond required to  
30 be filed provided in [section 5].

1 (5) A contractor may not falsify a registration number and use it in connection with a solicitation  
 2 or identification as a contractor. An individual contractor, partner, associate, agent, salesperson, solicitor,  
 3 officer, or employee of a contractor shall use a true name and address at all times while engaged in the  
 4 business or capacity of a contractor or in activities related to a contractor.

5 (6) (a) The finding of a violation of this section by the department at a hearing held in accordance  
 6 with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty  
 7 of not more than \$5,000, as determined by the department. THE REQUIRED HEARING MAY BE HELD BY  
 8 TELEPHONE OR BY VIDEOCONFERENCE. A penalty collected under this section must be deposited in the  
 9 ~~general fund~~ STATE SPECIAL REVENUE ACCOUNT TO THE CREDIT OF THE DEPARTMENT FOR  
 10 ADMINISTRATION AND ENFORCEMENT OF [SECTIONS 1 THROUGH 25].

11 (b) Penalties under this section do not apply to a violation that is determined to be an inadvertent  
 12 error.

13  
 14 NEW SECTION. Section 12. Unlawful advertising -- liability -- citations. (1) When determining  
 15 a violation under [section 11], the person who purchased or offered to purchase the advertising must be  
 16 held responsible.

17 (2) If the department, upon investigation, has probable cause to believe that a person holding a  
 18 registration, an applicant for registration, or an unregistered person acting in the capacity of a contractor  
 19 who is not otherwise exempted from [sections 1 through ~~28~~ 25] has violated [section 11] by unlawfully  
 20 advertising for work covered by [sections 1 through ~~28~~ 25] in an alphabetical or classified directory, the  
 21 department may issue a citation containing an order of correction. The order must require the violator to  
 22 cease the unlawful advertising.

23 (3) If the person to whom a citation is issued under subsection (2) notifies the department in  
 24 writing that the person contests the citation, the department shall offer an opportunity for an adjudicative  
 25 proceeding under the Montana Administrative Procedure Act within 30 days after receiving the notification.

26  
 27 ~~NEW SECTION. Section 13. Disclosure statement required -- prerequisite to lien claim. (1) A~~  
 28 ~~contractor who agrees to perform a contracting project for the repair, alteration, or construction of four or~~  
 29 ~~fewer residential units or accessory structures on residential property in which the bid or contract price~~  
 30 ~~totals \$1,000 or more or of a commercial building in which the contract price totals \$1,000 or more but~~

1 ~~less than \$60,000 shall provide the customer with the following disclosure statement prior to starting work~~  
 2 ~~on the project:~~

3 **"NOTICE TO CUSTOMER**

4 ~~This contractor is registered with the state of Montana, registration number \_\_\_\_\_, as a general or specialty~~  
 5 ~~contractor and has posted with the state a bond or cash deposit of \$6,000 or \$4,000 pursuant to 39-3-703~~  
 6 ~~for the purpose of satisfying claims against the contractor for negligent or improper work or breach of~~  
 7 ~~contract in the conduct of the contractor's business. The expiration date of this contractor's registration~~  
 8 ~~is \_\_\_\_\_. This bond or cash deposit may not be sufficient to cover a claim that might arise from the~~  
 9 ~~work done under your contract. If a supplier of materials used in your construction project or an employee~~  
 10 ~~of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property~~  
 11 ~~may be subject to a lien to force payment. If you wish additional protection, you may request the~~  
 12 ~~contractor to provide you with original "lien release" documents from each supplier or subcontractor on~~  
 13 ~~your project. The contractor is required to provide you with further information about lien release~~  
 14 ~~documents if you request it. General information is also available from the department of labor and~~  
 15 ~~industry."~~

16 ~~(2) A contractor subject to this section shall notify a consumer to whom notice is given under~~  
 17 ~~subsection (1) if the contractor's registration has expired or is revoked or suspended by the department~~  
 18 ~~prior to completion or other termination of the contract with the consumer.~~

19 ~~(3) A contractor subject to this section may not bring or maintain a lien claim under Title 71,~~  
 20 ~~chapter 3, part 5, based on a contract to which this section applies without alleging and proving that the~~  
 21 ~~contractor has provided the customer with a copy of the disclosure statement required in subsection (1).~~

22 ~~(4) This section does not apply to contracts authorized under Title 18, chapter 2, or to contractors~~  
 23 ~~contracting with other contractors.~~

24 ~~(5) Failure to comply with this section constitutes an infraction under the provisions of {sections~~  
 25 ~~1 through 28}.~~

26 ~~(6) The department shall produce model disclosure statements and public service announcements~~  
 27 ~~detailed the information needed to assist contractors and contractors' customers to comply with this~~  
 28 ~~section. The department shall periodically update the materials as needed.~~

29

30 **NEW SECTION. Section 13. Department to compile and update list of registered contractors --**



1 **availability -- fee.** (1) The department shall compile a list of all contractors registered under [sections 1  
2 through ~~28~~ 25] and update the list at least bimonthly. The list is public information and must be available  
3 to the public upon request for a reasonable fee.

4 (2) The department shall inform a person, firm, or corporation whether a contractor is registered  
5 and whether a contractor is bonded. The department shall provide the information without charge, except  
6 for a reasonable fee for any copies made.

7  
8 **NEW SECTION. Section 14. Provisions exclusive -- certain local authority not limited or abridged.**  
9 The provisions of [sections 1 through ~~28~~ 25] relating to the registration or licensing of a person, firm, or  
10 corporation, including the requirement of a bond with the state of Montana named as obligee and the  
11 collection of a fee, are exclusive. A political subdivision of the state may not require or issue any  
12 registrations, licenses, or bonds for the same or a similar purpose. However, this section does not limit or  
13 abridge the authority of a local government to levy and collect a general and nondiscriminatory license fee  
14 levied upon all businesses. This section does not limit the authority of a local government with respect to  
15 contractors not required to be registered under [sections 1 through ~~28~~ 25].

16  
17 **NEW SECTION. Section 15. Violation -- infraction.** (1) It is a violation of [sections 1 through ~~28~~  
18 25] and an infraction for any contractor to:

19 (a) advertise, offer to perform work, submit a bid, or perform work as a contractor without being  
20 registered as required by [sections 1 through ~~28~~ 25];

21 (b) advertise, offer to perform work, submit a bid, or perform work as a contractor when the  
22 contractor's registration is suspended; or

23 (c) transfer a valid registration to an unregistered contractor or allow an unregistered contractor  
24 to work under a registration issued to another contractor.

25 (2) Each day that a contractor works without being registered as required by [sections 1 through  
26 ~~28~~ 25], works while the contractor's registration is suspended, or works under a registration issued to  
27 another contractor is a separate infraction. Each worksite at which a contractor works without being  
28 registered as required by [sections 1 through ~~28~~ 25], works while the contractor's registration is  
29 suspended, or works under a registration issued to another contractor is a separate infraction.

30

1           **NEW SECTION. Section 16. Violations -- investigations -- evidence -- restraining orders --**  
2 **injunctions.** (1) The department shall appoint compliance inspectors to investigate alleged or apparent  
3 violations of [sections 1 through ~~28~~ 25]. An authorized compliance inspector, upon presentation of  
4 appropriate credentials, may inspect and investigate worksites at which a contractor had bid or is presently  
5 working to determine whether the contractor is registered in accordance with [sections 1 through ~~28~~ 25]  
6 or rules adopted under [section ~~28~~ 25] or whether there is a violation of [section ~~46~~ 15]. Upon request of  
7 the compliance inspector, a contractor or an employee of the contractor shall provide information identifying  
8 the contractor.

9           (2) If the employee of an unregistered contractor is cited by a compliance inspector, that employee  
10 is cited as the agent of the unregistered contractor, and issuance of the citation to the employee is notice  
11 to the contractor that the contractor is in violation of [sections 1 through ~~28~~ 25]. An employee who is  
12 cited by a compliance inspector is not liable for any of the alleged violations contained in the citation unless  
13 the employee is also the contractor.

14  
15           **NEW SECTION. Section 17. Failure to provide information to identifying contractor --**  
16 **misdemeanor.** Willful refusal to provide information identifying a contractor as required by [section ~~47~~ 16]  
17 is a misdemeanor.

18  
19           **NEW SECTION. Section 18. Restraining orders -- injunctions.** (1) If the authorized compliance  
20 inspector, upon investigation or inspection, reasonably believes that a contractor has failed to register in  
21 accordance with [sections 1 through ~~28~~ 25] or the rules adopted under [section ~~28~~ 25], the department  
22 ~~shall~~ MAY issue an order immediately restraining further construction work at the worksite by the  
23 contractor. The order shall describe the specific violation that necessitated the issuance of the restraining  
24 order. The contractor or representative to whom the restraining order is directed may request a hearing  
25 to be conducted pursuant to the Montana Administrative Procedure Act. A request for hearing may not  
26 stay the effect of the restraining order.

27           (2) In addition to and after having invoked the powers of restraint vested in the department as  
28 provided in subsection (1), the department, through the attorney general, may petition the district court to  
29 enjoin any activity in violation of [sections 1 through ~~28~~ 25]. A prima facie case for issuance of an  
30 injunction must be established by affidavits and supporting documentation that a restraining order was

1 served upon the contractor and that the contractor continued to work after service of the order. Upon the  
2 filing of the petition, the district court has jurisdiction to grant injunctive or other appropriate relief, pending  
3 the outcome of enforcement proceedings under [sections 1 through ~~28~~ 25], or to enforce restraining orders  
4 issued by the department. If the contractor fails to comply with a court order, the department shall request  
5 the attorney general to petition the district court for an order holding the contractor in contempt of court  
6 and for any other appropriate relief.

