

Donna M. ...
Richard ...
Ken ...
Jack M. Wells
ORR
Wm. E. Schurski

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INTRODUCED BY Donna M. Wells to House

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS AND INDEPENDENT CONTRACTORS; REPEALING CONTRACTOR REGISTRATION REQUIREMENTS; ELIMINATING BONDING REQUIREMENTS FOR CONTRACTORS; REQUIRING THE REFUND OF CONTRACTOR REGISTRATION FEES; AMENDING SECTIONS 39-71-118, 39-71-120, 39-71-401, AND 39-71-405, MCA; REPEALING SECTIONS 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, 39-9-101, 39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, AND 39-9-410, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

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

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

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

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

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

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

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

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

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

16 (f) an inmate working in a federally certified prison industries program authorized under 53-1-301;
17 and

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

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

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

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

26 (c) performing services as a volunteer, except for a person who is otherwise entitled to coverage
27 under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs
28 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined
29 in 39-71-123.

30 (3) With the approval of the insurer, an employer may elect to include as an employee under the

1 provisions of this chapter any volunteer as defined in subsection (2)(c).

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

4 (b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service
5 of an employer, including but not limited to training time, response time, and time spent at the employer's
6 premises.

7 (5) (a) If the employer is a partnership, sole proprietor, or a member-managed limited liability
8 company, the employer may elect to include as an employee within the provisions of this chapter any
9 member of the partnership, the owner of the sole proprietorship, or any member of the limited liability
10 company devoting full time to the partnership, proprietorship, or limited liability company business.

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

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

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

22 (6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited
23 liability company, the employer may elect to include as an employee within the provisions of this chapter
24 any corporate officer or manager exempted under 39-71-401(2).

25 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
26 naming the corporate officer or manager to be covered and stating the level of compensation coverage
27 desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A
28 corporate officer or manager is not considered an employee within this chapter until notice has been given.

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

1 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
2 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
3 determination of the weekly wage for weekly compensation benefits, the electing employer may elect not
4 less than \$200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

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

9 (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for
10 premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the
11 average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

12 (8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services
13 are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than
14 a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the
15 control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

16 (9) For purposes of this section, an "employee or worker in this state" means:

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

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

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

23 (d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose
24 employer elects coverage with an insurer that allows an election for an employer whose:

25 (i) nonresident employees are hired in Montana;

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

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

28 (iv) business records are maintained in Montana.

29 (10) An insurer may require coverage for all nonresident employees of a Montana employer who
30 do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under

1 subsection (9)(d)."

2

3 **Section 2.** Section 39-71-120, MCA, is amended to read:

4 **"39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders
5 service in the course of an occupation and:

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

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

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

10 (2) An individual performing services for remuneration who represents to the public that the
11 individual is an independent contractor is considered to be an independent contractor and not an employee
12 under this chapter ~~unless the requirements of subsection (1) are met.~~ An individual representing to the
13 public that the individual is an independent contractor may not make claims against an employing unit. The
14 department may not take action against a person relying on a claim of independent contractor status
15 pursuant to this subsection.

16 (3) The department may not adopt rules to implement this section."

17

18 **Section 3.** Section 39-71-401, MCA, is amended to read:

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

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

28 (a) household and domestic employment;

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

30 (c) employment of a dependent member of an employer's family for whom an exemption may be

1 claimed by the employer under the federal Internal Revenue Code;

2 (d) employment of sole proprietors, working members of a partnership, or working members of a
3 member-managed limited liability company, except as provided in subsection (3);

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

6 (f) employment of a direct seller as defined in 26 U.S.C. 3508;

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

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

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

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

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

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

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

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

26 (m) a person who is employed by an enrolled tribal member or an association, business,
27 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
28 business is conducted solely within the exterior boundaries of an Indian reservation;

29 (n) employment of a jockey performing under a license issued by the board of horseracing from the
30 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after

1 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
2 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

3 (o) employment of an employer's spouse for whom an exemption based on marital status may be
4 claimed by the employer under 26 U.S.C. 7703;

5 (p) a person who performs services as a petroleum land professional. As used in this subsection,
6 a "petroleum land professional" is a person who:

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

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

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

12 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
13 liability company who qualifies under one or more of the following provisions:

14 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
15 limited liability company and does not receive any pay from the corporation or the limited liability company
16 for performance of the duties;

17 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
18 limited liability company;

19 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
20 or owns 20% or more of the limited liability company; or

21 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
22 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
23 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

24 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
25 member-managed limited liability company who represents to the public that the person is an independent
26 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
27 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

28 (b) The application must be made in accordance with the rules adopted by the department. There
29 is no fee for the initial application. Any subsequent application must be accompanied by a \$25 application
30 fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset

1 the costs of administering the program.

2 (c) When an application is approved by the department or when the contracting parties agree to
3 an independent contractor status, it is conclusive as to the status of an independent contractor and
4 precludes the applicant from obtaining benefits under this chapter.

5 ~~(d) The exemption, if approved, remains in effect for 1 year following the date of the department's~~
6 ~~approval. To maintain the independent contractor status, an independent contractor shall annually submit~~
7 ~~a renewal application. A renewal application must be submitted for all independent contractor exemptions~~
8 ~~approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee~~
9 ~~must be received by the department at least 30 days prior to the anniversary date of the previously~~
10 ~~approved exemption. When an election of an exemption is approved by the department, the election~~
11 ~~remains effective and the independent contractor retains the status of an independent contractor until the~~
12 ~~independent contractor notifies the department of any change in status and provides a description of the~~
13 ~~independent contractor's present work status.~~

14 (e) A person who purposely makes a false statement or misrepresentation concerning that person's
15 status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may
16 impose the penalty for each false statement or misrepresentation. The penalty must be paid to the
17 uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

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

22 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
23 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
24 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
25 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
26 manner:

27 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
28 delivering the notice to the board of directors of the corporation or to the management organization of the
29 manager-managed limited liability company; or

30 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by

1 delivering the notice to the board of directors of the corporation or to the management organization of the
2 manager-managed limited liability company and to the insurer.

3 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
4 the employer shall again serve notice to its insurer and to its board of directors or the management
5 organization of the manager-managed limited liability company if the employer elects to be bound.

6 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
7 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
8 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
9 exemption from coverage.

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

20 **Section 4.** Section 39-71-405, MCA, is amended to read:

21 **"39-71-405. Liability of employer who contracts work out.** (1) An employer who contracts with
22 a contractor or an independent contractor to have work performed of a kind ~~which~~ that is a regular or a
23 recurrent part of the work of the trade, business, occupation, or profession of ~~such~~ the employer is not
24 liable for the payment of benefits under this chapter to the employees of the contractor or to the
25 independent contractor if the contractor or independent contractor has not properly complied with the
26 coverage requirements of the Worker's Compensation Act. ~~Any insurer who becomes liable for payment~~
27 ~~of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the~~
28 ~~contractor primarily liable therein.~~

29 (2) ~~Where~~ When an employer contracts to have any work ~~to be~~ done by a contractor ~~either than~~
30 or an independent contractor, and the work so contracted to be done is a part or process in the trade or

1 ~~business of the employer, then the employer is not liable to pay all benefits under this chapter to the same~~
 2 ~~extent as if the work were done without the intervention of the contractor, and the work so contracted to~~
 3 ~~be done shall not be construed to be casual employment even if the work contracted to be done is a part~~
 4 ~~or process in the trade, business, occupation, or profession of the employer. ~~Where~~ When an employer~~
 5 contracts work to be done as specified in this subsection, the contractor and the contractor's employees
 6 ~~shall~~ may not come under that plan of compensation adopted by the employer.

7 (3) ~~Where~~ When an employer contracts any work to be done, wholly or in part for the employer,
 8 by an independent contractor, ~~where~~ and the work ~~so~~ contracted to be done is casual employment as to
 9 ~~such~~ the employer, then the contractor ~~shall become the~~ is not an employer for the purposes of this
 10 chapter."
 11

12 NEW SECTION. Section 5. Fee refund. The department of labor and industry shall refund all fees
 13 collected under the provisions of former 39-9-206.
 14

15 NEW SECTION. Section 6. Repealer. Sections 39-3-701, 39-3-702, 39-3-703, 39-3-705,
 16 39-3-706, 39-9-101, 39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39-9-206,
 17 39-9-207, 39-9-211, 39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39-9-404,
 18 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, and 39-9-410, MCA, are repealed.
 19

20 NEW SECTION. Section 7. Effective date. [This act] is effective July 1, 1997.
 21

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0252, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws governing contractors and independent contractors; repealing contractor registration requirements; eliminating bonding requirements for contractors; requiring the refund of contractor registration fees.

ASSUMPTIONS:

1. Repealer would completely eliminate contractor registration funding and responsibilities for the Legal Bureau and Hearings Bureau within the Legal/Centralized Services Division. The injunction placed on the Department of Labor and Industry from enforcing this law leaves the department free of any unsettled legal issues requiring an identified workload.
2. Section 3, subsection (3)(d) contemplates perpetual duration of an independent contractor (IC) exemption, until the department is notified of a change. This provision renders the \$25 "subsequent application" fee in (3)(b) meaningless. Since no one will have to renew, the department assumes that the fees mentioned in (3)(b) will not be collected. Section (3)(b) states that the department is expected to determine independent contractor status for individuals and is required to use funding from the Workers' Compensation Administrative fund (fund established in 39-71-201, MCA). Any fees collected would be deposited in the Workers' Compensation Administrative fund.
3. The department assumes that the restriction on rulemaking applies only to Section 2 (39-71-120, MCA. Independent contractor defined). Existing rules will have to be amended or repealed to remove any rule that implements this section.

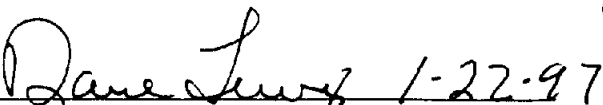
Unemployment Insurance (UI) Division:

4. It is possible that wages reported by employing entities would decrease as individuals that are currently determined to be employees may become independent contractors. A reduction in wages reported by employers may reduce the amount of taxes paid by employers which in turn could have a negative impact to the UI trust fund.
5. There is no data available to determine the fiscal impact because the number of decreasing employing entities can not be determined.
6. Individuals who are independent contractors would still be able to file a claim for UI benefits and receive a determination of eligibility as outlined in 39-51-2402, MCA.

Employment Relations Division:

7. This legislation would eliminate the contractor registration (CR) process as created by the 1995 Legislature.
8. Section 5 of this legislation requires the department to refund all CR fees collected under 39-9-206, MCA. The CR program utilizes its funds for salaries, benefits and operations, and has no other fund reserve. There would be no cash from this fund source available for such a refund. Implementation of the refund portion of this legislation would, therefore, require another resource, for example general fund. Assuming the refund period to be in fiscal 1998, and with the \$490,765 collected in fees in fiscal 1996 and projected fee revenue of as much as \$640,000 in fiscal 1997, general fund of \$1,130,765 would be required in fiscal 1998 to accomplish the fee refund.
9. In order for each registered contractor to receive a fee refund, the existing CR staff would: 1) cease cashing registration fees and return unprocessed fees and applications; and 2) identify and mail back fees collected in fiscal 1995 and 1996. It estimated that it would take three staff one month in fiscal 1998 to close files and mail back fee refunds, at a cost of \$22,611 (personal services, \$7,478; operating expenses, \$15,133) from the general fund.

(Continued)


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

BRAD MOLNAR, PRIMARY SPONSOR DATE

Fiscal Note for HB0252, as introduced

HB 252

(continued)

10. Contractor registration funding was identified to support administrative costs for the Employment Relations Division. If this funding source disappears, division administration costs still exist and funding of \$125,923 for fiscal 1998 and \$117,166 for fiscal 1999 would be reapportioned over all funding sources of the division.
11. Independent contractor exemption funding was identified to support division administration costs which still exist. The representative share of division administration costs related to IC would be funded by Workers' Compensation Administrative Fund (02455). See assumption two.

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Legal/Centralized Services Division		
FTE	(3.00)	(3.00)
Personal Services	(110,033)	(110,097)
Operating	(48,286)	(48,046)
Equipment	<u>(2,613)</u>	<u>(772)</u>
Total	(160,932)	(158,915)
Employment Relations Division		
FTE	(7.25)	(7.50)
Personal Services	(225,562)	(233,562)
Operating	(22,728)	(37,339)
Equipment	(4,812)	(4,812)
Refunds	<u>1,130,765</u>	<u>0</u>
Total	877,663	(275,713)
Total - Department of Labor and Industry		
FTE	(10.25)	(10.50)
Expenditures	716,731	(434,628)
<u>Funding:</u>		
General Fund (01)Refund Process	22,611	0
General Fund (01)Fees refunded	1,130,765	0
SSR (02)(Contractor Registration)	(436,645)	(434,628)
SSR (02)(for Admin. of CR-02346)	(125,923)	(117,666)
SSR (02)(ESA-02258)	14,740	13,399
SSR (WCA-02455)	72,719	67,703
FSR (03)(DLI Fed Fund-03128)	1,946	1,769
FSR (03)(Fed Safety Fnds-03130)	1,402	1,274
FSR (03)(Fed MSHA-03195)	2,813	2,557
Prop(06)(SIF Adm-06041)	443	403
Prop(06)(UEF Adm-06055)	31,860	30,561
SSR (02)(IC Exemption -02091)	(216,475)	(213,236)
SSR (02)(WCA-02455)	<u>216,475</u>	<u>213,236</u>
Total	716,731	(434,628)
<u>Revenues:</u>		
SSR (02)(CR-02346)	(600,000)	(600,000)
SSR (02)(IC Exemption-02091)	(216,475)	(213,236)
SSR (02)(WCA-02455)	216,475	213,236
<u>Net Impact on Fund Balance: (Revenue minus expense)</u>		
General Fund (01)	(1,153,396)	0

TECHNICAL NOTES:

Repeal of 39-3-703, MCA, removes the requirement that electrical contractors registered with the State Electrical Board be required to obtain a contractor bond for wages and benefits.

The term "employing unit" contained in Section 2 is not defined in the Workers' Compensation Act.

1 HOUSE BILL NO. 252

2 INTRODUCED BY MOLNAR, PROUSE, TASH, BOHARSKI, SLITER, BANKHEAD, MILLER, BEAUDRY,
3 WELLS, ARNOTT, ORR, JORE, HOLLAND, DEVANEY, MCGEE, CURTISS, KEENAN, BITNEY, BAER,
4 ESTRADA, GAGE, VICK
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS
7 AND INDEPENDENT CONTRACTORS; REPEALING CONTRACTOR REGISTRATION REQUIREMENTS;
8 ELIMINATING BONDING REQUIREMENTS FOR CONTRACTORS; ~~REQUIRING THE REFUND OF~~
9 ~~CONTRACTOR REGISTRATION FEES~~; AMENDING SECTIONS 39-71-118, 39-71-120, 39-71-401, AND
10 39-71-405, MCA; REPEALING SECTIONS 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, 39-9-101,
11 39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39-9-206, 39-9-207, 39-9-211,
12 39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406,
13 39-9-407, 39-9-408, 39-9-409, AND 39-9-410, MCA; AND PROVIDING AN EFFECTIVE DATE."
14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16

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

18 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term
19 "employee" or "worker" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 in 39-71-123.

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

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

6 (b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service
7 of an employer, including but not limited to training time, response time, and time spent at the employer's
8 premises.

9 (5) (a) If the employer is a partnership, sole proprietor, or a member-managed limited liability
10 company, the employer may elect to include as an employee within the provisions of this chapter any
11 member of the partnership, the owner of the sole proprietorship, or any member of the limited liability
12 company devoting full time to the partnership, proprietorship, or limited liability company business.

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

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

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

24 (6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited
25 liability company, the employer may elect to include as an employee within the provisions of this chapter
26 any corporate officer or manager exempted under 39-71-401(2).

27 (b) In the event of an election, the employer shall serve upon the employer's insurer written notice
28 naming the corporate officer or manager to be covered and stating the level of compensation coverage
29 desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A
30 corporate officer or manager is not considered an employee within this chapter until notice has been given.

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

3 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
4 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
5 determination of the weekly wage for weekly compensation benefits, the electing employer may elect not
6 less than \$200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

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

11 (b) In the event of an election, the employer shall report payroll for all volunteer firefighters for
12 premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the
13 average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

14 (8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services
15 are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than
16 a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the
17 control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

18 (9) For purposes of this section, an "employee or worker in this state" means:

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

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

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

25 (d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose
26 employer elects coverage with an insurer that allows an election for an employer whose:

27 (i) nonresident employees are hired in Montana;

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

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

30 (iv) business records are maintained in Montana.

1 (10) An insurer may require coverage for all nonresident employees of a Montana employer who
 2 do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under
 3 subsection (9)(d)."

4
 5 **Section 2.** Section 39-71-120, MCA, is amended to read:

6 **"39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders
 7 service in the course of an occupation and:

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

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

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

12 (2) An individual performing services for remuneration who represents to the public that the
 13 individual is an independent contractor is considered to be an independent contractor and not an employee
 14 under this chapter unless the requirements of subsection (1) are met. An individual representing to the
 15 public that the individual is an independent contractor may not make claims against an employing unit ANY
 16 PERSON FOR WHOM THE INDEPENDENT CONTRACTOR RENDERS SERVICE IN EXCHANGE FOR PAY OR
 17 ANY OTHER CONSIDERATION. The department may not take action against a person relying on a claim
 18 of independent contractor status pursuant to this subsection.

19 (3) The department may not adopt rules to implement this section."

