

1 SENATE BILL NO. 3

2 INTRODUCED BY NELSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT DELETING THE REQUIREMENT THAT AN INDEPENDENT
5 CONTRACTOR RECEIVE AN EXEMPTION FROM THE WORKERS' COMPENSATION ACT; ELIMINATING THE
6 \$25 INDEPENDENT CONTRACTOR EXEMPTION APPLICATION FEE; AMENDING SECTIONS 39-9-206,
7 39-71-120, AND 39-71-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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11 **Section 1.** Section 39-9-206, MCA, is amended to read:

12 **"39-9-206. Fees -- education program.** (1) The department shall charge fees for:

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

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

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

18 (3) The fees charged in subsection (1)(a) may not exceed \$80.

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

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

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

26
27 **Section 2.** Section 39-71-120, MCA, is amended to read:

28 **"39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders
29 service in the course of an occupation and:

30 (a) has been and will continue to be free from control or direction over the performance of the

1 services, both under the contract and in fact; and

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

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

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

6

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

8 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
9 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to
10 all employees, as defined in 39-71-118. An employer who has any employee in service under any
11 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
12 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
13 Compensation Act is subject to and bound by the compensation plan that has been elected by the
14 employer.

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

17 (a) household and domestic employment;

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

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

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

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

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

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

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

30 (i) employment with a railroad engaged in interstate commerce, except that railroad construction

1 work is included in and subject to the provisions of this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (3) (a) A sole proprietor, a working member of a partnership, or a working member of a
14 member-managed limited liability company who represents to the public that the person is an independent
15 contractor shall elect to be bound personally and individually by the provisions of compensation plan No.
16 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

17 (b) The application must be made in accordance with the rules adopted by the department. There
18 is no fee for the initial application. ~~Any subsequent application must be accompanied by a \$25 application~~
19 ~~fee. The application fee must be deposited in the administration fund established in 30-71-201 to offset~~
20 ~~the costs of administering the program. The department may deny the application only if it determines that~~
21 ~~the applicant is not an independent contractor.~~

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

24 ~~The exemption, if approved, remains in effect for 1 year following the date of the department's~~
25 ~~approval. To maintain the independent contractor status, an independent contractor shall annually submit~~
26 ~~a renewal application. A renewal application must be submitted for all independent contractor exemptions~~
27 ~~approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee~~
28 ~~must be received by the department at least 30 days prior to the anniversary date of the previously~~
29 ~~approved exemption. When an election of an exemption is approved by the department, the election~~
30 ~~remains effective and the independent contractor retains the status of an independent contractor until the~~

1 independent contractor notifies the department of any change in status and provides a description of
2 present work status.

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

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

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

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

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

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

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

29 (6) Each employer shall post a sign in the workplace at the locations where notices to employees
30 are normally posted, informing employees about the employer's current provision of workers' compensation

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

8

9 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0003, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act deleting the requirement that an independent contractor receive an exemption from the Workers' Compensation Act and eliminating the renewal process for the independent contractor exemption and eliminating the \$25 renewal fee.

ASSUMPTIONS:

1. Independent contractor (IC) exemptions will continue to be issued to those individuals requesting an exemption.
2. While there may be fewer exemptions issued because of the elimination of the "C" portion of the independent contractor definition, staff will still evaluate applications, issue IC exemptions, and resolve related compliance issues. The screening process to evaluate applications will increase with the elimination of the affidavit.
3. Funding for the exemption process in the Independent Contractor Central Unit would revert back to the Workers' Compensation assessment state special revenue account (02455) which funded the IC exemption process in the past.
4. Division administration costs are reapportioned over remaining fund sources in the division.

FISCAL IMPACT:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Personal Services	0	0
Operating Expenses	0	0
Equipment	<u>0</u>	<u>0</u>
Total	0	0

Funding:

SSR (IC Exemption-02091)	(216,475)	(213,236)
SSR (ESA-02258)	13,019	12,644
SSR (WCA-02455)	185,014	182,681
FSR (DLI Fed Funds-03128)	1,719	1,669
FSR (Fed Safety Funds-03130)	1,238	1,202
FSR (Fed MSHA Funds-03195)	2,484	2,413
Prop (SIF Adm-06041)	391	380
Prop (UEF Adm-06055)	<u>12,610</u>	<u>12,246</u>
Total	0	0

Revenues:

SSR (IC Exemption-02091)	(216,475)	(213,236)
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Dave Lewis 1-7-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Linda Nelson 1-9-97
 LINDA NELSON, PRIMARY SPONSOR DATE
 Fiscal Note for SB0003, as introduced