7  
8 **NEW SECTION. Section 19. Notice of infraction -- service.** The department may issue a notice  
9 of infraction if the department reasonably believes that the contractor required to be registered by [sections  
10 1 through ~~28~~ 25] has failed to do so or has otherwise committed a violation under [section ~~46~~ 15]. A  
11 notice of infraction issued under this section may be personally served on the contractor named in the  
12 notice by the department's compliance inspectors or service may be made by certified mail directed to the  
13 contractor named in the notice of infraction. If the contractor named in the notice of infraction is a firm  
14 or corporation, the notice may be personally served on any employee of the firm or corporation. If a notice  
15 of infraction is personally served upon an employee of a firm or corporation, the department shall send a  
16 copy of the notice by certified mail within 4 days of service to the contractor if the department is able to  
17 obtain the contractor's address.

18  
19 **NEW SECTION. Section 20. Notice of infraction -- form.** The form of the notice of the infraction  
20 issued under [sections 1 through ~~28~~ 25] must include a statement:

21 (1) that the notice represents a determination that the infraction has been committed by the  
22 contractor named in the notice and that the determination is final unless contested as provided in [sections  
23 1 through ~~28~~ 25];

24 (2) that the infraction is a civil offense;

25 (3) of the specific violation that necessitated the issuance of the notice of infraction;

26 (4) of penalty involved if the infraction is established;

27 (5) of the options provided in [sections 1 through ~~28~~ 25] for responding to the notice and the  
28 procedures necessary to exercise these options;

29 (6) that at a hearing to contest the notice of infraction, the state has the burden of proving, by a  
30 preponderance of the evidence, that the infraction was committed and that the contractor may subpoena

1 witnesses, including the compliance inspector who issued and served the notice of infraction;

2 (7) signed by the person who has been served with the notice of infraction that the contractor  
3 promises to respond to the notice of infraction in one of the ways provided in [sections 1 through ~~28~~ 25];

4 (8) that refusal to sign the notice of infraction as directed in subsection (7) is a misdemeanor and  
5 may be punished by a fine, imprisonment in jail, or both; and

6 (9) that the contractor's failure to respond to a notice of infraction as promised is a misdemeanor  
7 and may be punished by a fine, imprisonment in jail, or both.

8

9 **NEW SECTION. Section 21. Notice of infraction -- appeal -- determination -- failure to respond.**

10 ~~(1) A violation designated as an infraction under [sections 1 through 28] must be heard and determined~~  
11 ~~in an administrative hearing. If a party desires to contest the notice of infraction, the party shall file a~~  
12 ~~notice of appeal with the department within 20 days of the issuance of the notice of infraction. The~~  
13 ~~department shall conduct the hearing in the county where the infraction occurred.~~

14 ~~(2)(1)~~ Unless contested, the notice of infraction represents a determination that the contractor to  
15 whom the notice was issued committed the infraction.

16 **(2) IF A PARTY DESIRES TO CONTEST THE DETERMINATION, THE PARTY SHALL FILE A NOTICE**  
17 **OF APPEAL WITH THE DEPARTMENT WITHIN 20 DAYS OF THE ISSUANCE OF THE NOTICE OF**  
18 **INFRACTION. THE DEPARTMENT SHALL CONDUCT A HEARING IN ACCORDANCE WITH THE MONTANA**  
19 **ADMINISTRATIVE PROCEDURE ACT. THE DEPARTMENT MAY CONDUCT THE HEARING BY TELEPHONE**  
20 **OR BY VIDEOCONFERENCE.**

21 (3) A contractor who is issued a notice of infraction shall respond within 20 days of the date of  
22 issuance of the notice of infraction.

23 (4) If a contractor named in the notice does not elect to contest the notice of infraction, the  
24 contractor shall pay to the department the amount of the penalty prescribed for the infraction. When  
25 payment of the appropriate penalty is received by the department, the department shall make the  
26 appropriate entry in its records.

27 (5) If a contractor named in the notice elects to contest the notice of infraction, the contractor shall  
28 respond by filing an answer of protest with the department, specifying the grounds of protest.

29

30 **NEW SECTION. Section 22. Notice of infraction -- failure to respond -- refusal to sign -- penalty.**

1 (1) If a contractor issued a notice of infraction fails to respond within the prescribed response period, the  
 2 contractor is guilty of a misdemeanor and ~~must be prosecuted~~ THE DEPARTMENT MAY CAUSE THE  
 3 CRIMINAL PROCEEDINGS TO BE INITIATED AGAINST THE PERSON FOR PROSECUTION in the LOWEST  
 4 COURT OF CONCURRENT JURISDICTION IN THE county where the infraction occurred.

5 (2) After a final determination by the department that an infraction has been committed, a  
 6 contractor who fails to pay a penalty within 30 days, unless waived, reduced, or suspended pursuant to  
 7 [section ~~26~~ 24], and who fails to file an appeal pursuant to [section ~~25~~ 23] is guilty of a misdemeanor and  
 8 ~~must be prosecuted~~ THE DEPARTMENT MAY CAUSE THE CRIMINAL PROCEEDINGS TO BE INITIATED  
 9 AGAINST THE PERSON FOR PROSECUTION in the LOWEST COURT OF CONCURRENT JURISDICTION IN  
 10 THE county in which the infraction occurred.

11 (3) A contractor who fails to pay a penalty within 30 days after exhausting appellate remedies  
 12 pursuant to [section ~~25~~ 23] is guilty of a misdemeanor and ~~must be prosecuted~~ THE DEPARTMENT MAY  
 13 CAUSE THE CRIMINAL PROCEEDINGS TO BE INITIATED AGAINST THE PERSON FOR PROSECUTION in  
 14 the LOWEST COURT OF CONCURRENT JURISDICTION IN THE county where the infraction occurred.

15 (4) It is a misdemeanor for a person who has been personally served with a notice of infraction to  
 16 refuse to sign a written promise to respond to the notice.

17 (5) It is a misdemeanor for a contractor who has been personally served with a notice of infraction  
 18 to willfully violate the written promise to respond to a notice of infraction as provided in [sections 1 through  
 19 ~~28~~ 25], regardless of the ultimate disposition of the infraction.

20  
 21 ~~**NEW SECTION. Section 24. Representation by attorney -- department represented by attorney**~~  
 22 ~~**general.** A contractor subject to proceedings under [sections 1 through 28] may appear or be represented~~  
 23 ~~by counsel. The department must be represented by the attorney general in the administrative proceeding~~  
 24 ~~and in any subsequent appeals under [sections 1 through 28].~~

25  
 26 **NEW SECTION. Section 23. Infraction -- administrative hearing -- procedure -- burden of proof --**  
 27 **order -- appeal.** (1) The department shall conduct a case related to a contractor's notice of infraction  
 28 pursuant to Title 2, chapter 4.

29 (2) The burden of proof is on the department to establish the commission of the infraction by a  
 30 preponderance of the evidence. The notice of infraction must be dismissed if the defendant establishes

1 that, at the time the notice was issued, the defendant was registered by the department, was not  
2 suspended, or was exempt from registration.

3 (3) The hearings officer shall dismiss the notice of infraction at any time upon written notification  
4 from the department that the contractor named in the notice of infraction was registered, was not  
5 suspended, or was exempt from registration at the time the notice of infraction was issued.

6 (4) After consideration of the evidence and argument, the hearings officer shall determine whether  
7 the infraction was committed. If it has not been established that the infraction was committed, an order  
8 dismissing the notice must be entered in the record of the proceedings. If it has been established that the  
9 infraction was committed, the hearings officer shall issue findings of fact and conclusions of law in the  
10 decision and order determining whether the infraction was committed.

11 (5) An appeal from the hearings officer's determination or order must be to the district court.  
12

13 **NEW SECTION. Section 24. Infraction -- penalty.** (1) A contractor found to have committed an  
14 infraction under [section ~~46~~ 15] must be assessed a penalty of \$150 for each day for each infraction in  
15 which the contractor conducted business without being registered, beginning with the date the notice of  
16 infraction was served to the contractor or to the contractor's agent.

17 (2) The ~~hearings officer~~ DEPARTMENT may waive, reduce, or suspend the penalty imposed for the  
18 infraction only upon a showing of good cause that the penalty would be unduly burdensome to the  
19 contractor.

20 (3) A penalty collected under this section must be deposited in the ~~general fund~~ STATE SPECIAL  
21 REVENUE ACCOUNT TO THE CREDIT OF THE DEPARTMENT FOR ADMINISTRATION AND ENFORCEMENT  
22 OF [SECTIONS 1 THROUGH 25].  
23

24 ~~**NEW SECTION. Section 27. Violations -- consumer protection act.** The consumers of this state  
25 have a right to be protected from unfair or deceptive acts or practices when they enter into contracts with  
26 contractors. The fact that a contractor is found to have committed a misdemeanor or infraction under  
27 [sections 1 through 28] is considered to affect the public interest and constitutes a violation of Title 30,  
28 chapter 14, part 1. The surety bond is not liable for penalties or for violations of Title 30, chapter 14, part  
29 1.~~  
30

1           **NEW SECTION. Section 25. Rulemaking authority.** The department may adopt rules to implement  
2 [sections 1 through ~~28~~ 25].

3  
4           **Section 26.** Section 37-71-211, MCA, is amended to read:

5           **"37-71-211. Application for license -- contents. (1)** To obtain a license under this chapter, the  
6 applicant shall submit on ~~such~~ forms ~~as that~~ the department ~~shall prescribe~~ prescribes an application, under  
7 oath, ~~which shall that must~~ contain:

8           (a) proof of registration under [sections 1 through ~~28~~ 25];

9           (b) a statement of the applicant's experience and qualifications as a contractor;

10           (c) the value and character of contract work completed and for whom performed during 5 years  
11 prior to the filing of ~~such~~ the application; and

12           (d) a complete financial statement on ~~such~~ the forms and disclosing ~~such~~ the information ~~as shall~~  
13 be that is required by the department.