20
 21 **Section 3.** Section 39-71-401, MCA, is amended to read:

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

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

- 1 (a) household and domestic employment;
- 2 (b) casual employment as defined in 39-71-116;
- 3 (c) employment of a dependent member of an employer's family for whom an exemption may be
4 claimed by the employer under the federal Internal Revenue Code;
- 5 (d) employment of sole proprietors, working members of a partnership, or working members of a
6 member-managed limited liability company, except as provided in subsection (3);
- 7 (e) employment of a broker or salesman performing under a license issued by the board of realty
8 regulation;
- 9 (f) employment of a direct seller as defined in 26 U.S.C. 3508;
- 10 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
11 under the laws of the United States;
- 12 (h) employment of a person performing services in return for aid or sustenance only, except
13 employment of a volunteer under 67-2-105;
- 14 (i) employment with a railroad engaged in interstate commerce, except that railroad construction
15 work is included in and subject to the provisions of this chapter;
- 16 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
17 event, unless the person is otherwise employed by a school district;
- 18 (k) employment of a person performing services as a newspaper carrier or free-lance correspondent
19 if the person performing the services or a parent or guardian of the person performing the services in the
20 case of a minor has acknowledged in writing that the person performing the services and the services are
21 not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or
22 photographs for publication and is paid by the article or by the photograph. As used in this subsection,
23 "newspaper carrier":
- 24 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in
25 bundles; but
- 26 (ii) does not include an employee of the paper who, incidentally to the employee's main duties,
27 carries or delivers papers.
- 28 (l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);
- 29 (m) a person who is employed by an enrolled tribal member or an association, business,
30 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose

- 1 business is conducted solely within the exterior boundaries of an Indian reservation;
- 2 (n) employment of a jockey performing under a license issued by the board of horseracing from the
3 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
4 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
5 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;
- 6 (o) employment of an employer's spouse for whom an exemption based on marital status may be
7 claimed by the employer under 26 U.S.C. 7703;
- 8 (p) a person who performs services as a petroleum land professional. As used in this subsection,
9 a "petroleum land professional" is a person who:
- 10 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in
11 negotiating a business agreement for the exploration or development of minerals;
- 12 (ii) is paid for services that are directly related to the completion of a contracted specific task rather
13 than on an hourly wage basis; and
- 14 (iii) performs all services as an independent contractor pursuant to a written contract.
- 15 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
16 liability company who qualifies under one or more of the following provisions:
- 17 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
18 limited liability company and does not receive any pay from the corporation or the limited liability company
19 for performance of the duties;
- 20 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
21 limited liability company;
- 22 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
23 or owns 20% or more of the limited liability company; or
- 24 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
25 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
26 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.
- 27 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
28 member-managed limited liability company who represents to the public that the person is an independent
29 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
30 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

1 (b) The application must be made in accordance with the rules adopted by the department. There
2 is no fee for the initial application. Any subsequent application must be accompanied by a \$25 application
3 fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset
4 the costs of administering the program.

5 (c) When an application is approved by the department or when the contracting parties agree to
6 an independent contractor status, it is conclusive as to the status of an independent contractor and
7 precludes the applicant from obtaining benefits under this chapter.

8 (d) ~~The exemption, if approved, remains in effect for 1 year following the date of the department's~~
9 ~~approval. To maintain the independent contractor status, an independent contractor shall annually submit~~
10 ~~a renewal application. A renewal application must be submitted for all independent contractor exemptions~~
11 ~~approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee~~
12 ~~must be received by the department at least 30 days prior to the anniversary date of the previously~~
13 ~~approved exemption. When an election of an exemption is approved by the department, the election~~
14 remains effective and the independent contractor retains the status of an independent contractor until the
15 independent contractor notifies the department of any change in status and provides a description of the
16 independent contractor's present work status.

17 (e) A person who purposely makes a false statement or misrepresentation concerning that person's
18 status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may
19 impose the penalty for each false statement or misrepresentation. The penalty must be paid to the
20 uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

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

25 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
26 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
27 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
28 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
29 manner:

30 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by

1 delivering the notice to the board of directors of the corporation or to the management organization of the
2 manager-managed limited liability company; or

3 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
4 delivering the notice to the board of directors of the corporation or to the management organization of the
5 manager-managed limited liability company and to the insurer.

6 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
7 the employer shall again serve notice to its insurer and to its board of directors or the management
8 organization of the manager-managed limited liability company if the employer elects to be bound.

9 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
10 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
11 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
12 exemption from coverage.

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

23 **Section 4.** Section 39-71-405, MCA, is amended to read:

24 "**39-71-405. Liability of employer who contracts work out.** (1) An employer who contracts with
25 a contractor or an independent contractor to have work performed of a kind ~~which~~ that is a regular or a
26 recurrent part of the work of the trade, business, occupation, or profession of ~~such~~ the employer is not
27 liable for the payment of benefits under this chapter to the employees of the contractor or to the
28 independent contractor if the contractor or independent contractor has not properly complied with the
29 coverage requirements of the Worker's Compensation Act. ~~Any insurer who becomes liable for payment~~
30 ~~of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the~~

1 ~~contractor primarily liable therein.~~

2 (2) ~~Where~~ When an employer contracts to have any work ~~to be done~~ by a contractor ~~other than~~
 3 ~~or an independent contractor, and the work so contracted to be done is a part or process in the trade or~~
 4 ~~business of the employer, then the employer is not liable to pay all benefits under this chapter to the same~~
 5 ~~extent as if the work were done without the intervention of the contractor, and the work so contracted to~~
 6 ~~be done shall not be construed to be casual employment even if the work contracted to be done is a part~~
 7 ~~or process in the trade, business, occupation, or profession of the employer.~~ Where When an employer
 8 contracts work to be done as specified in this subsection, the contractor and the contractor's employees
 9 ~~shall~~ may not come under that plan of compensation adopted by the employer.

10 (3) ~~Where~~ When an employer contracts any work to be done, wholly or in part for the employer,
 11 by an independent contractor, ~~where~~ and the work ~~so~~ contracted to be done is casual employment as to
 12 ~~such~~ the employer, then the contractor ~~shall become the~~ is not an employer for the purposes of this
 13 chapter."

14

15 ~~NEW SECTION. Section 5. Fee refund. The department of labor and industry shall refund all fees~~
 16 ~~collected under the provisions of former 39-9-206.~~

17

18 NEW SECTION. Section 5. Repealer. Sections 39-3-701, 39-3-702, 39-3-703, 39-3-705,
 19 39-3-706, 39-9-101, 39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39-9-206,
 20 39-9-207, 39-9-211, 39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39-9-404,
 21 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, and 39-9-410, MCA, are repealed.

22

23 NEW SECTION. Section 6. Effective date. [This act] is effective July 1, 1997.

24

-END-

HOUSE BILL NO. 252

INTRODUCED BY MOLNAR, PROUSE, TASH, BOHARSKI, SLITER, BANKHEAD, MILLER, BEAUDRY,
WELLS, ARNOTT, ORR, JORE, HOLLAND, DEVANEY, MCGEE, CURTISS, KEENAN, BITNEY, BAER,
ESTRADA, GAGE, VICK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS
AND INDEPENDENT CONTRACTORS; REPEALING CONTRACTOR REGISTRATION REQUIREMENTS;
ELIMINATING BONDING REQUIREMENTS FOR CONTRACTORS; ~~REQUIRING THE REFUND OF
CONTRACTOR REGISTRATION FEES;~~ AMENDING SECTIONS 39-71-118, 39-71-120, 39-71-401, AND
39-71-405, MCA; REPEALING SECTIONS 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, 39-9-101,
39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39-9-206, 39-9-207, 39-9-211,
39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406,
39-9-407, 39-9-408, 39-9-409, AND 39-9-410, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0252, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws governing contractors and independent contractors; repealing contractor registration requirements; eliminating bonding requirements for contractors.

ASSUMPTIONS:

1. Repealer would completely eliminate contractor registration funding and responsibilities for the Legal Bureau and Hearings Bureau within the Legal/Centralized Services Division. The injunction placed on the Department of Labor and Industry from enforcing this law leaves the department free of any unsettled legal issues requiring an identified workload.
2. Section 3, subsection (3)(d) contemplates perpetual duration of an independent contractor (IC) exemption, until the department is notified of a change. This provision renders the \$25 "subsequent application" fee in (3)(b) meaningless. Since no one will have to renew, the department assumes that the fees mentioned in (3)(b) will not be collected. Section (3)(b) states that the department is expected to determine independent contractor status for individuals and is required to use funding from the Workers' Compensation administrative fund (fund established in 39-71-201, MCA). Any fees collected would be deposited in the Workers' Compensation Administrative fund.
3. The department assumes that the restriction on rulemaking applies only to Section 2 (39-71-120, MCA, independent contractor defined). Existing rules will have to be amended or repealed to remove any rule that implements this section.


Unemployment Insurance (UI) Division:

4. It is possible that wages reported by employing entities would decrease as individuals who are currently determined to be employees may become independent contractors. A reduction in wages reported by employers may reduce the amount of taxes paid by employers which in turn could have a negative impact to the UI trust fund.
5. There is no data available to determine the fiscal impact because the number of decreasing employing entities can not be determined.
6. Individuals who are independent contractors would still be able to file a claim for UI benefits and receive a determination of eligibility as outlined in 39-51-2402, MCA.

Employment Relations Division:

7. This legislation would eliminate the contractor registration (CR) process as created by the 1995 Legislature.
8. Contractor registration funding was identified to support administrative costs for the Employment Relations Division. If this funding source disappears, division administration costs still exist and funding of \$125,923 for fiscal 1998 and \$117,166 for fiscal 1999 would be reapportioned over all funding sources of the division.
9. Independent contractor exemption funding was identified to support division administration costs which still exist. The representative share of division administration costs related to IC would be funded by Workers' Compensation administrative fund (02455). See assumption two.

(continued)

 3.13.97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BRAD MOLNAR, PRIMARY SPONSOR DATE

Fiscal Note for HB0252, third reading

Am HB 252 #2

FISCAL IMPACT:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Legal/Centralized Services Division		
FTE	(3.00)	(3.00)
Personal Services	(110,033)	(110,097)
Operating	(48,286)	(48,046)
Equipment	<u>(2,613)</u>	<u>(772)</u>
Total	(160,932)	(158,915)
Employment Relations Division		
FTE	(7.50)	(7.50)
Personal Services	(233,562)	(233,562)
Operating	(37,339)	(37,339)
Equipment	<u>(4,812)</u>	<u>(4,812)</u>
Total	(275,713)	(275,713)
Total - Department of Labor and Industry		
FTE	(10.50)	(10.50)
Expenditures	(436,645)	(434,628)
<u>Funding:</u>		
SSR (02) (Contractor Registration)	(436,645)	(434,628)
SSR (02) (for Admin. of CR-02346)	(125,923)	(117,666)
SSR (02) (ESA-02258)	14,740	13,399
SSR (WCA-02455)	72,719	67,703
FSR (03) (DLI Fed Fund-03128)	1,946	1,769
FSR (03) (Fed Safety Fnds-03130)	1,402	1,274
FSR (03) (Fed MSHA-03195)	2,813	2,557
Prop(06) (SIF Adm-06041)	443	403
Prop(06) (UEF Adm-06055)	31,860	30,561
SSR (02) (IC Exemption -02091)	(216,475)	(213,236)
SSR (02) (WCA-02455)	<u>216,475</u>	<u>213,236</u>
Total	(436,645)	(434,628)
<u>Revenues:</u>		
SSR (02) (CR-02346)	(600,000)	(600,000)
SSR (02) (IC Exemption-02091)	(216,475)	(213,236)
SSR (02) (WCA-02455)	216,475	213,236

TECHNICAL NOTES:

Repeal of 39-3-703, MCA, removes the requirement that electrical contractors registered with the State Electrical Board be required to obtain a contractor bond for wages and benefits.

The term "employing unit" contained in Section 2 is not defined in the Workers' Compensation Act.

HOUSE BILL NO. 252

INTRODUCED BY MOLNAR, VICK, PROUSE, TASH, BOHARSKI, SLITER, BANKHEAD, MILLER, BEAUDRY, WELLS, ARNOTT, ORR, JORE, HOLLAND, DEVANEY, MCGEE, CURTISS, KEENAN, BITNEY, BAER, ESTRADA, GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS AND INDEPENDENT CONTRACTORS; REPEALING CONTRACTOR REGISTRATION REQUIREMENTS; ELIMINATING BONDING REQUIREMENTS FOR CONTRACTORS; ~~REQUIRING THE REFUND OF CONTRACTOR REGISTRATION FEES;~~ ELIMINATING INVESTIGATORY, ENFORCEMENT, NOTICE AND APPEAL PROCEDURES, AND PENALTY PROVISIONS RELATING TO CONTRACTOR REGISTRATION; DECREASING THE FEE FOR THE ISSUANCE OF THE INITIAL CERTIFICATE TO A MAXIMUM OF \$50 AND THE FEE FOR THE RENEWAL OR REINSTATEMENT OF A CERTIFICATE TO A MAXIMUM OF \$50; PROVIDING AN EXEMPTION FOR FIRE SUPPRESSION OR PROTECTION LICENSEES, FOR CONTRACTORS IN THE LOGGING INDUSTRY WHO BUILD FOREST ACCESS ROADS, AND FOR INDEPENDENT CONTRACTORS WHO HAVE NO EMPLOYEES; PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; PROVIDING FOR A \$25 FEE FOR THE INITIAL EXEMPTION APPLICATION AND FOR EACH SUBSEQUENT RENEWAL; AMENDING SECTIONS ~~39-71-118,~~ 39-9-101, 39-9-102, 39-9-201, 39-9-204, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-303, 39-9-401, 39-71-120, AND 39-71-401, AND ~~39-71-406,~~ MCA; REPEALING SECTIONS 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, ~~39-9-101, 39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, AND 39-9-410, MCA; AND PROVIDING AN EFFECTIVE DATE."~~

WHEREAS, THE CONTRACTOR REGISTRATION PROGRAM AFFECTS AN INDUSTRY IN MONTANA THAT HAS A HIGH NUMBER OF ACCIDENTS, RESULTING IN WORKERS' COMPENSATION RATES THAT ARE HIGHER THAN OTHER INDUSTRIES' AND CREATING A SITUATION THAT OFTEN RESULTS IN NONCOMPLIANCE WITH THE REQUIREMENTS OF THE WORKERS' COMPENSATION ACT AND THE UNEMPLOYMENT INSURANCE LAW; AND

WHEREAS, THE CONTRACTOR REGISTRATION PROGRAM PROVIDES NEEDED STRUCTURE TO



1 THE CONSTRUCTION INDUSTRY BY PROVIDING A MEANS TO DISTINGUISH, PRIOR TO AN ACCIDENT,
2 THOSE PERSONS WHO QUALIFY AS INDEPENDENT CONTRACTORS AND THOSE EMPLOYERS WHO ARE
3 REQUIRED TO PROVIDE WORKERS' COMPENSATION COVERAGE FOR THEIR EMPLOYEES; AND
4 WHEREAS, THE CONTRACTOR REGISTRATION LAW PROTECTS A CONTRACTOR FROM THE
5 LIABILITIES FOR WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE OBLIGATIONS THAT
6 EXIST FROM CONTRACTING WITH A CONTRACTOR WHO IS NOT IN COMPLIANCE WITH THOSE LAWS
7 BY REMOVING THOSE LIABILITIES WHEN A CONTRACTOR CONTRACTS WITH A REGISTERED
8 CONTRACTOR.

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

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

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

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

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

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

1 ~~(d) an aircrew member or other person employed as a volunteer under 67-2-105;~~

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

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

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

13 ~~(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;~~
14 ~~and~~

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

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

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

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

23 ~~(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage~~
24 ~~under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs~~
25 ~~services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined~~
26 ~~in 39-71-123.~~

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

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

1 ~~(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service~~
2 ~~of an employer, including but not limited to training time, response time, and time spent at the employer's~~
3 ~~premises.~~

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

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

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

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

19 ~~(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited~~
20 ~~liability company, the employer may elect to include as an employee within the provisions of this chapter~~
21 ~~any corporate officer or manager exempted under 39-71-401(2).~~

22 ~~(b) In the event of an election, the employer shall serve upon the employer's insurer written notice~~
23 ~~naming the corporate officer or manager to be covered and stating the level of compensation coverage~~
24 ~~desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A~~
25 ~~corporate officer or manager is not considered an employee within this chapter until notice has been given.~~

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

28 ~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to~~
29 ~~the minimum and maximum limitations of this subsection. For premium ratemaking and for the~~
30 ~~determination of the weekly wage for weekly compensation benefits, the electing employer may elect not~~

1 ~~less than \$200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.~~

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

6 ~~(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for~~
 7 ~~premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the~~
 8 ~~average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.~~

9 ~~(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services~~
 10 ~~are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than~~
 11 ~~a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the~~
 12 ~~control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).~~

13 ~~(9) For purposes of this section, an "employee or worker in this state" means:~~

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

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

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

20 ~~(d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose~~
 21 ~~employer elects coverage with an insurer that allows an election for an employer whose:~~

22 ~~(i) nonresident employees are hired in Montana;~~

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

24 ~~(iii) nonresident employees are supervised in Montana; and~~

25 ~~(iv) business records are maintained in Montana.~~

26 ~~(10) An insurer may require coverage for all nonresident employees of a Montana employer who~~
 27 ~~do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under~~
 28 ~~subsection (9)(d)."~~

29

30 **SECTION 1. SECTION 39-9-101, MCA, IS AMENDED TO READ:**

1 **"39-9-101. Purpose.** It is the purpose of this chapter to ensure that all construction contractors
2 are competing fairly and in compliance with state laws."

3
4 **SECTION 2. SECTION 39-9-102, MCA, IS AMENDED TO READ:**

5 **"39-9-102. Definitions.** As used in this chapter, the following definitions apply:

6 (1) "~~Contractor~~ Construction contractor" means a person, firm, or corporation that:

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

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

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

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

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

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

23
24 **SECTION 3. SECTION 39-9-201, MCA, IS AMENDED TO READ:**

25 **"39-9-201. Registration required -- ~~prohibited acts~~ criminal penalty application.** (1) ~~On or before~~
26 ~~July 1, 1996, each~~ Each construction contractor shall register with the department.

27 (2) ~~It is a misdemeanor for a contractor to:~~

28 ~~(a) advertise, offer to perform work, submit a bid, or perform work as a contractor;~~

29 ~~(i) without being registered as required by this chapter; or~~

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

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

3 ~~(c) transfer a valid registration to an unregistered contractor to work under a registration issued~~
4 ~~to another contractor.~~

5 ~~(3) The department may cause the criminal proceedings for a misdemeanor action under this~~
6 ~~chapter to be initiated for prosecution in the lowest court of concurrent jurisdiction in the county where the~~
7 ~~infraction occurs~~ An applicant for registration as a construction contractor shall submit an application under
8 oath on a form to be provided by the department that must include the following information:

- 9 (a) the applicant's social security number;
- 10 (b) proof of compliance with workers' compensation laws;
- 11 (c) the I.R.S. employer identification number, if any; and
- 12 (d) the name and address of:
 - 13 (i) each partner if the applicant is a firm or partnership;
 - 14 (ii) the owner if the applicant is an individual proprietorship;
 - 15 (iii) the corporate officers and registered agent if the applicant is a corporation; or
 - 16 (iv) the manager of a manager-managed limited liability company or the members of a
17 member-managed limited liability company and the registered agent if the applicant is a limited liability
18 company."

19
20 **SECTION 4. SECTION 39-9-204, MCA, IS AMENDED TO READ:**

21 **"39-9-204. Certificate of registration -- issuance -- duration -- ~~renewal~~ -- ~~suspension~~.** (1) The
22 department shall issue to the applicant a certificate of registration upon compliance with the registration
23 requirements of this chapter.