14           (2) ~~Such~~ The application ~~shall~~ must also contain ~~such~~ any other information ~~as that~~ may be  
15 requested by the department under ~~such~~ the rules ~~as may be~~ adopted by the department and ~~which that~~  
16 will assist the department in determining the applicant's fitness to act in the capacity of a public contractor  
17 as defined in this chapter.

18           (3) ~~Such~~ The application ~~shall~~ must also contain a statement that the applicant desires the issuance  
19 of a license under the terms of this chapter and ~~shall~~ must specify the field of contracting and the class of  
20 license applied for."

21  
22           **Section 27.** Section 39-3-703, MCA, is amended to read:

23           **"39-3-703. Contractor to furnish bond for wages and fringe benefits -- bond requirements --**  
24 **deposit.** (1) ~~Any~~ Except as provided in subsection (3), a contractor who contracts with another to do any  
25 work or perform any services for the other, ~~except personal services of the contractor not involving work~~  
26 ~~of hired employees,~~ shall furnish a surety bond or other form of security to the other ~~which shall that must~~  
27 be:

28           (a) approved by the commissioner;

29           (b) in an amount ~~equal to the contractor's average monthly payroll as estimated by the~~  
30 ~~commissioner.~~

1           (I) EQUAL TO THE CONTRACTOR'S AVERAGE MONTHLY PAYROLL, BASED ON 12  
 2 CONSECUTIVE MONTHS' PAYROLL, AS ESTIMATED BY THE COMMISSIONER; OR

3           (II) of \$6,000 for a general contractor and \$4,000 for a specialty contractor IF THE CONTRACTOR  
 4 IS A SOLE PROPRIETOR, AN INDEPENDENT CONTRACTOR, A CORPORATE OFFICER, OR A MANAGER  
 5 OR MEMBER OF A LIMITED LIABILITY COMPANY;

6           (c) in the name of the state of Montana;

7           (d) for the purpose of insuring;

8           (i) the wages and fringe benefits of all workers employed by the contractor for the contracted  
 9 work;

10          (ii) all taxes and contributions due to the state;

11          (iii) payment to persons furnishing labor or material and renting or supplying equipment to the  
 12 contractor;

13          ~~(iv) all amounts that may be adjudged against the contractor by reason of negligent or improper~~  
 14 ~~work or breach of contract;~~

15          (e) filed with the commissioner within 1 week of the making of the contract or the commencement  
 16 of work ~~thereunder~~ under the contract, whichever comes first.

17          (2) Only one bond ~~shall be~~ is required on any contractor for each year, and when the bond is filed  
 18 with and approved by the commissioner, the commissioner shall certify to any person contracting with a  
 19 contractor that the bond is in full force and effect.

20          (3) In lieu of the surety bond required by subsection (1), the contractor may file with the  
 21 department a deposit consisting of cash or other security acceptable to the department.

22          (4) A change in the name of a business or a change in the type of business may not impair a bond  
 23 for the purposes of this section as long as one of the original applicants for the bond maintains partial  
 24 ownership in the business covered by the bond."

25  
 26          **Section 28.** Section 39-3-705, MCA, is amended to read:

27          "**39-3-705. Suit on bond.** (1) Any employee employed by a contractor person, firm, or corporation  
 28 having a claim against the contractor for any of the items referred to in 39-3-703 may bring an action on  
 29 the surety bond in his own name for unpaid wages and fringe benefits in the district court in the county  
 30 in which the work was performed or in any county that has jurisdiction over the contractor.



1           (2) The surety issuing the bond must be named as a party to any suit upon the bond. Action upon  
2 the bond or deposit must be commenced by filing the summons and complaint with the clerk of the  
3 appropriate district court within 1 year from the date of expiration of the certificate of registration that was  
4 in force at the time the claimed labor was performed and benefits accrued, the taxes and contribution owing  
5 the state became due, the materials and equipment were furnished, or the claimed contract work was  
6 completed. Service of process in an action against the contractor, the contractor's bond, or the deposit  
7 must be exclusively by service upon the department. Three copies of the summons and complaint and a  
8 fee of \$10 for handling costs must be served by certified mail upon the department at the time suit is  
9 started. The \$10 fee must be deposited in the state special revenue fund to the credit of the department.  
10 The department shall maintain a record, available for public inspection, of all suits served. Service is not  
11 complete until the department receives the \$10 fee and three copies of the summons and complaint. The  
12 service constitutes service on the registrant and the surety for suit upon the bond or deposit. The  
13 department shall transmit the summons and complaint or a copy of the summons and complaint to the  
14 registrant listed in the application and to the surety within 48 hours after it has been received.

15           (3) The surety is not liable in an aggregate amount in excess of the amount named in the bond or  
16 for any penalty assessed pursuant to [sections 1 through ~~28~~ 25]. The liability for the surety may not  
17 accumulate when the bond has been renewed, continued, reinstated, reissued, or otherwise extended. The  
18 surety may, upon notice to the department and the parties, tender to the clerk of the court that has  
19 jurisdiction over the claim an amount equal to the claims under the bond or the amount of the bond less  
20 any judgments, if any, previously satisfied from the bond and exonerate the bond to the extent of the  
21 tender. However, if the actions commenced and pending at any one time exceed the amount of the bond  
22 then unimpaired, claims must be satisfied from the bond in the following order:

23           (a) labor, including employee benefits;

24           ~~(b) claims for breach of contract by a party to the construction contract;~~

25           ~~(B) materials and equipment;~~

26           ~~(C) taxes and contributions due to the state; and~~

27           ~~(D) any court costs, interest, and attorney fees that a plaintiff may be entitled to recover.~~

28           (4) If a final judgment impairs the liability of the surety to the extent that the bond is no longer in  
29 effect in the full amount required in 39-3-703, the department shall suspend the registration of the  
30 contractor until the bond liability has been furnished in the required amount, unimpaired by unsatisfied

1 judgment claims. If the bond becomes fully impaired, a new bond must be furnished in the amount  
 2 prescribed by 39-3-703.

3 (5) A person who filed and served a summons and complaint as required by this section and who  
 4 has an unsatisfied final judgment against the registrant for any items referred to in 39-3-703 may execute  
 5 upon the security held by the department by serving a certified copy of the unsatisfied final judgment within  
 6 1 year of the date of the entry of the judgment. Upon the receipt of service of the certified copy, the  
 7 department shall pay or order to be paid from the deposit, through the district court that rendered the  
 8 judgment, a payment toward the unsatisfied judgment. The priority of payment by the department must  
 9 be the order of receipt by the department, but the department has no liability for payment in excess of the  
 10 amount of the deposit."

11

12 **SECTION 29. SECTION 39-71-120, MCA, IS AMENDED TO READ:**

13 **"39-71-120. Independent contractor defined. (1) An "independent contractor" is one who renders**  
 14 **service in the course of an occupation and:**

15 (a) has been and will continue to be free from control or direction over the performance of the  
 16 services, both under ~~his~~ the contract and in fact; ~~and~~

17 (b) is engaged in an independently established trade, occupation, profession, or business; and

18 (c) has received an exemption granted under 39-71-401(3).

19 (2) An individual performing services for remuneration is considered to be an employee under this  
 20 chapter unless the requirements of subsection (1) are met."

21

22 **NEW SECTION. Section 30. Repealer.** Section 39-3-704, MCA, is repealed.

23

24 **NEW SECTION. Section 31. Codification instruction.** [Sections 1 through ~~28~~ 25] are intended  
 25 to be codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through ~~28~~  
 26 25].

27

28 **NEW SECTION. Section 32. Severability.** If a part of [this act] is invalid, all valid parts that are  
 29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
 30 applications, the part remains in effect in all valid applications that are severable from the invalid

1 applications.

2

-END-



## HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Page 1 of 5

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 354** (third reading copy -- blue) be concurred in as amended.

Signed:   
Bruce Simon, Chair

**And, that such amendments read:**

**Carried by: Rep. Simon**

1. Title, line 5.  
Following: "REGISTRATION;"  
Insert: "PROVIDING THAT A PERCENTAGE OF THE FEES BE USED FOR AN  
EDUCATION PROGRAM;"

2. Title, line 10.  
Following: "39-3-705,"  
Insert: "39-3-706,"

3. Page 5, line 3.  
Following: "Fees"  
Insert: "-- education program"

4. Page 5, line 9.  
Strike: "\$70"  
Insert: "\$80"

5. Page 5, line 12.  
Insert: "(5) The department shall establish, cooperatively with  
representatives of the building industry, an industry and  
consumer information program, funded with 15% of the fees,  
to educate the building industry about the registration  
program and to educate the public regarding the hiring of

Committee Vote:  
Yes 16 No 2

**SB 354**  
**HOUSE**  
660759SC.Hdh

building contractors.

(6) The fee for a joint application for a certificate of registration and an independent contractor exemption may not exceed the fee charged for a certificate of registration."

6. Page 5, lines 19 and 23.

Strike: "substantial"

7. Page 5, line 28.

Strike: "PERSON"

Insert: "contractor"

Following: "OF"

Strike: "A"

Insert: "another"

8. Page 5, line 29.

Following: "COVERAGE"

Insert: "for the other contractor or for any employee of the  
other contractor"

Strike: "PERSON"

Insert: "contractor"

9. Page 5, line 30.

Following: "THAT THE"

Insert: "other"

Strike: "PERSON"

Insert: "contractor"

10. Page 7, line 12.

Following: "(15)"

Insert: "to a contract security company, licensed under Title 37,  
chapter 60, operating within the scope of the license; or  
(16)"

11. Page 7, line 19.

Strike: "All"

Insert: "Except for telephone books, all"

12. Page 7, lines 22 and 23.

Following: "section of" on line 22  
Strike: remainder of line 22 through "other" on line 23  
Following: "directories" on line 23  
Insert: ", excluding telephone books,"

13. Page 10, line 5.  
Strike: "and whether a contractor is bonded"

14. Page 11, lines 1 and 2.  
Following: "investigations --" on line 1  
Strike: the remainder of line 1 through "injunctions" on line 2  
Insert: "citations"

15. Page 12, lines 4 and 5.  
Following: "shall" on line 4  
Strike: the remainder of line 4 through "to" on line 5

16. Page 13, line 9.  
Strike: "-- appeal"  
Following: "determination --"  
Strike: "failure"  
Insert: "appeal -- duty"

17. Page 16, line 24.  
Strike: "another"  
Insert: "any person or entity"

18. Page 16, line 25.  
Strike: "other"  
Insert: "person or entity"

19. Page 16, line 26.  
Strike: "to the other"

20. Page 17, lines 1 through 5.  
Strike: lines 1 through 5 in their entirety  
Insert: "(i) of \$6,000 for a general contractor or \$4,000 for a specialty contractor if the contractor is a sole proprietor, an independent contractor, or a corporate officer working as an individual without employees; or

(ii) equal to a contractor's average monthly employee payroll, based on 12 consecutive months' payroll, as estimated by the commissioner. However, the amount may not be less than \$6,000 for a general contractor or \$4,000 for a specialty contractor and may not exceed \$25,000 for any contractor."

21. Page 17, line 7.

Strike: "insuring"

Insert: "guaranteeing"

22. Page 17, lines 11 and 12.

Following: "labor" on line 11

Strike: the remainder of line 11 through "contractor" on line 12

23. Page 18, line 5.

Following: "due,"

Strike: "the" through "furnished,"

24. Page 18, line 13.

Strike: "transmit"

Insert: "mail"

25. Page 18, line 14.

Following: "registrant"

Insert: "at the address"

Following: "the"

Insert: "registrant's"

26. Page 18, line 25.

Strike: line 25 in its entirety

Renumber: subsequent subsections

27. Page 19, line 11.

Insert: "

**Section 29.** Section 39-3-706, MCA, is amended to read:

"39-3-706. **Liability of person contractor contracting with another contractor for ~~failure to require bond~~. Any person A contractor contracting with a another contractor who fails to require the other contractor to ~~acquire the surety bond provided for in 39-3-703(1)~~ be registered pursuant to [sections 1 through 25] is liable to the employees of ~~that~~ the other contractor for**

their wages and fringe benefits on that particular job."

Renumber: subsequent sections . . .

-END-



## SENATE BILL NO. 354

INTRODUCED BY FORRESTER, SIMON, HARP, QUILICI, GALVIN, KEATING

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CONTRACTOR REGISTRATION; PROVIDING FOR FEES TO FUND THE ADMINISTRATION AND ENFORCEMENT OF THE REGISTRATION; PROVIDING THAT A PERCENTAGE OF THE FEES BE USED FOR AN EDUCATION PROGRAM; SETTING REQUIREMENTS FOR REGISTRATION; REQUIRING SURETY BONDS; PROVIDING EXEMPTIONS; PROVIDING RESTRICTIONS ON ADVERTISING; PROVIDING FOR ADMINISTRATIVE HEARINGS; PROVIDING FOR VIOLATIONS AND PENALTIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF LABOR AND INDUSTRY; REQUIRING INDEPENDENT CONTRACTORS TO OBTAIN AN EXEMPTION; AMENDING SECTIONS 37-71-211, 39-3-703, ~~AND 39-3-705, 39-3-706, AND 39-71-120~~, MCA; AND REPEALING SECTION 39-3-704, MCA."

## STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of labor and industry authority to adopt administrative rules. It is the intent of the legislature that the department adopt rules to implement a self-funding registration program for contractors to ensure that:

(1) contractors are in compliance with the laws governing workers' compensation coverage, unemployment insurance coverage, and other state laws;

~~(2) the consumers of construction services are protected; and~~

~~(3)~~(2) all persons in the construction business are operating on a "level playing field" with regard to compliance with state laws.

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

NEW SECTION. Section 1. Purpose. It is the purpose of [sections 1 through ~~28~~ 25] to:

~~(1) afford protection to the public, including all persons, firms, and corporations furnishing labor, materials, or equipment to a contractor, from unreliable, fraudulent, financially irresponsible, or incompetent contractors; and~~

(2) ensure that all contractors are competing fairly and in compliance with state laws.

1           **NEW SECTION. Section 2. Definitions.** As used in [sections 1 through ~~28~~ 25], the following  
2 definitions apply:

3           (1) "Contractor" means a person, firm, or corporation that:

4           (a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to  
5 construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building,  
6 highway, road, railroad, excavation, or other structure, project, development, or improvement attached to  
7 real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other  
8 structures or works, or the installation or repair of roofing or siding; or

9           (b) in order to do work similar to that described in subsection (1)(a) upon the contractor's property,  
10 employs members of more than one trade on a single job or under a single building permit, except as  
11 otherwise provided.

12           (2) "Department" means the department of labor and industry.

13           (3) ~~(a)~~ "General contractor" means a contractor whose business operations require the use of more  
14 than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole  
15 or in part.

16           ~~(b) The term does not include an individual who performs all work personally, without employees  
17 or other specialty contractors, as defined in this section.~~

18           (4) "Specialty contractor" means a contractor whose operations do not fall within the definition  
19 of general contractor.

20           (5) "Verification" means the receipt and duplication by a political subdivision of a contractor  
21 registration card that is current on its face.

22

23           **NEW SECTION. Section 3. Registration required -- prohibited acts -- criminal penalty.** (1) On or  
24 before July 1, 1996, each contractor shall register with the department.

25           (2) It is a misdemeanor for a contractor to:

26           (a) advertise, offer to perform work, submit a bid, or perform work as a contractor:

27           (i) without being registered as required by [sections 1 through ~~28~~ 25]; or

28           (ii) when the contractor's registration is suspended;

29           (b) use a false or expired registration number in purchasing or offering to purchase an  
30 advertisement for which a contractor registration number is required; or

1 (c) transfer a valid registration to an unregistered contractor to work under a registration issued  
2 to another contractor.

3 (3) ~~A THE DEPARTMENT MAY CAUSE THE CRIMINAL PROCEEDINGS FOR A~~ misdemeanor action  
4 under [sections 1 through ~~28~~ 25] ~~must be prosecuted~~ TO BE INITIATED FOR PROSECUTION IN THE  
5 LOWEST COURT OF CONCURRENT JURISDICTION in the county where the infraction occurs.

6  
7 NEW SECTION. Section 4. Application for registration -- grounds for denial. (1) An applicant for  
8 registration as a contractor shall submit an application under oath on a form to be provided by the  
9 department that must include the following information:

- 10 (a) the applicant's social security number;
- 11 (b) proof of COMPLIANCE WITH workers' compensation ~~coverage~~ LAWS;
- 12 (c) proof of COMPLIANCE WITH unemployment insurance LAWS;
- 13 (d) the I.R.S. employer identification number, if any;
- 14 (e) the type of contracting activity, such as general or specialty, and, if applicable, the type of  
15 specialty; and
- 16 (f) the name and address of:
- 17 (i) each partner if the applicant is a firm or partnership;
- 18 (ii) the owner if the applicant is an individual proprietorship; ~~or~~
- 19 (iii) the corporate officers and ~~statutory~~ REGISTERED agent, ~~if any,~~ if the applicant is a corporation;

20 OR

21 (IV) THE MANAGER OF A MANAGER-MANAGED LIMITED LIABILITY COMPANY OR THE MEMBERS  
22 OF A MEMBER-MANAGED LIMITED LIABILITY COMPANY AND THE REGISTERED AGENT IF THE  
23 APPLICANT IS A LIMITED LIABILITY COMPANY.

24 (2) The information contained in the application is a matter of public record and is open to public  
25 inspection.

26 (3) The department may verify the workers' compensation coverage information provided by the  
27 applicant in subsection (1)(b), including but not limited to information regarding the coverage of an  
28 individual employee of the applicant. If coverage is provided under the laws of another state, the  
29 department may notify the other state that the applicant is employing employees in Montana.

30 (4) Registration must be denied if:

1 (a) the applicant has been previously registered as a sole proprietor, partnership, LIMITED LIABILITY  
2 COMPANY, or corporation and was a principal or officer of the corporation; and

3 (b) the applicant has an unsatisfied final judgment in an action based on Title 39, chapter 3, part  
4 7, that was incurred during a previous registration under [sections 1 through ~~28~~ 25].

5  
6 **NEW SECTION. Section 5. Bond or other security required.** Each applicant shall, at the time of  
7 registration or reregistration, file with the department a surety bond or other security as provided in Title  
8 39, chapter 3, part 7.

9  
10 **NEW SECTION. Section 6. Certificate of registration -- issuance -- duration -- renewal --**  
11 **suspension.** (1) The department shall issue to the applicant a certificate of registration upon compliance  
12 with the registration requirements of [sections 1 through ~~28~~ 25].