24 (2) ~~If the department approves an application, it shall issue a certificate of registration to the~~
25 ~~applicant. The department shall place the expiration date on the certificate. Except as provided in~~
26 ~~subsection (3), the~~ The certificate is valid until the earliest date of:

- 27 ~~(a) 1 year~~ for 3 years; or
- 28 ~~(b) the date the bond expires; or~~
- 29 ~~(c) the date the workers' compensation or unemployment insurance expires or any applicable~~
30 ~~exemption terminates.~~

1 ~~(3) The certificate issued under this section to an independent contractor is invalid on the date the~~
 2 ~~contractor hires employees unless the contractor provides proof to the department of workers'~~
 3 ~~compensation coverage for those employees.~~

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

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

9
 10 **SECTION 5. SECTION 39-9-206, MCA, IS AMENDED TO READ:**

11 **"39-9-206. Fees -- education program.** (1) The department shall charge fees for:

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

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

14 (2) The department shall set the fees by administrative rule. The fees shall cover the full cost of
 15 issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs
 16 include reproduction, travel, per diem, and administrative and legal support costs.

17 (3) The fees charged in subsection (1)(a) may not exceed ~~\$80~~;

18 (a) \$50 for the initial registration certificate; or

19 (b) \$50 for the renewal or reinstatement of a registration certificate.

20 (4) The fees collected under this section must be deposited in the state special revenue account
 21 to the credit of the department for the administration and enforcement of this chapter.

22 (5) The department shall establish, cooperatively with representatives of the building industry, an
 23 industry and consumer information program, funded with 15% of the fees, to educate the building industry
 24 about the registration program and to educate the public regarding the hiring of building construction
 25 contractors.

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

28
 29 **SECTION 6. SECTION 39-9-207, MCA, IS AMENDED TO READ:**

30 **"39-9-207. ~~Registration prerequisite to suit or lien claim~~ Contractor registration -- limiting liability.**

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

~~(2) For the purposes of this section, the court may not find a contractor in compliance with the registration requirements of this chapter unless:~~

~~(a) the department has on file the information required by 39-9-202; and~~

~~(b) the contractor has a current bond or other security as required by 39-9-203.~~

~~(3) In determining whether a contractor is in compliance with the registration requirements of this chapter, the court shall consider the length of time during which the contractor did not hold a valid certificate of registration.~~

~~(4) A contractor may not bring or maintain a lien claim under Title 71, chapter 3, part 5, unless the contractor is registered at the time of entering into a contract.~~

~~(5) A person, including a construction contractor, engaging the services of another registered construction contractor is not liable as an employer under 39-71-405 for workers' compensation and unemployment insurance coverage or for wages and fringe benefits for the other registered construction contractor or for any employee of the other construction contractor ~~if the contractor verifies with the department that the other contractor with whom the contractor is contracting for services is registered as provided under this chapter.~~"~~

SECTION 7. SECTION 39-9-211, MCA, IS AMENDED TO READ:

"39-9-211. Exemptions. This chapter does not apply:

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

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

(3) to a public utility operating under the regulations of the public service commission or to a rural cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work incidental to its own business;

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

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

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

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

10 (8) to work or operation on one undertaking or project considered of a casual, minor, or
 11 inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and
 12 materials and all other items, is less than ~~\$500~~ \$2,500 a job. The exemption prescribed in this subsection
 13 does not apply when the work or construction is only a part of a larger or major operation, whether
 14 undertaken by the same or a different construction contractor, or in which a division of the operation is
 15 made into contracts of amounts of less than ~~\$500~~ \$2,500 a job for the purpose of evasion of this chapter
 16 or otherwise. ~~The exemption prescribed in this subsection does not apply to a person who advertises or~~
 17 ~~puts out any sign or card or other device that might indicate to the public that the person is a contractor~~
 18 ~~or is qualified to engage in the business of a contractor.~~

19 (9) ~~except when work is performed by a registered contractor, to a construction or operation~~
 20 ~~incidental to the construction or repair:~~ farmer or rancher while engaged in a farming, dairying, agriculture,
 21 viticulture, horticulture, or stock or poultry operation;

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

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

24 ~~(c)(11) to an operation~~ related to clearing or other work upon land in rural districts for fire
 25 prevention purposes;

26 ~~(10)(12) to an owner who contracts for a project with~~ work to be performed by a registered
 27 construction contractor, but this exemption does not apply to an owner who is otherwise covered by this
 28 chapter who constructs a residence on the owner's property with the intention and for the purpose of
 29 promptly selling the improved property;

30 ~~(11)(13) to a person an owner~~ working on the person's owner's property, whether occupied by the

1 ~~person owner~~ or not, and ~~a person working on the person's residence, whether owned by the person or~~
 2 ~~not~~, but this exemption does not apply to ~~a person~~ an owner who is otherwise covered by this chapter who
 3 constructs an improvement on the ~~person's~~ owner's property with the intention and for the purpose of
 4 promptly selling the improved property, unless the owner has continuously occupied the property as the
 5 owner's primary residence for at least the last 12 months;

6 ~~(12)(14)~~ to owners of commercial properties who use their own employees to do maintenance,
 7 repair, and alteration work in or upon their own properties;

8 ~~(13)(15)~~ to ~~a licensed~~ an architect, or civil or professional engineer, or professional land surveyor,
 9 licensed in Montana and acting solely in a professional capacity;

10 ~~(14)(16)~~ to an electrician or plumber, licensed in Montana, operating within the scope of the license;

11 ~~(15)(17)~~ to a contract security company, licensed under Title 37, chapter 60, operating within the
 12 scope of the license; ~~or~~

13 ~~(16)(18)~~ to a person who engages in the activities regulated as an employee of a registered
 14 construction contractor with wages as the sole compensation or as an employee with wages as the sole
 15 compensation;

16 ~~(19)~~ to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire
 17 suppression or fire protection equipment;

18 ~~(20)~~ to a water well contractor licensed under Title 37, chapter 43, performing the work of a water
 19 well contractor;

20 ~~(21)~~ to an enrolled tribal member or an association, business, corporation, or other entity, at least
 21 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely
 22 within the exterior boundaries of an Indian reservation;

23 ~~(22)~~ to a contractor engaged in the logging industry who builds forest access roads for the purpose
 24 of harvesting and transporting logs from forest to mill;

25 ~~(23)~~ to a person working on the person's own residence, if the residence is owned by a person
 26 other than the resident; or

27 ~~(24)~~ to an independent contractor who has no employees. However, an independent contractor
 28 may voluntarily elect to register under this chapter."

29

30 **SECTION 8. SECTION 39-9-301, MCA, IS AMENDED TO READ:**

1 "39-9-301. **Business practices -- ~~advertising~~ penalty.** (1) Except as provided in 39-9-205, a
2 person who has registered under one name as provided in this chapter may not engage in the business or
3 act in the capacity of a construction contractor under any other name unless that name also is registered
4 under this chapter.

5 ~~(2) Except for telephone books, all advertising, contracts, correspondence, cards, signs, posters,~~
6 ~~papers, and documents that show a contractor's name or address must show the contractor's name and~~
7 ~~address as registered under this chapter.~~

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

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

15 ~~(4) A contractor may not advertise that the contractor is bonded because of the bond required to~~
16 ~~be filed provided in 39-9-203.~~

17 ~~(5)~~(2) A construction contractor may not falsify a registration number and use it in connection with
18 a solicitation or identification as a construction contractor. An individual construction contractor, partner,
19 associate, agent, salesperson, solicitor, officer, or employee of a construction contractor shall use a true
20 name and address at all times while engaged in the business or capacity of a construction contractor or in
21 activities related to a construction contractor.

22 ~~(6)~~(3) (a) The finding of a violation of this section by the department at a hearing held in
23 accordance with the Montana Administrative Procedure Act subjects the person who commits the violation
24 to a penalty of not more than \$5,000, as determined by the department. The required hearing may be held
25 by telephone or by videoconference. A penalty collected under this section must be deposited in the state
26 special revenue account to the credit of the department for administration and enforcement of this chapter.

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

29
30 **SECTION 9. SECTION 39-9-303, MCA, IS AMENDED TO READ:**

1 **"39-9-303. Department to compile and update list of registered construction contractors --**
 2 **availability -- fee.** (1) The department shall compile a list of all construction contractors registered under
 3 this chapter and update the list at least bimonthly. The list is public information and must be available to
 4 the public upon request for a reasonable fee.

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

8

9 **SECTION 10. SECTION 39-9-401, MCA, IS AMENDED TO READ:**

10 **"39-9-401. Violation -- infraction.** ~~(1)~~ It is a violation of this chapter and an infraction for any
 11 construction contractor to:

12 ~~(a)(1) advertise, offer to perform work, submit a bid, or perform work as a construction contractor~~
 13 without being registered as required by this chapter;

14 ~~(b)(2) advertise, offer to perform work, submit a bid, or perform work as a construction contractor~~
 15 when the construction contractor's registration is suspended; or

16 ~~(c)(3) transfer a valid registration to an unregistered construction contractor or allow an~~
 17 unregistered construction contractor to work under a registration issued to another construction contractor.

18 ~~(2) Each day that a contractor works without being registered as required by this chapter, works~~
 19 ~~while the contractor's registration is suspended, or works under a registration issued to another contractor~~
 20 ~~is a separate infraction. Each worksite at which a contractor works without being registered as required~~
 21 ~~by this chapter, works while the contractor's registration is suspended, or works under a registration issued~~
 22 ~~to another contractor is a separate infraction."~~

23

24 **Section 11. Section 39-71-120, MCA, is amended to read:**

25 **"39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders
 26 service in the course of an occupation and:

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

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

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

1 (2) An individual performing services for remuneration ~~who represents to the public that the~~
 2 ~~individual is an independent contractor~~ is considered to be an ~~independent contractor and not an~~ employee
 3 under this chapter ~~unless the requirements of subsection (1) are met~~ UNLESS THE REQUIREMENTS OF
 4 SUBSECTION (1) ARE MET. ~~An individual representing to the public that the individual is an independent~~
 5 ~~contractor may not make claims against an employing unit~~ ANY PERSON FOR WHOM THE INDEPENDENT
 6 CONTRACTOR RENDERS SERVICE IN EXCHANGE FOR PAY OR ANY OTHER CONSIDERATION. ~~The~~
 7 ~~department may not take action against a person relying on a claim of independent contractor status~~
 8 ~~pursuant to this subsection.~~

9 ~~(3) The department may not adopt rules to implement this section."~~

10
 11 **Section 12.** Section 39-71-401, MCA, is amended to read:

12 "**39-71-401. Employments covered and employments exempted.** (1) Except as provided in
 13 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
 14 all employees, as defined in 39-71-118. An employer who has any employee in service under any
 15 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
 16 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
 17 Compensation Act is subject to and bound by the compensation plan that has been elected by the
 18 employer.

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

- 21 (a) household and domestic employment;
- 22 (b) casual employment as defined in 39-71-116;
- 23 (c) employment of a dependent member of an employer's family for whom an exemption may be
 24 claimed by the employer under the federal Internal Revenue Code;
- 25 (d) employment of sole proprietors, working members of a partnership, or working members of a
 26 member-managed limited liability company, except as provided in subsection (3);
- 27 (e) employment of a broker or salesman performing under a license issued by the board of realty
 28 regulation;
- 29 (f) employment of a direct seller as defined in 26 U.S.C. 3508;
- 30 (g) employment for which a rule of liability for injury, occupational disease, or death is provided

1 under the laws of the United States;

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

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

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

8 (k) employment of a person performing services as a newspaper carrier or free-lance correspondent
9 if the person performing the services or a parent or guardian of the person performing the services in the
10 case of a minor has acknowledged in writing that the person performing the services and the services are
11 not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or
12 photographs for publication and is paid by the article or by the photograph. As used in this subsection,
13 "newspaper carrier":

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

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

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

19 (m) a person who is employed by an enrolled tribal member or an association, business,
20 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
21 business is conducted solely within the exterior boundaries of an Indian reservation;

22 (n) employment of a jockey performing under a license issued by the board of horseracing from the
23 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
24 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
25 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

26 (o) employment of an employer's spouse for whom an exemption based on marital status may be
27 claimed by the employer under 26 U.S.C. 7703;

28 (p) a person who performs services as a petroleum land professional. As used in this subsection,
29 a "petroleum land professional" is a person who:

30 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in

1 negotiating a business agreement for the exploration or development of minerals;

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

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

5 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
6 liability company who qualifies under one or more of the following provisions:

7 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
8 limited liability company and does not receive any pay from the corporation or the limited liability company
9 for performance of the duties;

10 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
11 limited liability company;

12 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
13 or owns 20% or more of the limited liability company; or

14 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
15 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
16 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

17 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
18 member-managed limited liability company who represents to the public that the person is an independent
19 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
20 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

21 (b) The application must be made in accordance with the rules adopted by the department. There
22 is ~~no~~ A \$25 fee for the initial application. Any subsequent application RENEWAL must be accompanied by
23 a \$25 application fee. The application fee must be deposited in the administration fund established in
24 39-71-201 to offset the costs of administering the program.

25 (c) When an application is approved by the department ~~or when the contracting parties agree to~~
26 ~~an independent contractor status~~, it is conclusive as to the status of an independent contractor and
27 precludes the applicant from obtaining benefits under this chapter.

28 (d) ~~The exemption, if approved, remains in effect for 1 year following the date of the department's~~
29 ~~approval. To maintain the independent contractor status, an independent contractor shall annually submit~~
30 ~~a renewal application. A renewal application must be submitted for all independent contractor exemptions~~

1 ~~approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee~~
 2 ~~must be received by the department at least 30 days prior to the anniversary date of the previously~~
 3 ~~approved exemption. When an election of an exemption is approved by the department, the election~~
 4 ~~remains effective and the independent contractor retains the status of an independent contractor until the~~
 5 ~~independent contractor notifies the department of any change in status and provides a description of the~~
 6 ~~independent contractor's present work status~~ THE EXEMPTION, IF APPROVED, REMAINS IN EFFECT FOR
 7 3 YEARS FOLLOWING THE DATE OF THE DEPARTMENT'S APPROVAL. TO MAINTAIN THE INDEPENDENT
 8 CONTRACTOR STATUS, AN INDEPENDENT CONTRACTOR SHALL EVERY 3 YEARS SUBMIT A RENEWAL
 9 APPLICATION. A RENEWAL APPLICATION MUST BE SUBMITTED FOR ALL INDEPENDENT CONTRACTOR
 10 EXEMPTIONS APPROVED AS OF JULY 1, 1995, OR THEREAFTER. THE RENEWAL APPLICATION AND
 11 THE \$25 RENEWAL APPLICATION FEE MUST BE RECEIVED BY THE DEPARTMENT AT LEAST 30 DAYS
 12 PRIOR TO THE ANNIVERSARY DATE OF THE PREVIOUSLY APPROVED EXEMPTION.

13 (e) A person who ~~purposefully~~ makes a false statement or misrepresentation concerning that person's
 14 status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may
 15 impose the penalty for each false statement or misrepresentation. The penalty must be paid to the
 16 uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

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

21 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
 22 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
 23 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
 24 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
 25 manner:

26 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
 27 delivering the notice to the board of directors of the corporation or to the management organization of the
 28 manager-managed limited liability company; or

29 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
 30 delivering the notice to the board of directors of the corporation or to the management organization of the

1 manager-managed limited liability company and to the insurer.

2 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
3 the employer shall again serve notice to its insurer and to its board of directors or the management
4 organization of the manager-managed limited liability company if the employer elects to be bound.

5 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
6 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
7 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
8 exemption from coverage.

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

19 **Section 4.** ~~Section 39-71-405, MCA, is amended to read:~~

20 ~~"39-71-405. Liability of employer who contracts work out. (1) An employer who contracts with~~
21 ~~a contractor or an independent contractor to have work performed of a kind which that is a regular or a~~
22 ~~recurrent part of the work of the trade, business, occupation, or profession of such the employer is not~~
23 ~~liable for the payment of benefits under this chapter to the employees of the contractor or to the~~
24 ~~independent contractor if the contractor or independent contractor has not properly complied with the~~
25 ~~coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment~~
26 ~~of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the~~
27 ~~contractor primarily liable therein.~~

28 ~~(2) Where~~ When ~~an employer contracts to have any work to be done by a contractor other than~~
29 ~~or an independent contractor, and the work so contracted to be done is a part or process in the trade or~~
30 ~~business of the employer, then the employer is not liable to pay all benefits under this chapter to the same~~

1 ~~extent as if the work were done without the intervention of the contractor, and the work so contracted to~~
 2 ~~be done shall not be construed to be casual employment even if the work contracted to be done is a part~~
 3 ~~or process in the trade, business, occupation, or profession of the employer. Where ~~When~~ an employer~~
 4 ~~contracts work to be done as specified in this subsection, the contractor and the contractor's employees~~
 5 ~~shall may not come under that plan of compensation adopted by the employer.~~

6 (3) ~~Where ~~When~~ an employer contracts any work to be done, wholly or in part for the employer,~~
 7 ~~by an independent contractor, where and the work so contracted to be done is casual employment as to~~
 8 ~~such the employer, then the contractor shall become the is not an employer for the purposes of this~~
 9 ~~chapter."~~

10
 11 ~~NEW SECTION. Section 5. Fee refund. The department of labor and industry shall refund all fees~~
 12 ~~collected under the provisions of former 39-9-206.~~

13
 14 ~~NEW SECTION. SECTION 13. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID~~
 15 ~~PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]~~
 16 ~~IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID~~
 17 ~~APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.~~

18
 19 ~~NEW SECTION. Section 14. Repealer. Sections 39-3-701, 39-3-702, 39-3-703, 39-3-705,~~
 20 ~~39-3-706, ~~39-9-101, 39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39-9-206,~~~~
 21 ~~39-9-207, ~~39-9-211, 39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39-9-404,~~~~
 22 ~~39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, and 39-9-410, MCA, are repealed.~~

23
 24 ~~NEW SECTION. Section 15. Effective date. [This act] is effective July 1, 1997.~~

25 -END-

HOUSE BILL NO. 252

INTRODUCED BY MOLNAR, VICK, PROUSE, TASH, BOHARSKI, SLITER, BANKHEAD, MILLER, BEAUDRY, WELLS, ARNOTT, ORR, JORE, HOLLAND, DEVANEY, MCGEE, CURTISS, KEENAN, BITNEY, BAER, ESTRADA, GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS AND INDEPENDENT CONTRACTORS; ~~REPEALING CONTRACTOR REGISTRATION REQUIREMENTS;~~ ELIMINATING BONDING REQUIREMENTS FOR CONTRACTORS; ~~REQUIRING THE REFUND OF CONTRACTOR REGISTRATION FEES;~~ ELIMINATING INVESTIGATORY, ENFORCEMENT, NOTICE AND APPEAL PROCEDURES, AND PENALTY PROVISIONS RELATING TO CONTRACTOR REGISTRATION; DECREASING THE FEE FOR THE ISSUANCE OF THE INITIAL CERTIFICATE TO A MAXIMUM OF \$50 AND THE FEE FOR THE RENEWAL OR REINSTATEMENT OF A CERTIFICATE TO A MAXIMUM OF \$50; PROVIDING AN EXEMPTION FOR FIRE SUPPRESSION OR PROTECTION LICENSEES, FOR CONTRACTORS IN THE LOGGING INDUSTRY WHO BUILD FOREST ACCESS ROADS, AND FOR INDEPENDENT CONTRACTORS WHO HAVE NO EMPLOYEES; PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; PROVIDING FOR A \$25 FEE FOR THE INITIAL EXEMPTION APPLICATION AND FOR EACH SUBSEQUENT RENEWAL; ~~AMENDING SECTIONS 39-71-118, 39-9-101, 39-9-102, 39-9-201, 39-9-204, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-303, 39-9-401, 39-71-120, AND 39-71-401, AND 39-71-406,~~ MCA; REPEALING SECTIONS 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, ~~39-9-101, 39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, AND 39-9-410,~~ MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, THE CONTRACTOR REGISTRATION PROGRAM AFFECTS AN INDUSTRY IN MONTANA THAT HAS A HIGH NUMBER OF ACCIDENTS, RESULTING IN WORKERS' COMPENSATION RATES THAT ARE HIGHER THAN OTHER INDUSTRIES' AND CREATING A SITUATION THAT OFTEN RESULTS IN NONCOMPLIANCE WITH THE REQUIREMENTS OF THE WORKERS' COMPENSATION ACT AND THE UNEMPLOYMENT INSURANCE LAW; AND

WHEREAS, THE CONTRACTOR REGISTRATION PROGRAM PROVIDES NEEDED STRUCTURE TO



1 THE CONSTRUCTION INDUSTRY BY PROVIDING A MEANS TO DISTINGUISH, PRIOR TO AN ACCIDENT,
 2 THOSE PERSONS WHO QUALIFY AS INDEPENDENT CONTRACTORS AND THOSE EMPLOYERS WHO ARE
 3 REQUIRED TO PROVIDE WORKERS' COMPENSATION COVERAGE FOR THEIR EMPLOYEES; AND
 4 WHEREAS, THE CONTRACTOR REGISTRATION LAW PROTECTS A CONTRACTOR FROM THE
 5 LIABILITIES FOR WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE OBLIGATIONS THAT
 6 EXIST FROM CONTRACTING WITH A CONTRACTOR WHO IS NOT IN COMPLIANCE WITH THOSE LAWS
 7 BY REMOVING THOSE LIABILITIES WHEN A CONTRACTOR CONTRACTS WITH A REGISTERED
 8 CONTRACTOR.

9

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

11

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

- 1 ~~(d) an aircrew member or other person employed as a volunteer under 67-2-105;~~
- 2 ~~(e) a person, other than a juvenile as defined in subsection (1)(b), performing community service~~
3 ~~for a nonprofit organization or association or for a federal, state, or local government entity under a court~~
4 ~~order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under~~
5 ~~appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving~~
6 ~~payment from a third party. For a person covered by the definition in this subsection (1)(e):~~
- 7 ~~(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an~~
8 ~~impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,~~
9 ~~chapter 3, part 4, for a full-time employee at the time of the injury; and~~
- 10 ~~(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon~~
11 ~~the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community~~
12 ~~service required under the order from the court or hearings officer.~~
- 13 ~~(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;~~
14 ~~and~~
- 15 ~~(g) a person who is an enrolled member of a volunteer fire department as described in 7-33-4109~~
16 ~~or a person who provides ambulance services under Title 7, chapter 34, part 1.~~
- 17 ~~(2) The terms defined in subsection (1) do not include a person who is:~~
- 18 ~~(a) participating in recreational activity and who at the time is relieved of and is not performing~~
19 ~~prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,~~
20 ~~permit, device, or other emolument of employment;~~
- 21 ~~(b) performing voluntary service at a recreational facility and who receives no compensation for~~
22 ~~those services other than meals, lodging, or the use of the recreational facilities; or~~
- 23 ~~(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage~~
24 ~~under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs~~
25 ~~services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined~~
26 ~~in 39-71-123.~~
- 27 ~~(3) With the approval of the insurer, an employer may elect to include as an employee under the~~
28 ~~provisions of this chapter any volunteer as defined in subsection (2)(c).~~
- 29 ~~(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member~~
30 ~~of a fire company organized and funded by a county, a rural fire district, or a fire service area.~~

1 ~~(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service~~
2 ~~of an employer, including but not limited to training time, response time, and time spent at the employer's~~
3 ~~premises.~~

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

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

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

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

19 ~~(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited~~
20 ~~liability company, the employer may elect to include as an employee within the provisions of this chapter~~
21 ~~any corporate officer or manager exempted under 39-71-401(2).~~

22 ~~(b) In the event of an election, the employer shall serve upon the employer's insurer written notice~~
23 ~~naming the corporate officer or manager to be covered and stating the level of compensation coverage~~
24 ~~desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A~~
25 ~~corporate officer or manager is not considered an employee within this chapter until notice has been given.~~

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

28 ~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to~~
29 ~~the minimum and maximum limitations of this subsection. For premium ratemaking and for the~~
30 ~~determination of the weekly wage for weekly compensation benefits, the electing employer may elect not~~

1 less than \$200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

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

6 ~~(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for~~
 7 ~~premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the~~
 8 ~~average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.~~

9 ~~(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services~~
 10 ~~are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than~~
 11 ~~a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the~~
 12 ~~control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).~~

13 ~~(9) For purposes of this section, an "employee or worker in this state" means:~~

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

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

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

20 ~~(d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose~~
 21 ~~employer elects coverage with an insurer that allows an election for an employer whose:~~

22 ~~(i) nonresident employees are hired in Montana;~~

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

24 ~~(iii) nonresident employees are supervised in Montana; and~~

25 ~~(iv) business records are maintained in Montana.~~

26 ~~(10) An insurer may require coverage for all nonresident employees of a Montana employer who~~
 27 ~~do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under~~
 28 ~~subsection (9)(d)."~~

29
 30 **SECTION 1. SECTION 39-9-101, MCA, IS AMENDED TO READ:**

1 **"39-9-101. Purpose.** It is the purpose of this chapter to ensure that all construction contractors
2 are competing fairly and in compliance with state laws."

3
4 **SECTION 2. SECTION 39-9-102, MCA, IS AMENDED TO READ:**

5 **"39-9-102. Definitions.** As used in this chapter, the following definitions apply:

6 (1) ~~"Contractor~~ Construction contractor" means a person, firm, or corporation that:

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

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

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

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

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

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

23
24 **SECTION 3. SECTION 39-9-201, MCA, IS AMENDED TO READ:**

25 **"39-9-201. Registration required -- ~~prohibited acts~~ criminal penalty application.** (1) ~~On or before~~
26 ~~July 1, 1996,~~ each Each construction contractor shall register with the department.

27 (2) ~~It is a misdemeanor for a contractor to:~~

28 ~~(a) advertise, offer to perform work, submit a bid, or perform work as a contractor;~~

29 ~~(i) without being registered as required by this chapter; or~~

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

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

3 ~~(c) transfer a valid registration to an unregistered contractor to work under a registration issued~~
 4 ~~to another contractor.~~

5 ~~(3) The department may cause the criminal proceedings for a misdemeanor action under this~~
 6 ~~chapter to be initiated for prosecution in the lowest court of concurrent jurisdiction in the county where the~~
 7 ~~infraction occurs. An applicant for registration as a construction contractor shall submit an application under~~
 8 ~~oath on a form to be provided by the department that must include the following information:~~

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

10 (b) proof of compliance with workers' compensation laws;

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

12 (d) the name and address of:

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

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

15 (iii) the corporate officers and registered agent if the applicant is a corporation; or

16 (iv) the manager of a manager-managed limited liability company or the members of a
 17 member-managed limited liability company and the registered agent if the applicant is a limited liability
 18 company."

19
 20 **SECTION 4. SECTION 39-9-204, MCA, IS AMENDED TO READ:**

21 **"39-9-204. Certificate of registration -- issuance -- duration -- renewal -- suspension.** (1) The
 22 department shall issue to the applicant a certificate of registration upon compliance with the registration
 23 requirements of this chapter.

24 (2) ~~If the department approves an application, it shall issue a certificate of registration to the~~
 25 ~~applicant. The department shall place the expiration date on the certificate. Except as provided in~~
 26 ~~subsection (3), the The certificate is valid until the earliest date of:~~

27 ~~(a) 1 year for 3 years; or~~

28 ~~(b) the date the bond expires; or~~

29 ~~(c) the date the workers' compensation or unemployment insurance expires or any applicable~~
 30 ~~exemption terminates.~~

1 ~~(3) The certificate issued under this section to an independent contractor is invalid on the date the~~
 2 ~~contractor hires employees unless the contractor provides proof to the department of workers'~~
 3 ~~compensation coverage for those employees.~~

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

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

9
 10 **SECTION 5. SECTION 39-9-206, MCA, IS AMENDED TO READ:**

11 **"39-9-206. Fees -- education program. (1) The department shall charge fees for:**

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

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

14 (2) The department shall set the fees by administrative rule. The fees shall cover the full cost of
 15 issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs
 16 include reproduction, travel, per diem, and administrative and legal support costs.

17 (3) The fees charged in subsection (1)(a) may not exceed ~~\$80~~;

18 (a) \$50 for the initial registration certificate; or

19 (b) \$50 for the renewal or reinstatement of a registration certificate.

20 (4) The fees collected under this section must be deposited in the state special revenue account
 21 to the credit of the department for the administration and enforcement of this chapter.

22 (5) The department shall establish, cooperatively with representatives of the building industry, an
 23 industry and consumer information program, funded with 15% of the fees, to educate the building industry
 24 about the registration program and to educate the public regarding the hiring of building construction
 25 contractors.

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

28
 29 **SECTION 6. SECTION 39-9-207, MCA, IS AMENDED TO READ:**

30 **"39-9-207. ~~Registration prerequisite to suit or lien claim~~ Contractor registration -- limiting liability.**

1 ~~(1) A person engaged in the business or acting in the capacity of a contractor may not bring or maintain~~
 2 ~~an action in any court of this state for the collection of compensation for the performance of any work or~~
 3 ~~for breach of contract for which registration is required under this chapter without alleging and proving that~~
 4 ~~the contractor was a registered contractor and held a current and valid certificate of registration at the time~~
 5 ~~the contractor entered the contract for the performance of work.~~

6 ~~(2) For the purposes of this section, the court may not find a contractor in compliance with the~~
 7 ~~registration requirements of this chapter unless:~~

8 ~~(a) the department has on file the information required by 39-9-202; and~~

9 ~~(b) the contractor has a current bond or other security as required by 39-9-203.~~

10 ~~(3) In determining whether a contractor is in compliance with the registration requirements of this~~
 11 ~~chapter, the court shall consider the length of time during which the contractor did not hold a valid~~
 12 ~~certificate of registration.~~

13 ~~(4) A contractor may not bring or maintain a lien claim under Title 71, chapter 3, part 5, unless the~~
 14 ~~contractor is registered at the time of entering into a contract.~~

15 ~~(5) A person, including a construction contractor, engaging the services of another a registered~~
 16 ~~construction contractor is not liable as an employer under 39-71-405 for workers' compensation and~~
 17 ~~unemployment insurance coverage or for wages and fringe benefits for the other registered construction~~
 18 ~~contractor or for any employee of the other construction contractor if the contractor verifies with the~~
 19 ~~department that the other contractor with whom the contractor is contracting for services is registered as~~
 20 ~~provided under this chapter."~~

21
 22 **SECTION 7. SECTION 39-9-211, MCA, IS AMENDED TO READ:**

23 **"39-9-211. Exemptions.** This chapter does not apply:

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

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

28 (3) to a public utility operating under the regulations of the public service commission or to a rural
 29 cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work
 30 incidental to its own business;

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

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

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

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

10 (8) to work or operation on one undertaking or project considered of a casual, minor, or
 11 inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and
 12 materials and all other items, is less than ~~\$500~~ \$2,500 a job. The exemption prescribed in this subsection
 13 does not apply when the work or construction is only a part of a larger or major operation, whether
 14 undertaken by the same or a different construction contractor, or in which a division of the operation is
 15 made into contracts of amounts of less than ~~\$500~~ \$2,500 a job for the purpose of evasion of this chapter
 16 or otherwise. ~~The exemption prescribed in this subsection does not apply to a person who advertises or~~
 17 ~~puts out any sign or card or other device that might indicate to the public that the person is a contractor~~
 18 ~~or is qualified to engage in the business of a contractor.~~

19 (9) ~~except when work is performed by a registered contractor, to a construction or operation~~
 20 ~~incidental to the construction or repair; farmer or rancher while engaged in a farming, dairying, agriculture,~~
 21 ~~viticulture, horticulture, or stock or poultry operation;~~

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

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

24 ~~(c)(11) to an operation~~ related to clearing or other work upon land in rural districts for fire
 25 prevention purposes;

26 ~~(10)(12) to an owner who contracts for a project with~~ work to be performed by a registered
 27 construction contractor, but this exemption does not apply to an owner who is otherwise covered by this
 28 chapter who constructs a residence on the owner's property with the intention and for the purpose of
 29 promptly selling the improved property;

30 ~~(11)(13) to a person an owner~~ working on the ~~person's~~ owner's property, whether occupied by the

1 ~~person owner~~ or not, ~~and a person working on the person's residence, whether owned by the person or~~
 2 ~~not~~, but this exemption does not apply to ~~a person~~ an owner who is otherwise covered by this chapter who
 3 constructs an improvement on the ~~person's~~ owner's property with the intention and for the purpose of
 4 promptly selling the improved property, unless the owner has continuously occupied the property as the
 5 owner's primary residence for at least the last 12 months;

6 ~~(12)(14)~~ to owners of commercial properties who use their own employees to do maintenance,
 7 repair, and alteration work in or upon their own properties;

8 ~~(13)(15)~~ to ~~a licensed~~ an architect, or civil or professional engineer, or professional land surveyor,
 9 licensed in Montana and acting solely in a professional capacity;

10 ~~(14)(16)~~ to an electrician or plumber, licensed in Montana, operating within the scope of the license;

11 ~~(15)(17)~~ to a contract security company, licensed under Title 37, chapter 60, operating within the
 12 scope of the license; ~~or~~

13 ~~(16)(18)~~ to a person who engages in the activities regulated as an employee of a registered
 14 construction contractor with wages as the sole compensation or as an employee with wages as the sole
 15 compensation;

16 ~~(19)~~ to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire
 17 suppression or fire protection equipment;

18 ~~(20)~~ to a water well contractor licensed under Title 37, chapter 43, performing the work of a water
 19 well contractor;

20 ~~(21)~~ to an enrolled tribal member or an association, business, corporation, or other entity, at least
 21 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely
 22 within the exterior boundaries of an Indian reservation;

23 ~~(22)~~ to a contractor engaged in the logging industry who builds forest access roads for the purpose
 24 of harvesting and transporting logs from forest to mill;

25 ~~(23)~~ to a person working on the person's own residence, if the residence is owned by a person
 26 other than the resident; or

27 ~~(24)~~ to an independent contractor who has no employees. However, an independent contractor
 28 may voluntarily elect to register under this chapter."

29
 30 **SECTION 8. SECTION 39-9-301, MCA, IS AMENDED TO READ:**

1 "**39-9-301. Business practices -- ~~advertising~~ -- penalty.** (1) Except as provided in 39-9-205, a
2 person who has registered under one name as provided in this chapter may not engage in the business or
3 act in the capacity of a construction contractor under any other name unless that name also is registered
4 under this chapter.

5 ~~(2) Except for telephone books, all advertising, contracts, correspondence, cards, signs, posters,~~
6 ~~papers, and documents that show a contractor's name or address must show the contractor's name and~~
7 ~~address as registered under this chapter.~~

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

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

15 ~~(4) A contractor may not advertise that the contractor is bonded because of the bond required to~~
16 ~~be filed provided in 39-9-203.~~

17 ~~(5)~~(2) A construction contractor may not falsify a registration number and use it in connection with
18 a solicitation or identification as a construction contractor. An individual construction contractor, partner,
19 associate, agent, salesperson, solicitor, officer, or employee of a construction contractor shall use a true
20 name and address at all times while engaged in the business or capacity of a construction contractor or in
21 activities related to a construction contractor.

22 ~~(6)~~(3) (a) The finding of a violation of this section by the department at a hearing held in
23 accordance with the Montana Administrative Procedure Act subjects the person who commits the violation
24 to a penalty of not more than \$5,000, as determined by the department. The required hearing may be held
25 by telephone or by videoconference. A penalty collected under this section must be deposited in the state
26 special revenue account to the credit of the department for administration and enforcement of this chapter.

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

29
30 **SECTION 9. SECTION 39-9-303, MCA, IS AMENDED TO READ:**

1 **"39-9-303. Department to compile and update list of registered construction contractors --**
 2 **availability -- fee.** (1) The department shall compile a list of all construction contractors registered under
 3 this chapter and update the list at least bimonthly. The list is public information and must be available to
 4 the public upon request for a reasonable fee.

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

8
 9 **SECTION 10. SECTION 39-9-401, MCA, IS AMENDED TO READ:**

10 **"39-9-401. Violation -- infraction. ~~(1)~~** It is a violation of this chapter and an infraction for any
 11 construction contractor to:

12 ~~(a)(1) advertise, offer to perform work, submit a bid, or perform work as a construction contractor~~
 13 without being registered as required by this chapter;

14 ~~(b)(2) advertise, offer to perform work, submit a bid, or perform work as a construction contractor~~
 15 when the construction contractor's registration is suspended; or

16 ~~(c)(3) transfer a valid registration to an unregistered construction contractor or allow an~~
 17 unregistered construction contractor to work under a registration issued to another construction contractor.