13 (2) If the department approves an application, it shall issue a certificate of registration to the  
14 applicant. The department shall place the expiration date on the certificate. ~~The~~ EXCEPT AS PROVIDED  
15 IN SUBSECTION (3), THE certificate is valid until the earliest date of:

16 (a) 1 year;

17 (b) the date the bond expires; or

18 (c) the date the WORKERS' COMPENSATION OR UNEMPLOYMENT insurance expires OR ANY  
19 APPLICABLE EXEMPTION TERMINATES.

20 (3) THE CERTIFICATE ISSUED UNDER THIS SECTION TO AN INDEPENDENT CONTRACTOR IS  
21 INVALID ON THE DATE THE CONTRACTOR HIRES EMPLOYEES UNLESS THE CONTRACTOR PROVIDES  
22 PROOF TO THE DEPARTMENT OF WORKERS' COMPENSATION COVERAGE FOR THOSE EMPLOYEES.

23 ~~{3}{4}~~ A contractor may supply a short-term bond or insurance policy to bring its registration period  
24 to the full 1 year.

25 ~~{4}{5}~~ If a contractor's surety bond or other security has an unsatisfied judgment against it or it  
26 is canceled, the contractor's registration is automatically suspended on the effective date of the impairment  
27 or cancellation. The department shall give notice of the suspension to the contractor.

28  
29 **NEW SECTION. Section 7. When partnership or joint venture considered registered.** A partnership  
30 or joint venture is considered registered under [sections 1 through ~~28~~ 25] if one of the general partners or

1 venturers whose name under which the partnership or venture does business is registered.

2

3 NEW SECTION. Section 8. Fees -- EDUCATION PROGRAM. (1) The department shall charge fees  
4 for:

5 (a) issuance, renewal, and reinstatement of certificates of registration; and

6 (b) changes of name, address, or business structure.

7 (2) The department shall set the fees by administrative rule. The fees shall cover the full cost of  
8 issuing certificates, filing papers and notices, and administering and enforcing [sections 1 through ~~28~~ 25].  
9 The costs include reproduction, travel, per diem, and administrative and legal support costs.

10 (3) The fees charged in subsection (1)(a) may not exceed ~~\$50~~ \$70 \$80.

11 (4) The fees collected under this section must be deposited in the state special revenue account  
12 to the credit of the department for the administration and enforcement of [sections 1 through ~~28~~ 25].

13 (5) THE DEPARTMENT SHALL ESTABLISH, COOPERATIVELY WITH REPRESENTATIVES OF THE  
14 BUILDING INDUSTRY, AN INDUSTRY AND CONSUMER INFORMATION PROGRAM, FUNDED WITH 15%  
15 OF THE FEES, TO EDUCATE THE BUILDING INDUSTRY ABOUT THE REGISTRATION PROGRAM AND TO  
16 EDUCATE THE PUBLIC REGARDING THE HIRING OF BUILDING CONTRACTORS.

17 (6) THE FEE FOR A JOINT APPLICATION FOR A CERTIFICATE OF REGISTRATION AND AN  
18 INDEPENDENT CONTRACTOR EXEMPTION MAY NOT EXCEED THE FEE CHARGED FOR A CERTIFICATE  
19 OF REGISTRATION.

20

21 NEW SECTION. Section 9. Registration prerequisite to suit OR LIEN CLAIM -- LIMITING LIABILITY.

22 (1) A person engaged in the business or acting in the capacity of a contractor may not bring or maintain  
23 an action in any court of this state for the collection of compensation for the performance of any work or  
24 for breach of contract for which registration is required under [sections 1 through ~~28~~ 25] without alleging  
25 and proving that the contractor was a registered contractor and held a current and valid certificate of  
26 registration at the time the contractor entered the contract for the performance of work.

27 (2) For the purposes of this section, the court may not find a contractor in ~~substantial~~ compliance  
28 with the registration requirements of [sections 1 through ~~28~~ 25] unless:

29 (a) the department has on file the information required by [section 4]; and

30 (b) the contractor has a current bond or other security as required by [section 5].

1 (3) In determining whether a contractor is in ~~substantial~~ compliance with the registration  
 2 requirements of [sections 1 through ~~28 25~~], the court shall consider the length of time during which the  
 3 contractor did not hold a valid certificate of registration.

4 (4) A CONTRACTOR MAY NOT BRING OR MAINTAIN A LIEN CLAIM UNDER TITLE 71, CHAPTER  
 5 3, PART 5, UNLESS THE CONTRACTOR IS REGISTERED AT THE TIME OF ENTERING INTO A CONTRACT.

6 (5) A ~~PERSON~~ CONTRACTOR ENGAGING THE SERVICES OF A ANOTHER CONTRACTOR IS NOT  
 7 LIABLE AS AN EMPLOYER FOR WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE  
 8 COVERAGE FOR THE OTHER CONTRACTOR OR FOR ANY EMPLOYEE OF THE OTHER CONTRACTOR IF  
 9 THE ~~PERSON~~ CONTRACTOR VERIFIES WITH THE DEPARTMENT THAT THE OTHER CONTRACTOR WITH  
 10 WHOM THE ~~PERSON~~ CONTRACTOR IS CONTRACTING FOR SERVICES IS REGISTERED AS PROVIDED  
 11 UNDER [SECTIONS 1 THROUGH 25].

12  
 13 NEW SECTION. Section 10. Exemptions. [Sections 1 through ~~28 25~~] do not apply:

14 (1) to an authorized representative of the United States government, the state of Montana, or any  
 15 incorporated municipality, county, alternative form of local government, irrigation district, reclamation  
 16 district, or other municipal or political corporation or subdivision of this state;

17 (2) to an officer of a court acting within the scope of office;

18 (3) to a public utility operating under the regulations of the public service commission in  
 19 construction, maintenance, or development work incidental to its own business;

20 (4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to  
 21 the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine  
 22 or mineral deposit when performed by an owner or lessee;

23 (5) to the sale or installation of finished products, materials, or articles of merchandise that are not  
 24 actually fabricated into and do not become a permanent fixed part of a structure;

25 (6) to the construction, alteration, improvement, or repair carried on within the limits and  
 26 boundaries of a site or reservation under the legal jurisdiction of the federal government;

27 (7) to a person who only furnished materials, supplies, or equipment without fabricating them into  
 28 or consuming them in the performance of the work of the contractor;

29 (8) to work or operation on one undertaking or project considered of a casual, minor, or  
 30 inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and

1 materials and all other items, is less than \$500. The exemption prescribed in this subsection does not apply  
 2 when the work or construction is only a part of a larger or major operation, whether undertaken by the  
 3 same or different contractor, or in which a division of the operation is made into contracts of amounts of  
 4 less than \$500 for the purpose of evasion of [sections 1 through ~~28~~ 25] or otherwise. The exemption  
 5 prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or  
 6 other device that might indicate to the public that the person is a contractor or is qualified to engage in the  
 7 business of a contractor.

8 (9) except when work is performed by a registered contractor, to a construction or operation  
 9 incidental to the construction or repair:

10 (a) of irrigation and drainage ditches of an irrigation district or reclamation district;

11 (b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or

12 (c) related to clearing or other work upon land in rural districts for fire prevention purposes;

13 (10) to an owner who contracts for a project with a registered contractor;

14 (11) to a person working on the person's property, whether occupied by the person or not, and a  
 15 person working on the person's residence, whether owned by the person or not, but this exemption does  
 16 not apply to a person otherwise covered by [sections 1 through ~~28~~ 25] who constructs an improvement  
 17 on the person's property with the intention and for the purpose of selling the improved property;

18 (12) to owners of commercial properties who use their own employees to do maintenance, repair,  
 19 and alteration work in or upon their own properties;

20 (13) to a licensed architect or civil or professional engineer acting solely in a professional capacity;

21 (14) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

22 (15) TO A CONTRACT SECURITY COMPANY, LICENSED UNDER TITLE 37, CHAPTER 60,  
 23 OPERATING WITHIN THE SCOPE OF THE LICENSE; OR

24 (16) to a person who engages in the activities regulated as an employee of a registered contractor  
 25 with wages as the sole compensation or as an employee with wages as the sole compensation.

26

27 **NEW SECTION. Section 11. Business practices -- advertising -- penalty.** (1) Except as provided  
 28 in [section 7], a person who has registered under one name as provided in [sections 1 through ~~28~~ 25] may  
 29 not engage in the business or act in the capacity of a contractor under any other name unless that name  
 30 also is registered under [sections 1 through ~~28~~ 25].

1 (2) ~~ALL EXCEPT FOR TELEPHONE BOOKS, ALL~~ advertising, contracts, correspondence, cards, signs,  
 2 posters, papers, and documents that show a contractor's name or address must show the contractor's  
 3 name and address as registered under [sections 1 through ~~28~~ 25].

4 (3) (a) The alphabetized listing of contractors appearing in the advertising section of ~~telephone~~  
 5 ~~books or other~~ directories, EXCLUDING TELEPHONE BOOKS, and all advertising must show the contractor's  
 6 current registration number. However, signs on motor vehicles and on-premises signs do not constitute  
 7 advertising under this section.

8 (b) All materials used to directly solicit business from retail customers who are not businesses must  
 9 show a contractor's current registration number. A contractor may not use a false or expired registration  
 10 number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not  
 11 subject to this subsection.

12 (4) A contractor may not advertise that the contractor is bonded because of the bond required to  
 13 be filed provided in [section 5].

14 (5) A contractor may not falsify a registration number and use it in connection with a solicitation  
 15 or identification as a contractor. An individual contractor, partner, associate, agent, salesperson, solicitor,  
 16 officer, or employee of a contractor shall use a true name and address at all times while engaged in the  
 17 business or capacity of a contractor or in activities related to a contractor.

18 (6) (a) The finding of a violation of this section by the department at a hearing held in accordance  
 19 with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty  
 20 of not more than \$5,000, as determined by the department. THE REQUIRED HEARING MAY BE HELD BY  
 21 TELEPHONE OR BY VIDEOCONFERENCE. A penalty collected under this section must be deposited in the  
 22 ~~general fund~~ STATE SPECIAL REVENUE ACCOUNT TO THE CREDIT OF THE DEPARTMENT FOR  
 23 ADMINISTRATION AND ENFORCEMENT OF [SECTIONS 1 THROUGH 25].

24 (b) Penalties under this section do not apply to a violation that is determined to be an inadvertent  
 25 error.

26

27 NEW SECTION. Section 12. Unlawful advertising -- liability -- citations. (1) When determining  
 28 a violation under [section 11], the person who purchased or offered to purchase the advertising must be  
 29 held responsible.

30 (2) If the department, upon investigation, has probable cause to believe that a person holding a



1 registration, an applicant for registration, or an unregistered person acting in the capacity of a contractor  
 2 who is not otherwise exempted from [sections 1 through ~~28~~ 25] has violated [section 11] by unlawfully  
 3 advertising for work covered by [sections 1 through ~~28~~ 25] in an alphabetical or classified directory, the  
 4 department may issue a citation containing an order of correction. The order must require the violator to  
 5 cease the unlawful advertising.

6 (3) If the person to whom a citation is issued under subsection (2) notifies the department in  
 7 writing that the person contests the citation, the department shall offer an opportunity for an adjudicative  
 8 proceeding under the Montana Administrative Procedure Act within 30 days after receiving the notification.

9  
 10 ~~NEW SECTION. Section 13. Disclosure statement required—prerequisite to lien claim. (1) A~~  
 11 ~~contractor who agrees to perform a contracting project for the repair, alteration, or construction of four or~~  
 12 ~~fewer residential units or accessory structures on residential property in which the bid or contract price~~  
 13 ~~totals \$1,000 or more or of a commercial building in which the contract price totals \$1,000 or more but~~  
 14 ~~less than \$60,000 shall provide the customer with the following disclosure statement prior to starting work~~  
 15 ~~on the project:~~

16 ~~"NOTICE TO CUSTOMER~~

17 ~~This contractor is registered with the state of Montana, registration number \_\_\_\_\_, as a general or specialty~~  
 18 ~~contractor and has posted with the state a bond or cash deposit of \$6,000 or \$4,000 pursuant to 39-3-703~~  
 19 ~~for the purpose of satisfying claims against the contractor for negligent or improper work or breach of~~  
 20 ~~contract in the conduct of the contractor's business. The expiration date of this contractor's registration~~  
 21 ~~is \_\_\_\_\_. This bond or cash deposit may not be sufficient to cover a claim that might arise from the~~  
 22 ~~work done under your contract. If a supplier of materials used in your construction project or an employee~~  
 23 ~~of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property~~  
 24 ~~may be subject to a lien to force payment. If you wish additional protection, you may request the~~  
 25 ~~contractor to provide you with original "lien release" documents from each supplier or subcontractor on~~  
 26 ~~your project. The contractor is required to provide you with further information about lien release~~  
 27 ~~documents if you request it. General information is also available from the department of labor and~~  
 28 ~~industry."~~

29 (2) ~~A contractor subject to this section shall notify a consumer to whom notice is given under~~  
 30 ~~subsection (1) if the contractor's registration has expired or is revoked or suspended by the department~~

1 ~~prior to completion or other termination of the contract with the consumer.~~

2 ~~(3) A contractor subject to this section may not bring or maintain a lien claim under Title 71,~~  
 3 ~~chapter 3, part 5, based on a contract to which this section applies without alleging and proving that the~~  
 4 ~~contractor has provided the customer with a copy of the disclosure statement required in subsection (1).~~

5 ~~(4) This section does not apply to contracts authorized under Title 18, chapter 2, or to contractors~~  
 6 ~~contracting with other contractors.~~

7 ~~(5) Failure to comply with this section constitutes an infraction under the provisions of [sections~~  
 8 ~~1 through 28].~~

9 ~~(6) The department shall produce model disclosure statements and public service announcements~~  
 10 ~~detailing the information needed to assist contractors and contractors' customers to comply with this~~  
 11 ~~section. The department shall periodically update the materials as needed.~~

12  
 13 **NEW SECTION. Section 13. Department to compile and update list of registered contractors --**  
 14 **availability -- fee.** (1) The department shall compile a list of all contractors registered under [sections 1  
 15 through ~~28~~ 25] and update the list at least bimonthly. The list is public information and must be available  
 16 to the public upon request for a reasonable fee.

17 (2) The department shall inform a person, firm, or corporation whether a contractor is registered  
 18 ~~and whether a contractor is bonded.~~ The department shall provide the information without charge, except  
 19 for a reasonable fee for any copies made.

20  
 21 **NEW SECTION. Section 14. Provisions exclusive -- certain local authority not limited or abridged.**  
 22 The provisions of [sections 1 through ~~28~~ 25] relating to the registration or licensing of a person, firm, or  
 23 corporation, including the requirement of a bond with the state of Montana named as obligee and the  
 24 collection of a fee, are exclusive. A political subdivision of the state may not require or issue any  
 25 registrations, licenses, or bonds for the same or a similar purpose. However, this section does not limit or  
 26 abridge the authority of a local government to levy and collect a general and nondiscriminatory license fee  
 27 levied upon all businesses. This section does not limit the authority of a local government with respect to  
 28 contractors not required to be registered under [sections 1 through ~~28~~ 25].

29  
 30 **NEW SECTION. Section 15. Violation -- infraction.** (1) It is a violation of [sections 1 through ~~28~~

1 25] and an infraction for any contractor to:

2 (a) advertise, offer to perform work, submit a bid, or perform work as a contractor without being  
3 registered as required by [sections 1 through ~~28~~ 25];

4 (b) advertise, offer to perform work, submit a bid, or perform work as a contractor when the  
5 contractor's registration is suspended; or

6 (c) transfer a valid registration to an unregistered contractor or allow an unregistered contractor  
7 to work under a registration issued to another contractor.

8 (2) Each day that a contractor works without being registered as required by [sections 1 through  
9 ~~28~~ 25], works while the contractor's registration is suspended, or works under a registration issued to  
10 another contractor is a separate infraction. Each worksite at which a contractor works without being  
11 registered as required by [sections 1 through ~~28~~ 25], works while the contractor's registration is  
12 suspended, or works under a registration issued to another contractor is a separate infraction.

13  
14 NEW SECTION. Section 16. Violations -- investigations -- evidence -- restraining orders --

15 ~~injunctions~~ CITATIONS. (1) The department shall appoint compliance inspectors to investigate alleged or  
16 apparent violations of [sections 1 through ~~28~~ 25]. An authorized compliance inspector, upon presentation  
17 of appropriate credentials, may inspect and investigate worksites at which a contractor had bid or is  
18 presently working to determine whether the contractor is registered in accordance with [sections 1 through  
19 ~~28~~ 25] or rules adopted under [section ~~28~~ 25] or whether there is a violation of [section ~~46~~ 15]. Upon  
20 request of the compliance inspector, a contractor or an employee of the contractor shall provide information  
21 identifying the contractor.

22 (2) If the employee of an unregistered contractor is cited by a compliance inspector, that employee  
23 is cited as the agent of the unregistered contractor, and issuance of the citation to the employee is notice  
24 to the contractor that the contractor is in violation of [sections 1 through ~~28~~ 25]. An employee who is  
25 cited by a compliance inspector is not liable for any of the alleged violations contained in the citation unless  
26 the employee is also the contractor.

27  
28 NEW SECTION. Section 17. Failure to provide information to identifying contractor --

29 ~~misdemeanor.~~ Willful refusal to provide information identifying a contractor as required by [section ~~47~~ 16]  
30 is a misdemeanor.

1           **NEW SECTION. Section 18. Restraining orders -- injunctions.** (1) If the authorized compliance  
2 inspector, upon investigation or inspection, reasonably believes that a contractor has failed to register in  
3 accordance with [sections 1 through ~~28 25~~] or the rules adopted under [section ~~28 25~~], the department  
4 ~~shall~~ **MAY** issue an order immediately restraining further construction work at the worksite by the  
5 contractor. The order shall describe the specific violation that necessitated the issuance of the restraining  
6 order. The contractor or representative to whom the restraining order is directed may request a hearing  
7 to be conducted pursuant to the Montana Administrative Procedure Act. A request for hearing may not  
8 stay the effect of the restraining order.

9           (2) In addition to and after having invoked the powers of restraint vested in the department as  
10 provided in subsection (1), the department, through the attorney general, may petition the district court to  
11 enjoin any activity in violation of [sections 1 through ~~28 25~~]. A prima facie case for issuance of an  
12 injunction must be established by affidavits and supporting documentation that a restraining order was  
13 served upon the contractor and that the contractor continued to work after service of the order. Upon the  
14 filing of the petition, the district court has jurisdiction to grant injunctive or other appropriate relief, pending  
15 the outcome of enforcement proceedings under [sections 1 through ~~28 25~~], or to enforce restraining orders  
16 issued by the department. If the contractor fails to comply with a court order, the department shall ~~request~~  
17 ~~the attorney general to~~ petition the district court for an order holding the contractor in contempt of court  
18 and for any other appropriate relief.

19  
20           **NEW SECTION. Section 19. Notice of infraction -- service.** The department may issue a notice  
21 of infraction if the department reasonably believes that the contractor required to be registered by [sections  
22 1 through ~~28 25~~] has failed to do so or has otherwise committed a violation under [section ~~46 15~~]. A  
23 notice of infraction issued under this section may be personally served on the contractor named in the  
24 notice by the department's compliance inspectors or service may be made by certified mail directed to the  
25 contractor named in the notice of infraction. If the contractor named in the notice of infraction is a firm  
26 or corporation, the notice may be personally served on any employee of the firm or corporation. If a notice  
27 of infraction is personally served upon an employee of a firm or corporation, the department shall send a  
28 copy of the notice by certified mail within 4 days of service to the contractor if the department is able to  
29 obtain the contractor's address.