18 ~~(2) Each day that a contractor works without being registered as required by this chapter, works~~
 19 ~~while the contractor's registration is suspended, or works under a registration issued to another contractor~~
 20 ~~is a separate infraction. Each worksite at which a contractor works without being registered as required~~
 21 ~~by this chapter, works while the contractor's registration is suspended, or works under a registration issued~~
 22 ~~to another contractor is a separate infraction."~~

23
 24 **Section 11. Section 39-71-120, MCA, is amended to read:**

25 **"39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders
 26 service in the course of an occupation and:

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

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

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

1 (2) An individual performing services for remuneration ~~who represents to the public that the~~
 2 ~~individual is an independent contractor~~ is considered to be an independent contractor and not an employee
 3 under this chapter ~~unless the requirements of subsection (1) are met~~ UNLESS THE REQUIREMENTS OF
 4 SUBSECTION (1) ARE MET. ~~An individual representing to the public that the individual is an independent~~
 5 ~~contractor may not make claims against an employing unit ANY PERSON FOR WHOM THE INDEPENDENT~~
 6 ~~CONTRACTOR RENDERS SERVICE IN EXCHANGE FOR PAY OR ANY OTHER CONSIDERATION. The~~
 7 ~~department may not take action against a person relying on a claim of independent contractor status~~
 8 ~~pursuant to this subsection.~~

9 ~~(3) The department may not adopt rules to implement this section."~~

10
 11 **Section 12.** Section 39-71-401, MCA, is amended to read:

12 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
 13 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
 14 all employees, as defined in 39-71-118. An employer who has any employee in service under any
 15 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
 16 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
 17 Compensation Act is subject to and bound by the compensation plan that has been elected by the
 18 employer.

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

21 (a) household and domestic employment;

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

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

25 (d) employment of sole proprietors, working members of a partnership, or working members of a
 26 member-managed limited liability company, except as provided in subsection (3);

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

29 (f) employment of a direct seller as defined in 26 U.S.C. 3508;

30 (g) employment for which a rule of liability for injury, occupational disease, or death is provided

1 under the laws of the United States;

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

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

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

8 (k) employment of a person performing services as a newspaper carrier or free-lance correspondent
9 if the person performing the services or a parent or guardian of the person performing the services in the
10 case of a minor has acknowledged in writing that the person performing the services and the services are
11 not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or
12 photographs for publication and is paid by the article or by the photograph. As used in this subsection,
13 "newspaper carrier":

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

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

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

19 (m) a person who is employed by an enrolled tribal member or an association, business,
20 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
21 business is conducted solely within the exterior boundaries of an Indian reservation;

22 (n) employment of a jockey performing under a license issued by the board of horseracing from the
23 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
24 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
25 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

26 (o) employment of an employer's spouse for whom an exemption based on marital status may be
27 claimed by the employer under 26 U.S.C. 7703;

28 (p) a person who performs services as a petroleum land professional. As used in this subsection,
29 a "petroleum land professional" is a person who:

30 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in

1 negotiating a business agreement for the exploration or development of minerals;

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

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

5 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
6 liability company who qualifies under one or more of the following provisions:

7 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
8 limited liability company and does not receive any pay from the corporation or the limited liability company
9 for performance of the duties;

10 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
11 limited liability company;

12 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
13 or owns 20% or more of the limited liability company; or

14 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
15 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
16 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

17 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
18 member-managed limited liability company who represents to the public that the person is an independent
19 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
20 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

21 (b) The application must be made in accordance with the rules adopted by the department. There
22 is ~~no~~ A \$25 fee for the initial application. Any subsequent application RENEWAL must be accompanied by
23 a \$25 application fee. The application fee must be deposited in the administration fund established in
24 39-71-201 to offset the costs of administering the program.

25 (c) When an application is approved by the department ~~or when the contracting parties agree to~~
26 ~~an independent contractor status~~, it is conclusive as to the status of an independent contractor and
27 precludes the applicant from obtaining benefits under this chapter.

28 (d) ~~The exemption, if approved, remains in effect for 1 year following the date of the department's~~
29 ~~approval. To maintain the independent contractor status, an independent contractor shall annually submit~~
30 ~~a renewal application. A renewal application must be submitted for all independent contractor exemptions~~

1 approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee
2 must be received by the department at least 30 days prior to the anniversary date of the previously
3 approved exemption. ~~When an election of an exemption is approved by the department, the election~~
4 ~~remains effective and the independent contractor retains the status of an independent contractor until the~~
5 ~~independent contractor notifies the department of any change in status and provides a description of the~~
6 ~~independent contractor's present work status~~ THE EXEMPTION, IF APPROVED, REMAINS IN EFFECT FOR
7 3 YEARS FOLLOWING THE DATE OF THE DEPARTMENT'S APPROVAL. TO MAINTAIN THE INDEPENDENT
8 CONTRACTOR STATUS, AN INDEPENDENT CONTRACTOR SHALL EVERY 3 YEARS SUBMIT A RENEWAL
9 APPLICATION. A RENEWAL APPLICATION MUST BE SUBMITTED FOR ALL INDEPENDENT CONTRACTOR
10 EXEMPTIONS APPROVED AS OF JULY 1, 1995, OR THEREAFTER. THE RENEWAL APPLICATION AND
11 THE \$25 RENEWAL APPLICATION FEE MUST BE RECEIVED BY THE DEPARTMENT AT LEAST 30 DAYS
12 PRIOR TO THE ANNIVERSARY DATE OF THE PREVIOUSLY APPROVED EXEMPTION.

13 (e) A person who ~~purposefully~~ makes a false statement or misrepresentation concerning that person's
14 status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may
15 impose the penalty for each false statement or misrepresentation. The penalty must be paid to the
16 uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

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

21 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
22 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
23 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
24 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
25 manner:

26 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
27 delivering the notice to the board of directors of the corporation or to the management organization of the
28 manager-managed limited liability company; or

29 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
30 delivering the notice to the board of directors of the corporation or to the management organization of the

1 manager-managed limited liability company and to the insurer.

2 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
3 the employer shall again serve notice to its insurer and to its board of directors or the management
4 organization of the manager-managed limited liability company if the employer elects to be bound.

5 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
6 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
7 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
8 exemption from coverage.

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

19 ~~Section 4. Section 39-71-405, MCA, is amended to read:~~

20 ~~"39-71-405. Liability of employer who contracts work out. (1) An employer who contracts with~~
21 ~~a contractor or an independent contractor to have work performed of a kind which that is a regular or a~~
22 ~~recurrent part of the work of the trade, business, occupation, or profession of such the employer is not~~
23 ~~liable for the payment of benefits under this chapter to the employees of the contractor or to the~~
24 ~~independent contractor if the contractor or independent contractor has not properly complied with the~~
25 ~~coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment~~
26 ~~of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the~~
27 ~~contractor primarily liable therein.~~

28 ~~(2) Where When an employer contracts to have any work to be done by a contractor other than~~
29 ~~or an independent contractor, and the work so contracted to be done is a part or process in the trade or~~
30 ~~business of the employer, then the employer is not liable to pay all benefits under this chapter to the same~~

1 extent as if the work were done without the intervention of the contractor, and the work so contracted to
 2 be done shall not be construed to be casual employment even if the work contracted to be done is a part
 3 or process in the trade, business, occupation, or profession of the employer. Where ~~When~~ an employer
 4 contracts work to be done as specified in this subsection, the contractor and the contractor's employees
 5 shall ~~may not~~ come under that plan of compensation adopted by the employer.

6 (3) ~~Where~~ ~~When~~ an employer contracts any work to be done, wholly or in part for the employer,
 7 by an independent contractor, where and the work so contracted to be done is casual employment as to
 8 such ~~the~~ employer, then the contractor shall become the is not an employer for the purposes of this
 9 chapter."

10
 11 NEW SECTION. Section 5. Fee refund. The department of labor and industry shall refund all fees
 12 collected under the provisions of former 39-9-206.

13
 14 NEW SECTION. SECTION 13. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
 15 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
 16 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
 17 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

18
 19 NEW SECTION. Section 14. Repealer. Sections 39-3-701, 39-3-702, 39-3-703, 39-3-705,
 20 39-3-706, ~~39-9-101, 39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39-9-206,~~
 21 ~~39-9-207, 39-9-211, 39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39-9-404,~~
 22 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, and 39-9-410, MCA, are repealed.

23
 24 NEW SECTION. Section 15. Effective date. [This act] is effective July 1, 1997.

25 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0252, revised second reading - second house

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws governing contractors and independent contractors; repealing contractor registration requirements; eliminating bonding requirements for contractors; eliminating investigatory, enforcement, notice and appeal procedures, and penalty provisions relating to contractor registration; decreasing the fee for the issuance of the initial certificate to a maximum of \$50 and the fee for the renewal or reinstatement of a certificate to a maximum of \$50; providing an exemption for fire suppression or protection licensees, for contractors in the logging industry who build forest access roads, and for independent contractors who have no employees; providing that an independent contractor exemption remains in effect for 3 years; providing for a \$25 fee for the initial exemption application and for each subsequent renewal.

ASSUMPTIONS:

1. Implementation of this legislation would require 3.0 FTE (two information specialists, and one customer service/licensing technician). Operating costs and administrative overhead to support these three positions are identified below.
2. The revenue at \$50 every three years would be insufficient to fund the workload for the duties identified in the legislation.
3. Section 7 of HB 252 exempts new categories of persons from the contractor registration requirement. Because less than 50% of the currently registered contractors would be required to register under HB 252, it is estimated that 4,000 contractors would be required to register.
4. Seventy percent of the estimated 4,000 (2,800) contractors would register in fiscal 1998. The remaining 30% (1,200) would register in fiscal 1999.
5. New construction contractors would start up in business every year. Education is required in statute. Although there would be variations in the type of workload, in the year when the registration workload is lighter, the Department of Labor and Industry would increase the education emphasis. Likewise, when the registration workload is intense, the department would decrease the emphasis on education.

FISCAL IMPACT:

Department of Labor and Industry

	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
<u>Employment Relations Division:</u>		
<u>Expenditures:</u>		
FTE	3.00	3.00
Personal Services	82,828	82,828
Operating Expenses	70,772	70,772
Total	153,600	153,600
<u>Funding:</u>		
SSR (02) (Contractor Registration)	140,000	60,000
General Fund (01)	13,600	93,600
Total	153,600	153,600
<u>Revenues:</u>		
SSR (02) (CR-02346)	140,000	60,000
<u>Net Impact on Fund Balance: (Revenue minus expense)</u>		
SSR (02) (CR-02346)	0	0
General Fund (01)	(13,600)	(93,600)

(Continued)

Dave Lewis 4-10-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

BRAD MOLNAR, PRIMARY SPONSOR DATE

Fiscal Note for HB0252, revised second reading - second house

HB 252 #3

TECHNICAL NOTES:

The nature of the legislation covers a three year period, but this fiscal note covers a two year period. The time frames are incongruous for illustration.

Based on the cyclical nature of the workload as imposed by this legislation, a biennial appropriation would be beneficial to the department.

1 HOUSE BILL NO. 252

2 INTRODUCED BY MOLNAR, VICK, PROUSE, TASH, BOHARSKI, SLITER, BANKHEAD, MILLER,
 3 BEAUDRY, WELLS, ARNOTT, ORR, JORE, HOLLAND, DEVANEY, MCGEE, CURTISS, KEENAN, BITNEY,
 4 BAER, ESTRADA, GAGE

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS
 7 AND INDEPENDENT CONTRACTORS; ~~REPEALING CONTRACTOR REGISTRATION REQUIREMENTS;~~
 8 ~~ELIMINATING BONDING REQUIREMENTS FOR CONTRACTORS; REQUIRING THE REFUND OF~~
 9 ~~CONTRACTOR REGISTRATION FEES; ELIMINATING INVESTIGATORY, ENFORCEMENT, NOTICE AND~~
 10 ~~APPEAL PROCEDURES, AND PENALTY PROVISIONS RELATING TO CONTRACTOR REGISTRATION;~~
 11 ~~DECREASING THE FEE FOR THE ISSUANCE OF THE INITIAL CERTIFICATE TO A MAXIMUM OF \$50 AND~~
 12 ~~THE FEE FOR THE RENEWAL OR REINSTATEMENT OF A CERTIFICATE TO A MAXIMUM OF \$50;~~
 13 ~~PROVIDING AN EXEMPTION FOR FIRE SUPPRESSION OR PROTECTION LICENSEES, FOR CONTRACTORS~~
 14 ~~IN THE LOGGING INDUSTRY WHO BUILD FOREST ACCESS ROADS, AND FOR INDEPENDENT~~
 15 ~~CONTRACTORS WHO HAVE NO EMPLOYEES; PROVIDING THAT AN INDEPENDENT CONTRACTOR~~
 16 ~~EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; PROVIDING FOR A \$25 FEE FOR THE INITIAL~~
 17 ~~EXEMPTION APPLICATION AND FOR EACH SUBSEQUENT RENEWAL; AMENDING SECTIONS ~~39-71-118,~~~~
 18 ~~39-9-101, 39-9-102, 39-9-201, 39-9-204, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-303, 39-9-401,~~
 19 ~~39-71-120, AND 39-71-401, AND ~~39-71-405,~~ MCA; REPEALING SECTIONS 39-3-701, 39-3-702,~~
 20 ~~39-3-703, 39-3-705, 39-3-706, ~~39-9-101, 39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204,~~~~
 21 ~~39-9-205, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402,~~
 22 ~~39-9-403, 39-9-404, 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, AND 39-9-410, MCA; AND~~
 23 PROVIDING AN EFFECTIVE DATE."

24
 25 WHEREAS, THE CONTRACTOR REGISTRATION PROGRAM AFFECTS AN INDUSTRY IN MONTANA
 26 THAT HAS A HIGH NUMBER OF ACCIDENTS, RESULTING IN WORKERS' COMPENSATION RATES THAT
 27 ARE HIGHER THAN OTHER INDUSTRIES' AND CREATING A SITUATION THAT OFTEN RESULTS IN
 28 NONCOMPLIANCE WITH THE REQUIREMENTS OF THE WORKERS' COMPENSATION ACT AND THE
 29 UNEMPLOYMENT INSURANCE LAW; AND

30 WHEREAS, THE CONTRACTOR REGISTRATION PROGRAM PROVIDES NEEDED STRUCTURE TO

1 THE CONSTRUCTION INDUSTRY BY PROVIDING A MEANS TO DISTINGUISH, PRIOR TO AN ACCIDENT,
 2 THOSE PERSONS WHO QUALIFY AS INDEPENDENT CONTRACTORS AND THOSE EMPLOYERS WHO ARE
 3 REQUIRED TO PROVIDE WORKERS' COMPENSATION COVERAGE FOR THEIR EMPLOYEES; AND

4 WHEREAS, THE CONTRACTOR REGISTRATION LAW PROTECTS A CONTRACTOR FROM THE
 5 LIABILITIES FOR WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE OBLIGATIONS THAT
 6 EXIST FROM CONTRACTING WITH A CONTRACTOR WHO IS NOT IN COMPLIANCE WITH THOSE LAWS
 7 BY REMOVING THOSE LIABILITIES WHEN A CONTRACTOR CONTRACTS WITH A REGISTERED
 8 CONTRACTOR.

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

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

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

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

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

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

1 ~~(d) an aircrew member or other person employed as a volunteer under 67-2-105;~~

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

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

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

13 ~~(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;~~
 14 ~~and~~

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

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

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

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

23 ~~(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage~~
 24 ~~under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs~~
 25 ~~services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined~~
 26 ~~in 39-71-123.~~

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

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

1 ~~(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service~~
2 ~~of an employer, including but not limited to training time, response time, and time spent at the employer's~~
3 ~~premises.~~

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

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

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

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

19 ~~(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited~~
20 ~~liability company, the employer may elect to include as an employee within the provisions of this chapter~~
21 ~~any corporate officer or manager exempted under 39-71-401(2).~~

22 ~~(b) In the event of an election, the employer shall serve upon the employer's insurer written notice~~
23 ~~naming the corporate officer or manager to be covered and stating the level of compensation coverage~~
24 ~~desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A~~
25 ~~corporate officer or manager is not considered an employee within this chapter until notice has been given.~~

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

28 ~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to~~
29 ~~the minimum and maximum limitations of this subsection. For premium ratemaking and for the~~
30 ~~determination of the weekly wage for weekly compensation benefits, the electing employer may elect not~~

1 ~~less than \$200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.~~

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

6 ~~(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for~~
 7 ~~premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the~~
 8 ~~average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.~~

9 ~~(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services~~
 10 ~~are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than~~
 11 ~~a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the~~
 12 ~~control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).~~

13 ~~(9) For purposes of this section, an "employee or worker in this state" means:~~

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

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

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

20 ~~(d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose~~
 21 ~~employer elects coverage with an insurer that allows an election for an employer whose:~~

22 ~~(i) nonresident employees are hired in Montana;~~

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

24 ~~(iii) nonresident employees are supervised in Montana; and~~

25 ~~(iv) business records are maintained in Montana.~~

26 ~~(10) An insurer may require coverage for all nonresident employees of a Montana employer who~~
 27 ~~do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under~~
 28 ~~subsection (9)(d)."~~

29
 30 **SECTION 1. SECTION 39-9-101, MCA, IS AMENDED TO READ:**

1 **"39-9-101. Purpose.** It is the purpose of this chapter to ensure that all construction contractors
2 are competing fairly and in compliance with state laws."

3
4 **SECTION 2. SECTION 39-9-102, MCA, IS AMENDED TO READ:**

5 **"39-9-102. Definitions.** As used in this chapter, the following definitions apply:

6 (1) ~~"Contractor~~ Construction contractor" means a person, firm, or corporation that:

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

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

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

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

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

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

23
24 **SECTION 3. SECTION 39-9-201, MCA, IS AMENDED TO READ:**

25 **"39-9-201. Registration required -- ~~prohibited acts -- criminal penalty application.~~** (1) ~~On or before~~
26 ~~July 1, 1996,~~ each Each construction contractor shall register with the department.

27 ~~(2) It is a misdemeanor for a contractor to:~~

28 ~~(a) advertise, offer to perform work, submit a bid, or perform work as a contractor;~~

29 ~~(i) without being registered as required by this chapter; or~~

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

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

3 ~~(c) transfer a valid registration to an unregistered contractor to work under a registration issued~~
 4 ~~to another contractor.~~

5 ~~(3) The department may cause the criminal proceedings for a misdemeanor action under this~~
 6 ~~chapter to be initiated for prosecution in the lowest court of concurrent jurisdiction in the county where the~~
 7 ~~infraction occurs. An applicant for registration as a construction contractor shall submit an application under~~
 8 ~~oath on a form to be provided by the department that must include the following information:~~

9 ~~(a) the applicant's social security number;~~

10 ~~(b) proof of compliance with workers' compensation laws;~~

11 ~~(c) the I.R.S. employer identification number, if any; and~~

12 ~~(d) the name and address of:~~

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

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

15 ~~(iii) the corporate officers and registered agent if the applicant is a corporation; or~~

16 ~~(iv) the manager of a manager-managed limited liability company or the members of a~~
 17 ~~member-managed limited liability company and the registered agent if the applicant is a limited liability~~
 18 ~~company."~~

19
 20 **SECTION 4. SECTION 39-9-204, MCA, IS AMENDED TO READ:**

21 **"39-9-204. Certificate of registration -- issuance -- duration -- ~~renewal~~ -- ~~suspension~~.** (1) The
 22 department shall issue to the applicant a certificate of registration upon compliance with the registration
 23 requirements of this chapter.

24 ~~(2) If the department approves an application, it shall issue a certificate of registration to the~~
 25 ~~applicant. The department shall place the expiration date on the certificate. ~~Except as provided in~~~~
 26 ~~subsection (3), the The certificate is valid until the earliest date of:~~

27 ~~(a) 1 year for 3 years; or~~

28 ~~(b) the date the bond expires; or~~

29 ~~(c) the date the workers' compensation or unemployment insurance expires or any applicable~~
 30 ~~exemption terminates.~~

1 ~~(3) The certificate issued under this section to an independent contractor is invalid on the date the~~
 2 ~~contractor hires employees unless the contractor provides proof to the department of workers'~~
 3 ~~compensation coverage for those employees.~~

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

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

9

10 **SECTION 5. SECTION 39-9-206, MCA, IS AMENDED TO READ:**

11 **"39-9-206. Fees -- education program.** (1) The department shall charge fees for:

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

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

14 (2) The department shall set the fees by administrative rule. The fees shall cover the full cost of
 15 issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs
 16 include reproduction, travel, per diem, and administrative and legal support costs.

17 (3) The fees charged in subsection (1)(a) may not exceed ~~\$80~~;

18 (a) \$50 for the initial registration certificate; or

19 (b) \$50 for the renewal or reinstatement of a registration certificate.

20 (4) The fees collected under this section must be deposited in the state special revenue account
 21 to the credit of the department for the administration and enforcement of this chapter.

22 (5) The department shall establish, cooperatively with representatives of the building industry, an
 23 industry and consumer information program, funded with 15% of the fees, to educate the building industry
 24 about the registration program and to educate the public regarding the hiring of building construction
 25 contractors.

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

28

29 **SECTION 6. SECTION 39-9-207, MCA, IS AMENDED TO READ:**

30 **"39-9-207. ~~Registration prerequisite to suit or lien claim~~ Contractor registration -- limiting liability.**

1 ~~(1) A person engaged in the business or acting in the capacity of a contractor may not bring or maintain~~
 2 ~~an action in any court of this state for the collection of compensation for the performance of any work or~~
 3 ~~for breach of contract for which registration is required under this chapter without alleging and proving that~~
 4 ~~the contractor was a registered contractor and held a current and valid certificate of registration at the time~~
 5 ~~the contractor entered the contract for the performance of work.~~

6 ~~(2) For the purposes of this section, the court may not find a contractor in compliance with the~~
 7 ~~registration requirements of this chapter unless:~~

8 ~~(a) the department has on file the information required by 39-9-202; and~~

9 ~~(b) the contractor has a current bond or other security as required by 39-9-203.~~

10 ~~(3) In determining whether a contractor is in compliance with the registration requirements of this~~
 11 ~~chapter, the court shall consider the length of time during which the contractor did not hold a valid~~
 12 ~~certificate of registration.~~

13 ~~(4) A contractor may not bring or maintain a lien claim under Title 71, chapter 3, part 5, unless the~~
 14 ~~contractor is registered at the time of entering into a contract.~~

15 ~~(5) A person, including a construction contractor, engaging the services of another a registered~~
 16 ~~construction contractor is not liable as an employer under 39-71-405 for workers' compensation and~~
 17 ~~unemployment insurance coverage or for wages and fringe benefits for the other registered construction~~
 18 ~~contractor or for any employee of the other construction contractor if the contractor verifies with the~~
 19 ~~department that the other contractor with whom the contractor is contracting for services is registered as~~
 20 ~~provided under this chapter."~~

21
 22 **SECTION 7. SECTION 39-9-211, MCA, IS AMENDED TO READ:**

23 **"39-9-211. Exemptions.** This chapter does not apply:

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

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

28 (3) to a public utility operating under the regulations of the public service commission or to a rural
 29 cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work
 30 incidental to its own business;

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

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

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

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

10 (8) to work or operation on one undertaking or project considered of a casual, minor, or
 11 inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and
 12 materials and all other items, is less than ~~\$500~~ \$2,500 a job. The exemption prescribed in this subsection
 13 does not apply when the work or construction is only a part of a larger or major operation, whether
 14 undertaken by the same or a different construction contractor, or in which a division of the operation is
 15 made into contracts of amounts of less than ~~\$500~~ \$2,500 a job for the purpose of evasion of this chapter
 16 or otherwise. ~~The exemption prescribed in this subsection does not apply to a person who advertises or~~
 17 ~~puts out any sign or card or other device that might indicate to the public that the person is a contractor~~
 18 ~~or is qualified to engage in the business of a contractor.~~

19 (9) ~~except when work is performed by a registered contractor, to a construction or operation~~
 20 ~~incidental to the construction or repair:~~ farmer or rancher while engaged in a farming, dairying, agriculture,
 21 viticulture, horticulture, or stock or poultry operation;

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

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

24 ~~(c)(11) to an operation~~ related to clearing or other work upon land in rural districts for fire
 25 prevention purposes;

26 ~~(10)(12) to an owner who contracts for a project with~~ work to be performed by a registered
 27 construction contractor, but this exemption does not apply to an owner who is otherwise covered by this
 28 chapter who constructs a residence on the owner's property with the intention and for the purpose of
 29 promptly selling the improved property;

30 ~~(11)(13) to a person~~ an owner working on the ~~person's~~ owner's property, whether occupied by the

1 ~~person owner~~ or not, ~~and a person working on the person's residence, whether owned by the person or~~
 2 ~~not~~, but this exemption does not apply to ~~a person~~ an owner who is otherwise covered by this chapter who
 3 constructs an improvement on the ~~person's~~ owner's property with the intention and for the purpose of
 4 promptly selling the improved property, unless the owner has continuously occupied the property as the
 5 owner's primary residence for at least the last 12 months;

6 ~~(12)(14)~~ to owners of commercial properties who use their own employees to do maintenance,
 7 repair, and alteration work in or upon their own properties;

8 ~~(13)(15)~~ to ~~a licensed~~ an architect, ~~or~~ civil or professional engineer, or professional land surveyor,
 9 licensed in Montana and acting solely in a professional capacity;

10 ~~(14)(16)~~ to an electrician or plumber, licensed in Montana, operating within the scope of the license;

11 ~~(15)(17)~~ to a contract security company, licensed under Title 37, chapter 60, operating within the
 12 scope of the license; ~~or~~

13 ~~(16)(18)~~ to a person who engages in the activities regulated as an employee of a registered
 14 construction contractor with wages as the sole compensation or as an employee with wages as the sole
 15 compensation;

16 ~~(19)~~ to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire
 17 suppression or fire protection equipment;

18 ~~(20)~~ to a water well contractor licensed under Title 37, chapter 43, performing the work of a water
 19 well contractor;

20 ~~(21)~~ to an enrolled tribal member or an association, business, corporation, or other entity, at least
 21 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely
 22 within the exterior boundaries of an Indian reservation;

23 ~~(22)~~ to a contractor engaged in the logging industry who builds forest access roads for the purpose
 24 of harvesting and transporting logs from forest to mill;

25 ~~(23)~~ to a person working on the person's own residence, if the residence is owned by a person
 26 other than the resident; or

27 ~~(24)~~ to an independent contractor who has no employees. However, an independent contractor
 28 may voluntarily elect to register under this chapter."

29
 30 **SECTION 8. SECTION 39-9-301, MCA, IS AMENDED TO READ:**

1 **"39-9-301. Business practices -- ~~advertising~~ penalty.** (1) Except as provided in 39-9-205, a
 2 person who has registered under one name as provided in this chapter may not engage in the business or
 3 act in the capacity of a construction contractor under any other name unless that name also is registered
 4 under this chapter.

5 ~~(2) Except for telephone books, all advertising, contracts, correspondence, cards, signs, posters,~~
 6 ~~papers, and documents that show a contractor's name or address must show the contractor's name and~~
 7 ~~address as registered under this chapter.~~

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

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

15 ~~(4) A contractor may not advertise that the contractor is bonded because of the bond required to~~
 16 ~~be filed provided in 39-9-203.~~

17 ~~(5)~~(2) A construction contractor may not falsify a registration number and use it in connection with
 18 a solicitation or identification as a construction contractor. An individual construction contractor, partner,
 19 associate, agent, salesperson, solicitor, officer, or employee of a construction contractor shall use a true
 20 name and address at all times while engaged in the business or capacity of a construction contractor or in
 21 activities related to a construction contractor.

22 ~~(6)~~(3) (a) The finding of a violation of this section by the department at a hearing held in
 23 accordance with the Montana Administrative Procedure Act subjects the person who commits the violation
 24 to a penalty of not more than \$5,000, as determined by the department. The required hearing may be held
 25 by telephone or by videoconference. A penalty collected under this section must be deposited in the state
 26 special revenue account to the credit of the department for administration and enforcement of this chapter.

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

29
 30 **SECTION 9. SECTION 39-9-303, MCA, IS AMENDED TO READ:**

1 **"39-9-303. Department to compile and update list of registered construction contractors --**
 2 **availability -- fee.** (1) The department shall compile a list of all construction contractors registered under
 3 this chapter and update the list at least bimonthly. The list is public information and must be available to
 4 the public upon request for a reasonable fee.

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

8
 9 **SECTION 10. SECTION 39-9-401, MCA, IS AMENDED TO READ:**

10 **"39-9-401. Violation -- infraction. ~~(1)~~** It is a violation of this chapter and an infraction for any
 11 construction contractor to:

12 ~~(a)(1) advertise, offer to perform work, submit a bid, or perform work as a construction contractor~~
 13 ~~without being registered as required by this chapter;~~

14 ~~(b)(2) advertise, offer to perform work, submit a bid, or perform work as a construction contractor~~
 15 ~~when the construction contractor's registration is suspended; or~~

16 ~~(c)(3) transfer a valid registration to an unregistered construction contractor or allow an~~
 17 ~~unregistered construction contractor to work under a registration issued to another construction contractor.~~

18 ~~(2) Each day that a contractor works without being registered as required by this chapter, works~~
 19 ~~while the contractor's registration is suspended, or works under a registration issued to another contractor~~
 20 ~~is a separate infraction. Each worksite at which a contractor works without being registered as required~~
 21 ~~by this chapter, works while the contractor's registration is suspended, or works under a registration issued~~
 22 ~~to another contractor is a separate infraction."~~

23
 24 **Section 11. Section 39-71-120, MCA, is amended to read:**

25 **"39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders
 26 service in the course of an occupation and:

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

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

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

1 (2) An individual performing services for remuneration ~~who represents to the public that the~~
 2 ~~individual is an independent contractor~~ is considered to be an ~~independent contractor and not an~~ employee
 3 under this chapter ~~unless the requirements of subsection (1) are met~~ UNLESS THE REQUIREMENTS OF
 4 SUBSECTION (1) ARE MET. ~~An individual representing to the public that the individual is an independent~~
 5 ~~contractor may not make claims against an employing unit~~ ANY PERSON FOR WHOM THE INDEPENDENT
 6 CONTRACTOR RENDERS SERVICE IN EXCHANGE FOR PAY OR ANY OTHER CONSIDERATION. ~~The~~
 7 ~~department may not take action against a person relying on a claim of independent contractor status~~
 8 ~~pursuant to this subsection.~~

9 ~~(3) The department may not adopt rules to implement this section."~~

10
 11 **Section 12.** Section 39-71-401, MCA, is amended to read:

12 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
 13 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
 14 all employees, as defined in 39-71-118. An employer who has any employee in service under any
 15 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
 16 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
 17 Compensation Act is subject to and bound by the compensation plan that has been elected by the
 18 employer.

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

- 21 (a) household and domestic employment;
- 22 (b) casual employment as defined in 39-71-116;
- 23 (c) employment of a dependent member of an employer's family for whom an exemption may be
 24 claimed by the employer under the federal Internal Revenue Code;
- 25 (d) employment of sole proprietors, working members of a partnership, or working members of a
 26 member-managed limited liability company, except as provided in subsection (3);
- 27 (e) employment of a broker or salesman performing under a license issued by the board of realty
 28 regulation;
- 29 (f) employment of a direct seller as defined in 26 U.S.C. 3508;
- 30 (g) employment for which a rule of liability for injury, occupational disease, or death is provided

1 under the laws of the United States;

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

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

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

8 (k) employment of a person performing services as a newspaper carrier or free-lance correspondent
9 if the person performing the services or a parent or guardian of the person performing the services in the
10 case of a minor has acknowledged in writing that the person performing the services and the services are
11 not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or
12 photographs for publication and is paid by the article or by the photograph. As used in this subsection,
13 "newspaper carrier":

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

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

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

19 (m) a person who is employed by an enrolled tribal member or an association, business,
20 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
21 business is conducted solely within the exterior boundaries of an Indian reservation;

22 (n) employment of a jockey performing under a license issued by the board of horseracing from the
23 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
24 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
25 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

26 (o) employment of an employer's spouse for whom an exemption based on marital status may be
27 claimed by the employer under 26 U.S.C. 7703;

28 (p) a person who performs services as a petroleum land professional. As used in this subsection,
29 a "petroleum land professional" is a person who:

30 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in

1 negotiating a business agreement for the exploration or development of minerals;

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

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

5 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
6 liability company who qualifies under one or more of the following provisions:

7 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
8 limited liability company and does not receive any pay from the corporation or the limited liability company
9 for performance of the duties;

10 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
11 limited liability company;

12 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
13 or owns 20% or more of the limited liability company; or

14 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
15 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
16 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

17 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
18 member-managed limited liability company who represents to the public that the person is an independent
19 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
20 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

21 (b) The application must be made in accordance with the rules adopted by the department. There
22 is ~~no~~ A \$25 fee for the initial application. Any subsequent application RENEWAL must be accompanied by
23 a \$25 application fee. The application fee must be deposited in the administration fund established in
24 39-71-201 to offset the costs of administering the program.

25 (c) When an application is approved by the department ~~or when the contracting parties agree to~~
26 ~~an independent contractor status~~, it is conclusive as to the status of an independent contractor and
27 precludes the applicant from obtaining benefits under this chapter.

28 (d) ~~The exemption, if approved, remains in effect for 1 year following the date of the department's~~
29 ~~approval. To maintain the independent contractor status, an independent contractor shall annually submit~~
30 ~~a renewal application. A renewal application must be submitted for all independent contractor exemptions~~

1 approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee
 2 must be received by the department at least 30 days prior to the anniversary date of the previously
 3 approved exemption. ~~When an election of an exemption is approved by the department, the election~~
 4 ~~remains effective and the independent contractor retains the status of an independent contractor until the~~
 5 ~~independent contractor notifies the department of any change in status and provides a description of the~~
 6 ~~independent contractor's present work status~~ THE EXEMPTION, IF APPROVED, REMAINS IN EFFECT FOR
 7 3 YEARS FOLLOWING THE DATE OF THE DEPARTMENT'S APPROVAL. TO MAINTAIN THE INDEPENDENT
 8 CONTRACTOR STATUS, AN INDEPENDENT CONTRACTOR SHALL EVERY 3 YEARS SUBMIT A RENEWAL
 9 APPLICATION. A RENEWAL APPLICATION MUST BE SUBMITTED FOR ALL INDEPENDENT CONTRACTOR
 10 EXEMPTIONS APPROVED AS OF JULY 1, 1995, OR THEREAFTER. THE RENEWAL APPLICATION AND
 11 THE \$25 RENEWAL APPLICATION FEE MUST BE RECEIVED BY THE DEPARTMENT AT LEAST 30 DAYS
 12 PRIOR TO THE ANNIVERSARY DATE OF THE PREVIOUSLY APPROVED EXEMPTION.

13 (e) A person who ~~purposefully~~ makes a false statement or misrepresentation concerning that person's
 14 status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may
 15 impose the penalty for each false statement or misrepresentation. The penalty must be paid to the
 16 uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

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

21 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
 22 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
 23 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
 24 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
 25 manner:

26 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
 27 delivering the notice to the board of directors of the corporation or to the management organization of the
 28 manager-managed limited liability company; or

29 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
 30 delivering the notice to the board of directors of the corporation or to the management organization of the

1 manager-managed limited liability company and to the insurer.

2 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
3 the employer shall again serve notice to its insurer and to its board of directors or the management
4 organization of the manager-managed limited liability company if the employer elects to be bound.

5 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
6 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
7 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
8 exemption from coverage.

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

19 **Section 4. ~~Section 39-71-405, MCA, is amended to read:~~**

20 **~~"39-71-405. Liability of employer who contracts work out. (1) An employer who contracts with~~**
21 **~~a contractor or an independent contractor to have work performed of a kind which that is a regular or a~~**
22 **~~recurrent part of the work of the trade, business, occupation, or profession of such the employer is not~~**
23 **~~liable for the payment of benefits under this chapter to the employees of the contractor or to the~~**
24 **~~independent contractor if the contractor or independent contractor has not properly complied with the~~**
25 **~~coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment~~**
26 **~~of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the~~**
27 **~~contractor primarily liable therein.~~**

28 **~~(2) Where When an employer contracts to have any work to be done by a contractor other than~~**
29 **~~or an independent contractor, and the work so contracted to be done is a part or process in the trade or~~**
30 **~~business of the employer, then the employer is not liable to pay all benefits under this chapter to the same~~**

1 extent as if the work were done without the intervention of the contractor, and the work so contracted to
 2 be done shall not be construed to be casual employment even if the work contracted to be done is a part
 3 of process in the trade, business, occupation, or profession of the employer. Where ~~When~~ an employer
 4 contracts work to be done as specified in this subsection, the contractor and the contractor's employees
 5 shall ~~may not~~ come under that plan of compensation adopted by the employer.

6 (3) ~~Where~~ When an employer contracts any work to be done, wholly or in part for the employer,
 7 by an independent contractor, ~~where and~~ the work so contracted to be done is casual employment as to
 8 such the employer, ~~then the contractor shall become the~~ is not an employer for the purposes of this
 9 chapter."

10
 11 ~~NEW SECTION. Section 5. Fee refund.~~ The department of labor and industry shall refund all fees
 12 collected under the provisions of former 39-9-206.