30

1           **NEW SECTION. Section 20. Notice of infraction -- form.** The form of the notice of the infraction  
 2 issued under [sections 1 through ~~28~~ 25] must include a statement:

3           (1) that the notice represents a determination that the infraction has been committed by the  
 4 contractor named in the notice and that the determination is final unless contested as provided in [sections  
 5 1 through ~~28~~ 25];

6           (2) that the infraction is a civil offense;

7           (3) of the specific violation that necessitated the issuance of the notice of infraction;

8           (4) of penalty involved if the infraction is established;

9           (5) of the options provided in [sections 1 through ~~28~~ 25] for responding to the notice and the  
 10 procedures necessary to exercise these options;

11           (6) that at a hearing to contest the notice of infraction, the state has the burden of proving, by a  
 12 preponderance of the evidence, that the infraction was committed and that the contractor may subpoena  
 13 witnesses, including the compliance inspector who issued and served the notice of infraction;

14           (7) signed by the person who has been served with the notice of infraction that the contractor  
 15 promises to respond to the notice of infraction in one of the ways provided in [sections 1 through ~~28~~ 25];

16           (8) that refusal to sign the notice of infraction as directed in subsection (7) is a misdemeanor and  
 17 may be punished by a fine, imprisonment in jail, or both; and

18           (9) that the contractor's failure to respond to a notice of infraction as promised is a misdemeanor  
 19 and may be punished by a fine, imprisonment in jail, or both.

20  
 21           **NEW SECTION. Section 21. Notice of infraction —~~appeal~~ -- determination -- failure APPEAL --**  
 22 **DUTY to respond.** ~~(1) A violation designated as an infraction under [sections 1 through 28] must be heard~~  
 23 ~~and determined in an administrative hearing. If a party desires to contest the notice of infraction, the party~~  
 24 ~~shall file a notice of appeal with the department within 20 days of the issuance of the notice of infraction.~~  
 25 ~~The department shall conduct the hearing in the county where the infraction occurred.~~

26           ~~(2)(1)~~ Unless contested, the notice of infraction represents a determination that the contractor to  
 27 whom the notice was issued committed the infraction.

28           **(2) IF A PARTY DESIRES TO CONTEST THE DETERMINATION, THE PARTY SHALL FILE A NOTICE**  
 29 **OF APPEAL WITH THE DEPARTMENT WITHIN 20 DAYS OF THE ISSUANCE OF THE NOTICE OF**  
 30 **INFRACTION. THE DEPARTMENT SHALL CONDUCT A HEARING IN ACCORDANCE WITH THE MONTANA**

1 ADMINISTRATIVE PROCEDURE ACT. THE DEPARTMENT MAY CONDUCT THE HEARING BY TELEPHONE  
 2 OR BY VIDEOCONFERENCE.

3 (3) A contractor who is issued a notice of infraction shall respond within 20 days of the date of  
 4 issuance of the notice of infraction.

5 (4) If a contractor named in the notice does not elect to contest the notice of infraction, the  
 6 contractor shall pay to the department the amount of the penalty prescribed for the infraction. When  
 7 payment of the appropriate penalty is received by the department, the department shall make the  
 8 appropriate entry in its records.

9 (5) If a contractor named in the notice elects to contest the notice of infraction, the contractor shall  
 10 respond by filing an answer of protest with the department, specifying the grounds of protest.

11

12 NEW SECTION. Section 22. Notice of infraction -- failure to respond -- refusal to sign -- penalty.

13 (1) If a contractor issued a notice of infraction fails to respond within the prescribed response period, the  
 14 contractor is guilty of a misdemeanor and ~~must be prosecuted~~ THE DEPARTMENT MAY CAUSE THE  
 15 CRIMINAL PROCEEDINGS TO BE INITIATED AGAINST THE PERSON FOR PROSECUTION in the LOWEST  
 16 COURT OF CONCURRENT JURISDICTION IN THE county where the infraction occurred.

17 (2) After a final determination by the department that an infraction has been committed, a  
 18 contractor who fails to pay a penalty within 30 days, unless waived, reduced, or suspended pursuant to  
 19 [section ~~26~~ 24], and who fails to file an appeal pursuant to [section ~~25~~ 23] is guilty of a misdemeanor and  
 20 ~~must be prosecuted~~ THE DEPARTMENT MAY CAUSE THE CRIMINAL PROCEEDINGS TO BE INITIATED  
 21 AGAINST THE PERSON FOR PROSECUTION in the LOWEST COURT OF CONCURRENT JURISDICTION IN  
 22 THE county in which the infraction occurred.

23 (3) A contractor who fails to pay a penalty within 30 days after exhausting appellate remedies  
 24 pursuant to [section ~~25~~ 23] is guilty of a misdemeanor and ~~must be prosecuted~~ THE DEPARTMENT MAY  
 25 CAUSE THE CRIMINAL PROCEEDINGS TO BE INITIATED AGAINST THE PERSON FOR PROSECUTION in  
 26 the LOWEST COURT OF CONCURRENT JURISDICTION IN THE county where the infraction occurred.

27 (4) It is a misdemeanor for a person who has been personally served with a notice of infraction to  
 28 refuse to sign a written promise to respond to the notice.

29 (5) It is a misdemeanor for a contractor who has been personally served with a notice of infraction  
 30 to willfully violate the written promise to respond to a notice of infraction as provided in [sections 1 through

1 ~~28 25]~~, regardless of the ultimate disposition of the infraction.

2  
3 ~~**NEW SECTION. Section 24. Representation by attorney — department represented by attorney**~~  
4 ~~**general.** A contractor subject to proceedings under [sections 1 through 28] may appear or be represented~~  
5 ~~by counsel. The department must be represented by the attorney general in the administrative proceeding~~  
6 ~~and in any subsequent appeals under [sections 1 through 28].~~

7  
8 **NEW SECTION. Section 23. Infraction -- administrative hearing -- procedure -- burden of proof --**  
9 **order -- appeal.** (1) The department shall conduct a case related to a contractor's notice of infraction  
10 pursuant to Title 2, chapter 4.

11 (2) The burden of proof is on the department to establish the commission of the infraction by a  
12 preponderance of the evidence. The notice of infraction must be dismissed if the defendant establishes  
13 that, at the time the notice was issued, the defendant was registered by the department, was not  
14 suspended, or was exempt from registration.

15 (3) The hearings officer shall dismiss the notice of infraction at any time upon written notification  
16 from the department that the contractor named in the notice of infraction was registered, was not  
17 suspended, or was exempt from registration at the time the notice of infraction was issued.

18 (4) After consideration of the evidence and argument, the hearings officer shall determine whether  
19 the infraction was committed. If it has not been established that the infraction was committed, an order  
20 dismissing the notice must be entered in the record of the proceedings. If it has been established that the  
21 infraction was committed, the hearings officer shall issue findings of fact and conclusions of law in the  
22 decision and order determining whether the infraction was committed.

23 (5) An appeal from the hearings officer's determination or order must be to the district court.

24  
25 **NEW SECTION. Section 24. Infraction -- penalty.** (1) A contractor found to have committed an  
26 infraction under [section ~~16 15]~~ must be assessed a penalty of \$150 for each day for each infraction in  
27 which the contractor conducted business without being registered, beginning with the date the notice of  
28 infraction was served to the contractor or to the contractor's agent.

29 (2) The ~~hearings officer~~ **DEPARTMENT** may waive, reduce, or suspend the penalty imposed for the  
30 infraction only upon a showing of good cause that the penalty would be unduly burdensome to the

1 contractor.

2 (3) A penalty collected under this section must be deposited in the ~~general fund~~ STATE SPECIAL  
 3 REVENUE ACCOUNT TO THE CREDIT OF THE DEPARTMENT FOR ADMINISTRATION AND ENFORCEMENT  
 4 OF [SECTIONS 1 THROUGH 25].

5

6 ~~**NEW SECTION. Section 27. Violations — consumer protection act.** The consumers of this state~~  
 7 ~~have a right to be protected from unfair or deceptive acts or practices when they enter into contracts with~~  
 8 ~~contractors. The fact that a contractor is found to have committed a misdemeanor or infraction under~~  
 9 ~~[sections 1 through 28] is considered to affect the public interest and constitutes a violation of Title 30,~~  
 10 ~~chapter 14, part 1. The surety bond is not liable for penalties or for violations of Title 30, chapter 14, part~~  
 11 ~~4.~~

12

13 **NEW SECTION. Section 25. Rulemaking authority.** The department may adopt rules to implement  
 14 [sections 1 through ~~28~~ 25].

15

16 **Section 26.** Section 37-71-211, MCA, is amended to read:

17 "**37-71-211. Application for license -- contents.** (1) To obtain a license under this chapter, the  
 18 applicant shall submit on ~~such forms as that~~ the department ~~shall prescribe~~ prescribes an application, under  
 19 oath, ~~which shall that must~~ contain:

20 (a) proof of registration under [sections 1 through ~~28~~ 25];

21 (b) a statement of the applicant's experience and qualifications as a contractor;

22 (c) the value and character of contract work completed and for whom performed during 5 years  
 23 prior to the filing of ~~such the~~ application; and

24 (d) a complete financial statement on ~~such the~~ forms and disclosing ~~such the~~ information ~~as shall~~  
 25 ~~be that is~~ required by the department.