13
 14 NEW SECTION. SECTION 13. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
 15 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
 16 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
 17 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

18
 19 NEW SECTION. Section 14. Repealer. Sections 39-3-701, 39-3-702, 39-3-703, 39-3-705,
 20 39-3-706, ~~39-9-101, 39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39-9-206,~~
 21 ~~39-9-207, 39-9-211, 39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39-9-404,~~
 22 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, and 39-9-410, MCA, are repealed.

23
 24 NEW SECTION. Section 15. Effective date. [This act] is effective July 1, 1997.

25 -END-



FREE CONFERENCE COMMITTEE

on House Bill 252

Report No. 1, April 19, 1997

Page 1 of 4

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 252** (reference copy -- salmon) and recommend that **House Bill 252** be amended as follows:

1. Title, line 7.

Following: "~~REQUIREMENTS,~~"

Insert: ""REPEALING CERTAIN CONTRACTOR REGISTRATION
REQUIREMENTS;"

2. Title, line 9.

Following: "ENFORCEMENT,"

Insert: "AND"

3. Title, line 10.

Following: "PROCEDURES"

Strike: ", AND PENALTY PROVISIONS"

Following: "REGISTRATION;"

Insert: "PROVIDING FOR A PENALTY OF UP TO \$1,000 FOR CERTAIN
VIOLATIONS OF THE CONSTRUCTION CONTRACTOR REGISTRATION LAWS;
REQUIRING THAT ANY PENALTY COLLECTED BE DEPOSITED IN THE
UNINSURED EMPLOYERS' FUND;"

4. Title, line 11.

Following: "INITIAL"

Insert: "2-YEAR"

Following: "MAXIMUM OF"

Strike: "\$50"

Insert: "\$70"

5. Title, line 12.

Following: "MAXIMUM OF"

Strike: "\$50"

Insert: "\$70"

ADOPT

REJECT

FCCR #1
HB 252

AC HB 252-1

840944CC.Hgd

6. Title, line 14.

Following: "ROADS"

Insert: ", FOR LICENSED WATER WELL CONTRACTORS, FOR ENROLLED TRIBAL MEMBERS OR TRIBALLY-OWNED BUSINESSES, FOR CERTAIN PROPERTY OWNERS, FOR PROJECTS COSTING LESS THAN \$2,500"

7. Title, line 17.

Following: "RENEWAL:"

Insert: "PROVIDING AN APPROPRIATION;"

8. Page 7, line 27.

Strike: "3"

Insert: "2"

9. Page 8, line 18 and line 19.

Strike: "\$50"

Insert: "\$70"

10. Page 9, lines 15 through 18.

Following: "person" on line 15

Strike: ", including" through the "registered"

Insert: "who, pursuant to an oral or written contract, engages a"

Following: "contractor" on line 16

Insert: "who is registered under this chapter on the date of the contract"

Following: "employer"

Insert: "for workers' compensation coverage"

Following: "39-71-405"

Strike: "for workers' compensation and"

Insert: ", for"

Following: "coverage" on line 17

Insert: ", "

Following: "for" on line 17

Strike: remainder of line 17 through second "contractor" on line 18

Insert: ":

(1) the registered construction contractor;

(2) the employees of the registered construction

contractor; or

(3) any subsequent subcontractor or the employees of any subsequent subcontractor engaged to fulfill a part of or all of the obligations of the oral or written contract of the registered construction contractor listed in subsection (1)"

11. Page 13, line 10.

Following: "infraction"

Insert: "-- penalty -- disposition"

Following: "{1}"

Insert: "(1)"

12. Page 13, line 12.

Strike: "(1)"

Insert: "(a)"

Renumber: subsequent subsections

13. Page 13.

Following: line 22

Insert: "(2)(a) A determination by the department of a violation of this section subjects the person who commits the violation to a penalty of up to \$1,000, as determined by the department. A person who has been determined to have violated this section may request that a hearing be held in accordance with the Montana Administrative Procedures Act. The hearing may be held by telephone or video conference. An appeal of the hearing decision must be made in the same manner as prescribed in 39-51-2403 and 39-51-2404.

(b) A penalty under this section does not apply to a violation that is determined to be an inadvertent error.

(c) A penalty collected under this section must be deposited in the uninsured employers' fund established in 39-71-502."

14. Page 19.

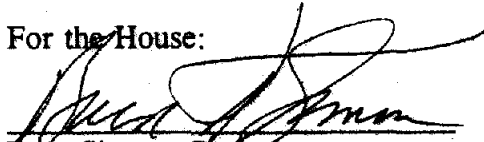
Following: line 22

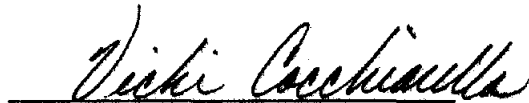
Insert: "NEW SECTION. **Section 15. Appropriation.** There is appropriated from the state special revenue account to the department of labor and industry up to \$315,000 for the biennium ending June 30, 1999, for the purpose of administering the construction contractor registration program."

Renumber: subsequent section

And this FREE Conference Committee report be adopted.

For the House:


Rep. Simon, Chair


Rep. Cocchiarella

Rep. Molnar

For the Senate:


Senator Thomas, Chair


Senator Holden


Senator Shea

HOUSE BILL NO. 252

INTRODUCED BY MOLNAR, PROUSE, TASH, SLITER, BANKHEAD, BEAUDRY, WELLS, ARNOTT, ORR,
 JORE, HOLLAND, DEVANEY, MCGEE, CURTISS, KEENAN, BITNEY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS
 AND INDEPENDENT CONTRACTORS; ~~REPEALING CONTRACTOR REGISTRATION REQUIREMENTS;~~
~~REPEALING CERTAIN CONTRACTOR REGISTRATION REQUIREMENTS;~~ ELIMINATING BONDING
 REQUIREMENTS FOR CONTRACTORS; ~~REQUIRING THE REFUND OF CONTRACTOR REGISTRATION FEES;~~
 ELIMINATING INVESTIGATORY, ENFORCEMENT, AND NOTICE AND APPEAL PROCEDURES, ~~AND~~
~~PENALTY PROVISIONS~~ RELATING TO CONTRACTOR REGISTRATION; PROVIDING FOR A PENALTY OF
 UP TO \$500 FOR CERTAIN VIOLATIONS OF THE CONSTRUCTION CONTRACTOR REGISTRATION LAWS;
 REQUIRING THAT ANY PENALTY COLLECTED BE DEPOSITED IN THE UNINSURED EMPLOYERS' FUND;
 DECREASING THE FEE FOR THE ISSUANCE OF THE INITIAL 2-YEAR CERTIFICATE TO A MAXIMUM OF
~~\$60~~ \$70 AND THE FEE FOR THE RENEWAL OR REINSTATEMENT OF A CERTIFICATE TO A MAXIMUM
 OF ~~\$60~~ \$70; PROVIDING AN EXEMPTION FOR FIRE SUPPRESSION OR PROTECTION LICENSEES, FOR
 CONTRACTORS IN THE LOGGING INDUSTRY WHO BUILD FOREST ACCESS ROADS, FOR LICENSED
 WATER WELL CONTRACTORS, FOR ENROLLED TRIBAL MEMBERS OR TRIBALLY OWNED BUSINESSES,
 FOR CERTAIN PROPERTY OWNERS, FOR PROJECTS COSTING LESS THAN \$2,500, AND FOR
 INDEPENDENT CONTRACTORS WHO HAVE NO EMPLOYEES; PROVIDING THAT AN INDEPENDENT
 CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; PROVIDING FOR A \$25 FEE FOR THE
 INITIAL EXEMPTION APPLICATION AND FOR EACH SUBSEQUENT RENEWAL; PROVIDING AN
 APPROPRIATION; AMENDING SECTIONS ~~39-71-118~~, ~~39-9-101~~, ~~39-9-102~~, ~~39-9-201~~, ~~39-9-204~~, ~~39-9-206~~,
~~39-9-207~~, ~~39-9-211~~, ~~39-9-301~~, ~~39-9-303~~, ~~39-9-401~~, ~~39-71-120~~, AND ~~39-71-401~~, AND ~~39-71-405~~, MCA;
 REPEALING SECTIONS 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, ~~39-9-101~~, ~~39-9-102~~,
~~39-9-103~~, ~~39-9-201~~, ~~39-9-202~~, ~~39-9-203~~, ~~39-9-204~~, ~~39-9-205~~, ~~39-9-206~~, ~~39-9-207~~, ~~39-9-211~~, ~~39-9-301~~,
~~39-9-302~~, ~~39-9-303~~, ~~39-9-304~~, ~~39-9-401~~, ~~39-9-402~~, ~~39-9-403~~, ~~39-9-404~~, ~~39-9-405~~, ~~39-9-406~~, ~~39-9-407~~,
 39-9-408, 39-9-409, AND 39-9-410, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, THE CONTRACTOR REGISTRATION PROGRAM AFFECTS AN INDUSTRY IN MONTANA
THAT HAS A HIGH NUMBER OF ACCIDENTS, RESULTING IN WORKERS' COMPENSATION RATES THAT

1 ARE HIGHER THAN OTHER INDUSTRIES' AND CREATING A SITUATION THAT OFTEN RESULTS IN
 2 NONCOMPLIANCE WITH THE REQUIREMENTS OF THE WORKERS' COMPENSATION ACT AND THE
 3 UNEMPLOYMENT INSURANCE LAW; AND

4 WHEREAS, THE CONTRACTOR REGISTRATION PROGRAM PROVIDES NEEDED STRUCTURE TO
 5 THE CONSTRUCTION INDUSTRY BY PROVIDING A MEANS TO DISTINGUISH, PRIOR TO AN ACCIDENT,
 6 THOSE PERSONS WHO QUALIFY AS INDEPENDENT CONTRACTORS AND THOSE EMPLOYERS WHO ARE
 7 REQUIRED TO PROVIDE WORKERS' COMPENSATION COVERAGE FOR THEIR EMPLOYEES; AND

8 WHEREAS, THE CONTRACTOR REGISTRATION LAW PROTECTS A CONTRACTOR FROM THE
 9 LIABILITIES FOR WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE OBLIGATIONS THAT
 10 EXIST FROM CONTRACTING WITH A CONTRACTOR WHO IS NOT IN COMPLIANCE WITH THOSE LAWS
 11 BY REMOVING THOSE LIABILITIES WHEN A CONTRACTOR CONTRACTS WITH A REGISTERED
 12 CONTRACTOR.

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

15
 16 ~~Section 1. Section 39-71-118, MCA, is amended to read:~~

17 ~~"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) The term~~
 18 ~~"employee" or "worker" means:~~

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

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

30 ~~(c) a person receiving on the job vocational rehabilitation training or other on the job training under~~

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

5 (d) ~~an aircrew member or other person employed as a volunteer under 67-2-105;~~

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

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

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

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

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

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

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

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

27 (c) ~~performing services as a volunteer, except for a person who is otherwise entitled to coverage
 28 under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs
 29 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined
 30 in 39-71-123.~~

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

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

5 ~~(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service~~
6 ~~of an employer, including but not limited to training time, response time, and time spent at the employer's~~
7 ~~premises.~~

8 ~~(5) (a) If the employer is a partnership, sole proprietor, or a member-managed limited liability~~
9 ~~company, the employer may elect to include as an employee within the provisions of this chapter any~~
10 ~~member of the partnership, the owner of the sole proprietorship, or any member of the limited liability~~
11 ~~company devoting full time to the partnership, proprietorship, or limited liability company business.~~

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

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

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

23 ~~(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited~~
24 ~~liability company, the employer may elect to include as an employee within the provisions of this chapter~~
25 ~~any corporate officer or manager exempted under 39-71-401(2).~~

26 ~~(b) In the event of an election, the employer shall serve upon the employer's insurer written notice~~
27 ~~naming the corporate officer or manager to be covered and stating the level of compensation coverage~~
28 ~~desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A~~
29 ~~corporate officer or manager is not considered an employee within this chapter until notice has been given.~~

30 ~~(c) A change in elected wages must be in writing and is effective at the start of the next quarter~~

1 following notification.

2 (d) ~~All weekly compensation benefits must be based on the amount of elected wages, subject to~~
3 ~~the minimum and maximum limitations of this subsection. For premium ratemaking and for the~~
4 ~~determination of the weekly wage for weekly compensation benefits, the electing employer may elect not~~
5 ~~less than \$200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.~~

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

10 (b) ~~In the event of an election, the employer shall report payroll for all volunteer firefighters for~~
11 ~~premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the~~
12 ~~average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.~~

13 (8) ~~Except as provided in chapter 8 of this title, an employee or worker in this state whose services~~
14 ~~are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than~~
15 ~~a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the~~
16 ~~control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).~~

17 (9) ~~For purposes of this section, an "employee or worker in this state" means:~~

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

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

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

24 (d) ~~a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose~~
25 ~~employer elects coverage with an insurer that allows an election for an employer whose:~~

26 (i) ~~nonresident employees are hired in Montana;~~

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

28 (iii) ~~nonresident employees are supervised in Montana; and~~

29 (iv) ~~business records are maintained in Montana.~~

30 (10) ~~An insurer may require coverage for all nonresident employees of a Montana employer who~~

1 ~~do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under~~
 2 ~~subsection (9)(d)."~~

3

4 SECTION 1. SECTION 39-9-101, MCA, IS AMENDED TO READ:

5 "39-9-101. **Purpose.** It is the purpose of this chapter to ensure that all construction contractors
 6 are competing fairly and in compliance with state laws."

7

8 SECTION 2. SECTION 39-9-102, MCA, IS AMENDED TO READ:

9 "39-9-102. **Definitions.** As used in this chapter, the following definitions apply:

10 (1) ~~Contractor~~ Construction contractor means a person, firm, or corporation that:

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

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

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

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

23 ~~(4) "Specialty contractor" means a contractor whose operations do not fall within the definition~~
 24 ~~of general contractor.~~

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

27

28 SECTION 3. SECTION 39-9-201, MCA, IS AMENDED TO READ:

29 "39-9-201. **Registration required -- ~~prohibited acts -- criminal penalty application.~~** (1) ~~On or before~~
 30 ~~July 1, 1996, each~~ Each construction contractor shall register with the department.

1 (2) ~~It is a misdemeanor for a contractor to:~~

2 ~~(a) advertise, offer to perform work, submit a bid, or perform work as a contractor;~~

3 ~~(i) without being registered as required by this chapter; or~~

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

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

7 ~~(c) transfer a valid registration to an unregistered contractor to work under a registration issued~~
8 ~~to another contractor.~~

9 ~~(3) The department may cause the criminal proceedings for a misdemeanor action under this~~
10 ~~chapter to be initiated for prosecution in the lowest court of concurrent jurisdiction in the county where the~~
11 ~~infraction occurs. An applicant for registration as a construction contractor shall submit an application under~~

12 ~~oath on a form to be provided by the department that must include the following information:~~

13 ~~(a) the applicant's social security number;~~

14 ~~(b) proof of compliance with workers' compensation laws;~~

15 ~~(c) the I.R.S. employer identification number, if any; and~~

16 ~~(d) 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;~~

19 ~~(iii) the corporate officers and registered agent if the applicant is a corporation; or~~

20 ~~(iv) the manager of a manager-managed limited liability company or the members of a~~
21 ~~member-managed limited liability company and the registered agent if the applicant is a limited liability~~
22 ~~company."~~

23
24 **SECTION 4. SECTION 39-9-204, MCA, IS AMENDED TO READ:**

25 **"39-9-204. Certificate of registration -- issuance -- duration -- renewal -- suspension.** (1) The
26 department shall issue to the applicant a certificate of registration upon compliance with the registration
27 requirements of this chapter.

28 (2) ~~If the department approves an application, it shall issue a certificate of registration to the~~
29 ~~applicant. The department shall place the expiration date on the certificate. ~~Except as provided in~~~~
30 ~~subsection (3), the The certificate is valid until the earliest date of:~~

1 ~~(a) 1 year for 3 2 years; or~~

2 ~~(b) the date the bond expires; or~~

3 ~~(c) the date the workers' compensation or unemployment insurance expires or any applicable~~
4 ~~exemption terminates.~~

5 ~~(3) The certificate issued under this section to an independent contractor is invalid on the date the~~
6 ~~contractor hires employees unless the contractor provides proof to the department of workers'~~
7 ~~compensation coverage for these employees.~~

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

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

13

14 **SECTION 5. SECTION 39-9-206, MCA, IS AMENDED TO READ:**

15 **"39-9-206. Fees -- education program.** (1) The department shall charge fees for:

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

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

18 (2) The department shall set the fees by administrative rule. The fees shall cover the full cost of
19 issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs
20 include reproduction, travel, per diem, and administrative and legal support costs.

21 (3) The fees charged in subsection (1)(a) may not exceed ~~\$80~~;

22 (a) \$50 \$70 for the initial registration certificate; or

23 (b) \$50\$70 for the renewal or reinstatement of a registration certificate.

24 (4) The fees collected under this section must be deposited in the state special revenue account
25 to the credit of the department for the administration and enforcement of this chapter.

26 (5) The department shall establish, cooperatively with representatives of the building industry, an
27 industry and consumer information program, funded with 15% of the fees, to educate the building industry
28 about the registration program and to educate the public regarding the hiring of building construction
29 contractors.

30 (6) The fee for a joint application for a certificate of registration and an independent contractor

1 exemption may not exceed the fee charged for a certificate of registration."

2

3 **SECTION 6. SECTION 39-9-207, MCA, IS AMENDED TO READ:**

4 **"39-9-207. ~~Registration prerequisite to suit or lien claim~~ Contractor registration -- limiting liability.**

5 ~~(1) A person engaged in the business or acting in the capacity of a contractor may not bring or maintain~~
6 ~~an action in any court of this state for the collection of compensation for the performance of any work or~~
7 ~~for breach of contract for which registration is required under this chapter without alleging and proving that~~
8 ~~the contractor was a registered contractor and held a current and valid certificate of registration at the time~~
9 ~~the contractor entered the contract for the performance of work.~~

10 ~~(2) For the purposes of this section, the court may not find a contractor in compliance with the~~
11 ~~registration requirements of this chapter unless:~~

12 ~~(a) the department has on file the information required by 39-9-202; and~~

13 ~~(b) the contractor has a current bond or other security as required by 39-9-203.~~

14 ~~(3) In determining whether a contractor is in compliance with the registration requirements of this~~
15 ~~chapter, the court shall consider the length of time during which the contractor did not hold a valid~~
16 ~~certificate of registration.~~

17 ~~(4) A contractor may not bring or maintain a lien claim under Title 71, chapter 3, part 5, unless the~~
18 ~~contractor is registered at the time of entering into a contract.~~

19 ~~(5) A person, including a construction contractor, engaging the services of another a registered~~
20 ~~WHO, PURSUANT TO AN ORAL OR WRITTEN CONTRACT, ENGAGES A construction contractor WHO IS~~
21 ~~REGISTERED UNDER THIS CHAPTER ON THE DATE OF THE CONTRACT is not liable as an employer FOR~~
22 ~~WORKERS' COMPENSATION COVERAGE under 39-71-405 for workers' compensation and, FOR~~
23 ~~unemployment insurance coverage, or for wages and fringe benefits for the other registered construction~~
24 ~~contractor or for any employee of the other construction contractor;~~

25 ~~(1) THE REGISTERED CONSTRUCTION CONTRACTOR;~~

26 ~~(2) THE EMPLOYEES OF THE REGISTERED CONSTRUCTION CONTRACTOR; OR~~

27 ~~(3) ANY SUBSEQUENT SUBCONTRACTOR OR THE EMPLOYEES OF ANY SUBSEQUENT~~
28 ~~SUBCONTRACTOR ENGAGED TO FULFILL A PART OF OR ALL OF THE OBLIGATIONS OF THE ORAL OR~~
29 ~~WRITTEN CONTRACT OF THE REGISTERED CONSTRUCTION CONTRACTOR LISTED IN SUBSECTION (1)~~
30 ~~if the contractor verifies with the department that the other contractor with whom the contractor is~~

1 ~~contracting for services is registered as provided under this chapter."~~

2

3 **SECTION 7. SECTION 39-9-211, MCA, IS AMENDED TO READ:**

4 **"39-9-211. Exemptions.** This chapter does not apply:

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

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

9 (3) to a public utility operating under the regulations of the public service commission or to a rural
10 cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work
11 incidental to its own business;

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

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

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

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

21 (8) to work or operation on one undertaking or project considered of a casual, minor, or
22 inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and
23 materials and all other items, is less than ~~\$500~~ \$2,500 a job. The exemption prescribed in this subsection
24 does not apply when the work or construction is only a part of a larger or major operation, whether
25 undertaken by the same or a different construction contractor, or in which a division of the operation is
26 made into contracts of amounts of less than ~~\$500~~ \$2,500 a job for the purpose of evasion of this chapter
27 or otherwise. ~~The exemption prescribed in this subsection does not apply to a person who advertises or~~
28 ~~puts out any sign or card or other device that might indicate to the public that the person is a contractor~~
29 ~~or is qualified to engage in the business of a contractor.~~

30 (9) ~~except when work is performed by a registered contractor,~~ to a ~~construction or operation~~

1 ~~incidental to the construction or repair:~~ farmer or rancher while engaged in a farming, dairying, agriculture,
 2 viticulture, horticulture, or stock or poultry operation;

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

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

5 ~~(c)(11) to an operation~~ related to clearing or other work upon land in rural districts for fire
 6 prevention purposes;

7 ~~(10)(12) to an owner who contracts for a project with work to be performed by a registered~~
 8 construction contractor, but this exemption does not apply to an owner who is otherwise covered by this
 9 chapter who constructs a residence on the owner's property with the intention and for the purpose of
 10 promptly selling the improved property;

11 ~~(11)(13) to a person an owner working on the person's owner's property, whether occupied by the~~
 12 ~~person owner or not, and a person working on the person's residence, whether owned by the person or~~
 13 ~~not,~~ but this exemption does not apply to a person an owner who is otherwise covered by this chapter who
 14 constructs an improvement on the person's owner's property with the intention and for the purpose of
 15 promptly selling the improved property, unless the owner has continuously occupied the property as the
 16 owner's primary residence for at least the last 12 months;

17 ~~(12)(14) to owners of commercial properties who use their own employees to do maintenance,~~
 18 repair, and alteration work in or upon their own properties;

19 ~~(13)(15) to a licensed an architect, or civil or professional engineer, or professional land surveyor,~~
 20 licensed in Montana and acting solely in a professional capacity;

21 ~~(14)(16) to an electrician or plumber, licensed in Montana, operating within the scope of the license;~~

22 ~~(15)(17) to a contract security company, licensed under Title 37, chapter 60, operating within the~~
 23 scope of the license; or

24 ~~(16)(18) to a person who engages in the activities regulated as an employee of a registered~~
 25 construction contractor with wages as the sole compensation or as an employee with wages as the sole
 26 compensation;

27 ~~(19) to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire~~
 28 suppression or fire protection equipment;

29 ~~(20) to a water well contractor licensed under Title 37, chapter 43, performing the work of a water~~
 30 well contractor;

1 (21) to an enrolled tribal member or an association, business, corporation, or other entity, at least
 2 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely
 3 within the exterior boundaries of an Indian reservation;

4 (22) to a contractor engaged in the logging industry who builds forest access roads for the purpose
 5 of harvesting and transporting logs from forest to mill;

6 (23) to a person working on the person's own residence, if the residence is owned by a person
 7 other than the resident; or

8 (24) to an independent contractor who has no employees. However, an independent contractor
 9 may voluntarily elect to register under this chapter."

10
 11 **SECTION 8. SECTION 39-9-301, MCA, IS AMENDED TO READ:**

12 **"39-9-301. Business practices -- ~~advertising~~ penalty.** (1) Except as provided in 39-9-205, a
 13 person who has registered under one name as provided in this chapter may not engage in the business or
 14 act in the capacity of a construction contractor under any other name unless that name also is registered
 15 under this chapter.

16 ~~(2) Except for telephone books, all advertising, contracts, correspondence, cards, signs, posters,~~
 17 ~~papers, and documents that show a contractor's name or address must show the contractor's name and~~
 18 ~~address as registered under this chapter.~~

19 ~~(3) (a) The alphabetized listing of contractors appearing in the advertising section of directories,~~
 20 ~~excluding telephone books, and all advertising must show the contractor's current registration number.~~
 21 ~~However, signs on motor vehicles and on premises signs do not constitute advertising under this section.~~

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

26 ~~(4) A contractor may not advertise that the contractor is bonded because of the bond required to~~
 27 ~~be filed provided in 39-9-203.~~

28 ~~(5)~~(2) A construction contractor may not falsify a registration number and use it in connection with
 29 a solicitation or identification as a construction contractor. An individual construction contractor, partner,
 30 associate, agent, salesperson, solicitor, officer, or employee of a construction contractor shall use a true

1 name and address at all times while engaged in the business or capacity of a construction contractor or in
2 activities related to a construction contractor.

3 ~~(6)~~(3) (a) The finding of a violation of this section by the department at a hearing held in
4 accordance with the Montana Administrative Procedure Act subjects the person who commits the violation
5 to a penalty of not more than \$5,000, as determined by the department. The required hearing may be held
6 by telephone or by videoconference. A penalty collected under this section must be deposited in the state
7 special revenue account to the credit of the department for administration and enforcement of this chapter.

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

10

11 **SECTION 9. SECTION 39-9-303, MCA, IS AMENDED TO READ:**

12 "39-9-303. Department to compile and update list of registered construction contractors --
13 availability -- fee. (1) The department shall compile a list of all construction contractors registered under
14 this chapter 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 construction contractor
17 is registered. The department shall provide the information without charge, except for a reasonable fee for
18 any copies made."

19

20 **SECTION 10. SECTION 39-9-401, MCA, IS AMENDED TO READ:**

21 "39-9-401. Violation -- infraction -- **PENALTY -- DISPOSITION.** ~~(1)~~(1) It is a violation of this
22 chapter and an infraction for any construction contractor to:

23 ~~(a)~~(1)(A) advertise, offer to perform work, submit a bid, or perform work as a construction
24 contractor without being registered as required by this chapter;

25 ~~(b)~~(2)(B) advertise, offer to perform work, submit a bid, or perform work as a construction
26 contractor when the construction contractor's registration is suspended; or

27 ~~(c)~~(3)(C) transfer a valid registration to an unregistered construction contractor or allow an
28 unregistered construction contractor to work under a registration issued to another construction contractor.

29 ~~(2) Each day that a contractor works without being registered as required by this chapter, works~~
30 ~~while the contractor's registration is suspended, or works under a registration issued to another contractor~~

1 ~~is a separate infraction. Each worksite at which a contractor works without being registered as required~~
 2 ~~by this chapter, works while the contractor's registration is suspended, or works under a registration issued~~
 3 ~~to another contractor is a separate infraction.~~

4 (2) (A) A DETERMINATION BY THE DEPARTMENT OF A VIOLATION OF THIS SECTION SUBJECTS
 5 THE PERSON WHO COMMITS THE VIOLATION TO A PENALTY OF UP TO \$500, AS DETERMINED BY THE
 6 DEPARTMENT. A PERSON WHO HAS BEEN DETERMINED TO HAVE VIOLATED THIS SECTION MAY
 7 REQUEST THAT A HEARING BE HELD IN ACCORDANCE WITH THE MONTANA ADMINISTRATIVE
 8 PROCEDURE ACT. THE HEARING MAY BE HELD BY TELEPHONE OR VIDEO CONFERENCE. AN APPEAL
 9 OF THE HEARING DECISION MUST BE MADE IN THE SAME MANNER AS PRESCRIBED IN 39-51-2403
 10 AND 39-51-2404.

11 (B) A PENALTY UNDER THIS SECTION DOES NOT APPLY TO A VIOLATION THAT IS DETERMINED
 12 TO BE AN INADVERTENT ERROR.

13 (C) A PENALTY COLLECTED UNDER THIS SECTION MUST BE DEPOSITED IN THE UNINSURED
 14 EMPLOYERS' FUND ESTABLISHED IN 39-71-502."

15
 16 **Section 11.** Section 39-71-120, MCA, is amended to read:

17 **"39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders
 18 service in the course of an occupation and:

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

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

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

23 (2) An individual performing services for remuneration ~~who represents to the public that the~~
 24 ~~individual is an independent contractor~~ is considered to be an independent contractor and not an employee
 25 under this chapter ~~unless the requirements of subsection (1) are met~~ UNLESS THE REQUIREMENTS OF
 26 SUBSECTION (1) ARE MET. An individual representing to the public that the individual is an independent
 27 contractor may not make claims against an employing unit ANY PERSON FOR WHOM THE INDEPENDENT
 28 CONTRACTOR RENDERS SERVICE IN EXCHANGE FOR PAY OR ANY OTHER CONSIDERATION. The
 29 department may not take action against a person relying on a claim of independent contractor status
 30 pursuant to this subsection.

1 ~~(3) The department may not adopt rules to implement this section.~~

2
3 **Section 12.** Section 39-71-401, MCA, is amended to read:

4 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
5 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
6 all employees, as defined in 39-71-118. An employer who has any employee in service under any
7 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
8 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
9 Compensation Act is subject to and bound by the compensation plan that has been elected by the
10 employer.

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

- 13 (a) household and domestic employment;
- 14 (b) casual employment as defined in 39-71-116;
- 15 (c) employment of a dependent member of an employer's family for whom an exemption may be
16 claimed by the employer under the federal Internal Revenue Code;
- 17 (d) employment of sole proprietors, working members of a partnership, or working members of a
18 member-managed limited liability company, except as provided in subsection (3);
- 19 (e) employment of a broker or salesman performing under a license issued by the board of realty
20 regulation;
- 21 (f) employment of a direct seller as defined in 26 U.S.C. 3508;
- 22 (g) employment for which a rule of liability for injury, occupational disease, or death is provided
23 under the laws of the United States;
- 24 (h) employment of a person performing services in return for aid or sustenance only, except
25 employment of a volunteer under 67-2-105;
- 26 (i) employment with a railroad engaged in interstate commerce, except that railroad construction
27 work is included in and subject to the provisions of this chapter;
- 28 (j) employment as an official, including a timer, referee, or judge, at a school amateur athletic
29 event, unless the person is otherwise employed by a school district;
- 30 (k) employment of a person performing services as a newspaper carrier or free-lance correspondent

1 if the person performing the services or a parent or guardian of the person performing the services in the
2 case of a minor has acknowledged in writing that the person performing the services and the services are
3 not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or
4 photographs for publication and is paid by the article or by the photograph. As used in this subsection,
5 "newspaper carrier":

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

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

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

11 (m) a person who is employed by an enrolled tribal member or an association, business,
12 corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose
13 business is conducted solely within the exterior boundaries of an Indian reservation;

14 (n) employment of a jockey performing under a license issued by the board of horseracing from the
15 time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after
16 a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
17 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

18 (o) employment of an employer's spouse for whom an exemption based on marital status may be
19 claimed by the employer under 26 U.S.C. 7703;

20 (p) a person who performs services as a petroleum land professional. As used in this subsection,
21 a "petroleum land professional" is a person who:

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

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

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

27 (q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited
28 liability company who qualifies under one or more of the following provisions:

29 (i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the
30 limited liability company and does not receive any pay from the corporation or the limited liability company

1 for performance of the duties;

2 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
3 limited liability company;

4 (iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation
5 or owns 20% or more of the limited liability company; or

6 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
7 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the
8 number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

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

13 (b) The application must be made in accordance with the rules adopted by the department. There
14 is ~~no~~ A \$25 fee for the initial application. Any subsequent application RENEWAL must be accompanied by
15 a \$25 application fee. The application fee must be deposited in the administration fund established in
16 39-71-201 to offset the costs of administering the program.

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

20 (d) ~~The exemption, if approved, remains in effect for 1 year following the date of the department's~~
21 ~~approval. To maintain the independent contractor status, an independent contractor shall annually submit~~
22 ~~a renewal application. A renewal application must be submitted for all independent contractor exemptions~~
23 ~~approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee~~
24 ~~must be received by the department at least 30 days prior to the anniversary date of the previously~~
25 ~~approved exemption. When an election of an exemption is approved by the department, the election~~
26 ~~remains effective and the independent contractor retains the status of an independent contractor until the~~
27 ~~independent contractor notifies the department of any change in status and provides a description of the~~
28 ~~independent contractor's present work status~~ THE EXEMPTION, IF APPROVED, REMAINS IN EFFECT FOR
29 3 YEARS FOLLOWING THE DATE OF THE DEPARTMENT'S APPROVAL. TO MAINTAIN THE INDEPENDENT
30 CONTRACTOR STATUS, AN INDEPENDENT CONTRACTOR SHALL EVERY 3 YEARS SUBMIT A RENEWAL

1 APPLICATION. A RENEWAL APPLICATION MUST BE SUBMITTED FOR ALL INDEPENDENT CONTRACTOR
2 EXEMPTIONS APPROVED AS OF JULY 1, 1995, OR THEREAFTER. THE RENEWAL APPLICATION AND
3 THE \$25 RENEWAL APPLICATION FEE MUST BE RECEIVED BY THE DEPARTMENT AT LEAST 30 DAYS
4 PRIOR TO THE ANNIVERSARY DATE OF THE PREVIOUSLY APPROVED EXEMPTION.

5 (e) A person who ~~purpose~~ makes a false statement or misrepresentation concerning that person's
6 status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may
7 impose the penalty for each false statement or misrepresentation. The penalty must be paid to the
8 uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

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

13 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
14 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
15 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers
16 or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following
17 manner:

18 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by
19 delivering the notice to the board of directors of the corporation or to the management organization of the
20 manager-managed limited liability company; or

21 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
22 delivering the notice to the board of directors of the corporation or to the management organization of the
23 manager-managed limited liability company and to the insurer.

24 (b) If the employer changes plans or insurers, the employer's previous election is not effective and
25 the employer shall again serve notice to its insurer and to its board of directors or the management
26 organization of the manager-managed limited liability company if the employer elects to be bound.

27 (5) The appointment or election of an employee as an officer of a corporation, a partner in a
28 partnership, or a member in or a manager of a limited liability company for the purpose of exempting the
29 employee from coverage under this chapter does not entitle the officer, partner, member, or manager to
30 exemption from coverage.

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

11 **Section 4.** ~~Section 39-71-405, MCA, is amended to read:~~

12 ~~"39-71-405. Liability of employer who contracts work out. (1) An employer who contracts with~~
 13 ~~a contractor or an independent contractor to have work performed of a kind which that is a regular or a~~
 14 ~~recurrent part of the work of the trade, business, occupation, or profession of such the employer is not~~
 15 ~~liable for the payment of benefits under this chapter to the employees of the contractor or to the~~
 16 ~~independent contractor if the contractor or independent contractor has not properly complied with the~~
 17 ~~coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment~~
 18 ~~of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the~~
 19 ~~contractor primarily liable therein.~~

20 ~~(2) Where When an employer contracts to have any work to be done by a contractor other than~~
 21 ~~or an independent contractor, and the work so contracted to be done is a part or process in the trade or~~
 22 ~~business of the employer, then the employer is not liable to pay all benefits under this chapter to the same~~
 23 ~~extent as if the work were done without the intervention of the contractor, and the work so contracted to~~
 24 ~~be done shall not be construed to be casual employment even if the work contracted to be done is a part~~
 25 ~~or process in the trade, business, occupation, or profession of the employer. Where When an employer~~
 26 ~~contracts work to be done as specified in this subsection, the contractor and the contractor's employees~~
 27 ~~shall may not come under that plan of compensation adopted by the employer.~~

28 ~~(3) Where When an employer contracts any work to be done, wholly or in part for the employer,~~
 29 ~~by an independent contractor, where and the work so contracted to be done is casual employment as to~~
 30 ~~such the employer, then the contractor shall become the is not an employer for the purposes of this~~

1 chapter."

2

3 ~~NEW SECTION. Section 5. Fee refund. The department of labor and industry shall refund all fees~~
4 ~~collected under the provisions of former 39-9-206.~~

5

6 NEW SECTION. SECTION 13. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
7 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
8 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
9 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

10

11 NEW SECTION. Section 14. Repealer. Sections 39-3-701, 39-3-702, 39-3-703, 39-3-705,
12 39-3-706, ~~39-9-101, 39-9-102, 39-9-103, 39-9-201, 39-9-202, 39-9-203, 39-9-204, 39-9-205, 39-9-206,~~
13 ~~39-9-207, 39-9-211, 39-9-301, 39-9-302, 39-9-303, 39-9-304, 39-9-401, 39-9-402, 39-9-403, 39-9-404,~~
14 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, and 39-9-410, MCA, are repealed.

15

16 NEW SECTION. SECTION 15. APPROPRIATION. THERE IS APPROPRIATED FROM THE STATE
17 SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF LABOR AND INDUSTRY UP TO \$315,000 FOR
18 THE BIENNIUM ENDING JUNE 30, 1999, FOR THE PURPOSE OF ADMINISTERING THE CONSTRUCTION
19 CONTRACTOR REGISTRATION PROGRAM.

20

21 NEW SECTION. Section 16. Effective date. [This act] is effective July 1, 1997.

22

-END-