26 (2) ~~Such The~~ application ~~shall must~~ also contain ~~such any~~ other information ~~as that~~ may be  
 27 requested by the department under ~~such the~~ rules ~~as may be~~ adopted by the department and ~~which that~~  
 28 will assist the department in determining the applicant's fitness to act in the capacity of a public contractor  
 29 as defined in this chapter.

30 (3) ~~Such The~~ application ~~shall must~~ also contain a statement that the applicant desires the issuance



1 of a license under the terms of this chapter and ~~shall~~ must specify the field of contracting and the class of  
 2 license applied for."

3

4 **Section 27.** Section 39-3-703, MCA, is amended to read:

5 **"39-3-703. Contractor to furnish bond for wages and fringe benefits -- bond requirements --**  
 6 **deposit.** (1) ~~Any~~ Except as provided in subsection (3), a contractor who contracts with another ANY  
 7 PERSON OR ENTITY to do any work or perform any services for the ~~other~~ PERSON OR ENTITY, ~~except~~  
 8 ~~personal services of the contractor not involving work of hired employees,~~ shall furnish a surety bond or  
 9 other form of security ~~to the other which shall~~ that must be:

10 (a) approved by the commissioner;

11 (b) in an amount ~~equal to the contractor's average monthly payroll as estimated by the~~  
 12 ~~commissioner;~~

13 ~~(i) EQUAL TO THE CONTRACTOR'S AVERAGE MONTHLY PAYROLL, BASED ON 12~~  
 14 ~~CONSECUTIVE MONTHS' PAYROLL, AS ESTIMATED BY THE COMMISSIONER; OR~~

15 ~~(ii) of \$6,000 for a general contractor and \$4,000 for a specialty contractor IF THE CONTRACTOR~~  
 16 ~~IS A SOLE PROPRIETOR, AN INDEPENDENT CONTRACTOR, A CORPORATE OFFICER, OR A MANAGER~~  
 17 ~~OR MEMBER OF A LIMITED LIABILITY COMPANY;~~

18 ~~(i) OF \$6,000 FOR A GENERAL CONTRACTOR OR \$4,000 FOR A SPECIALTY CONTRACTOR IF~~  
 19 ~~THE CONTRACTOR IS A SOLE PROPRIETOR, AN INDEPENDENT CONTRACTOR, OR A CORPORATE~~  
 20 ~~OFFICER WORKING AS AN INDIVIDUAL WITHOUT EMPLOYEES; OR~~

21 ~~(iii) EQUAL TO A CONTRACTOR'S AVERAGE MONTHLY EMPLOYEE PAYROLL, BASED ON 12~~  
 22 ~~CONSECUTIVE MONTHS' PAYROLL, AS ESTIMATED BY THE COMMISSIONER. HOWEVER, THE AMOUNT~~  
 23 ~~MAY NOT BE LESS THAN \$6,000 FOR A GENERAL CONTRACTOR OR \$4,000 FOR A SPECIALTY~~  
 24 ~~CONTRACTOR AND MAY NOT EXCEED \$25,000 FOR ANY CONTRACTOR.~~

25 (c) in the name of the state of Montana;

26 (d) for the purpose of ~~insuring~~ GUARANTEEING:

27 (i) the wages and fringe benefits of all workers employed by the contractor for the contracted  
 28 work;

29 (ii) all taxes and contributions due to the state;

30 (iii) payment to persons furnishing labor or material and renting or supplying equipment to the

1 contractor;

2 ~~(iv) all amounts that may be adjudged against the contractor by reason of negligent or improper~~  
3 ~~work or breach of contract;~~

4 (e) filed with the commissioner within 1 week of the making of the contract or the commencement  
5 of work ~~thereunder~~ under the contract, whichever comes first.

6 (2) Only one bond ~~shall be~~ is required on any contractor for each year, and when the bond is filed  
7 with and approved by the commissioner, the commissioner shall certify to any person contracting with a  
8 contractor that the bond is in full force and effect.

9 (3) In lieu of the surety bond required by subsection (1), the contractor may file with the  
10 department a deposit consisting of cash or other security acceptable to the department.

11 (4) A change in the name of a business or a change in the type of business may not impair a bond  
12 for the purposes of this section as long as one of the original applicants for the bond maintains partial  
13 ownership in the business covered by the bond."

14

15 **Section 28.** Section 39-3-705, MCA, is amended to read:

16 **"39-3-705. Suit on bond.** (1) Any employee employed by a contractor person, firm, or corporation  
17 having a claim against the contractor for any of the items referred to in 39-3-703 may bring an action on  
18 the surety bond in his own name for unpaid wages and fringe benefits in the district court in the county  
19 in which the work was performed or in any county that has jurisdiction over the contractor.

20 (2) The surety issuing the bond must be named as a party to any suit upon the bond. Action upon  
21 the bond or deposit must be commenced by filing the summons and complaint with the clerk of the  
22 appropriate district court within 1 year from the date of expiration of the certificate of registration that was  
23 in force at the time the claimed labor was performed and benefits accrued, the taxes and contribution owing  
24 the state became due, the materials and equipment were furnished, or the claimed contract work was  
25 completed. Service of process in an action against the contractor, the contractor's bond, or the deposit  
26 must be exclusively by service upon the department. Three copies of the summons and complaint and a  
27 fee of \$10 for handling costs must be served by certified mail upon the department at the time suit is  
28 started. The \$10 fee must be deposited in the state special revenue fund to the credit of the department.  
29 The department shall maintain a record, available for public inspection, of all suits served. Service is not  
30 complete until the department receives the \$10 fee and three copies of the summons and complaint. The

1 service constitutes service on the registrant and the surety for suit upon the bond or deposit. The  
 2 department shall ~~transmit~~ MAIL the summons and complaint or a copy of the summons and complaint to  
 3 the registrant AT THE ADDRESS listed in the REGISTRANT'S application and to the surety within 48 hours  
 4 after it has been received.

5 (3) The surety is not liable in an aggregate amount in excess of the amount named in the bond or  
 6 for any penalty assessed pursuant to [sections 1 through ~~28~~ 25]. The liability for the surety may not  
 7 accumulate when the bond has been renewed, continued, reinstated, reissued, or otherwise extended. The  
 8 surety may, upon notice to the department and the parties, tender to the clerk of the court that has  
 9 jurisdiction over the claim an amount equal to the claims under the bond or the amount of the bond less  
 10 any judgments, if any, previously satisfied from the bond and exonerate the bond to the extent of the  
 11 tender. However, if the actions commenced and pending at any one time exceed the amount of the bond  
 12 then unimpaired, claims must be satisfied from the bond in the following order:

13 (a) labor, including employee benefits;

14 ~~(b) claims for breach of contract by a party to the construction contract;~~

15 ~~(c)(B) materials and equipment;~~

16 ~~(d)(C)(B) taxes and contributions due to the state; and~~

17 ~~(e)(D)(C) any court costs, interest, and attorney fees that a plaintiff may be entitled to recover.~~

18 (4) If a final judgment impairs the liability of the surety to the extent that the bond is no longer in  
 19 effect in the full amount required in 39-3-703, the department shall suspend the registration of the  
 20 contractor until the bond liability has been furnished in the required amount, unimpaired by unsatisfied  
 21 judgment claims. If the bond becomes fully impaired, a new bond must be furnished in the amount  
 22 prescribed by 39-3-703.

23 (5) A person who filed and served a summons and complaint as required by this section and who  
 24 has an unsatisfied final judgment against the registrant for any items referred to in 39-3-703 may execute  
 25 upon the security held by the department by serving a certified copy of the unsatisfied final judgment within  
 26 1 year of the date of the entry of the judgment. Upon the receipt of service of the certified copy, the  
 27 department shall pay or order to be paid from the deposit, through the district court that rendered the  
 28 judgment, a payment toward the unsatisfied judgment. The priority of payment by the department must  
 29 be the order of receipt by the department, but the department has no liability for payment in excess of the  
 30 amount of the deposit."

1           **SECTION 29. SECTION 39-3-706, MCA, IS AMENDED TO READ:**

2           "39-3-706. **Liability of ~~person~~ contractor contracting with another contractor for failure to require**  
3 **bond.** ~~Any person~~ A contractor contracting with a another contractor who fails to require the other  
4 contractor to ~~acquire the surety bond provided for in 39-3-703(1)~~ be registered pursuant to [sections 1  
5 through 25] is liable to the employees of ~~that~~ the other contractor for their wages and fringe benefits on  
6 that particular job."

7

8           **SECTION 30. SECTION 39-71-120, MCA, IS AMENDED TO READ:**

9           "39-71-120. **Independent contractor defined.** (1) An "independent contractor" is one who renders  
10 service in the course of an occupation and:

11           (a) has been and will continue to be free from control or direction over the performance of the  
12 services, both under ~~his~~ the contract and in fact; ~~and~~

13           (b) is engaged in an independently established trade, occupation, profession, or business; and

14           (c) has received an exemption granted under 39-71-401(3).

15           (2) An individual performing services for remuneration is considered to be an employee under this  
16 chapter unless the requirements of subsection (1) are met."

17

18           **NEW SECTION. Section 31. Repealer.** Section 39-3-704, MCA, is repealed.

19

20           **NEW SECTION. Section 32. Codification instruction.** [Sections 1 through ~~28~~ 25] are intended to  
21 be codified as an integral part of Title 39, and the provisions of Title 39 apply to [sections 1 through ~~28~~  
22 25].

23

24           **NEW SECTION. Section 33. Severability.** If a part of [this act] is invalid, all valid parts that are  
25 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
26 applications, the part remains in effect in all valid applications that are severable from the invalid  
27 applications.

28

-END-