

D. Williams

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Senate BILL NO. 251

INTRODUCED BY Alana BENEDICT

Talor Ellis, Kitzelary M Taylor

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WORKERS' COMPENSATION ACT COVERAGE REQUIREMENTS FOR A STUDENT WHO IS ENROLLED IN A SECONDARY OR POSTSECONDARY EDUCATIONAL INSTITUTION AND WHO PARTICIPATES AS A VOLUNTEER OR FOR WAGES IN WORK-BASED LEARNING ACTIVITIES; DEFINING "BUSINESS PARTNER" AND "WORK-BASED LEARNING ACTIVITIES"; AMENDING SECTIONS 39-71-116, 39-71-118, AND 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases used in this chapter have the following meanings:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

- (a) investigation, review, and settlement of claims;
- (b) payment of benefits;
- (c) setting of reserves;
- (d) furnishing of services and facilities; and
- (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means ~~any~~ a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department ~~prior to~~ before July 1 of each year.

1 (5) "Beneficiary" means:

2 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time
3 of injury;

4 (b) an unmarried child under 18 years of age;

5 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or
6 is enrolled in an accredited apprenticeship program;

7 (d) an invalid child over 18 years of age who is dependent upon the decedent for support at the
8 time of injury;

9 (e) a parent who is dependent upon the decedent for support at the time of the injury if a
10 beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

11 (f) a brother or sister under 18 years of age if dependent upon the decedent for support at the time
12 of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a)
13 through (5)(e), does not exist.

14 (6) "Business partner" means the community or business organization that provides the premises
15 for work-based learning activities for students.

16 ~~(6)(7)~~ "Casual employment" means employment not in the usual course of the trade, business,
17 profession, or occupation of the employer.

18 ~~(7)(8)~~ "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior
19 to the injury.

20 ~~(8)(9)~~ "Construction industry" means the major group of general contractors and operative builders,
21 heavy construction (other than building construction) contractors, and special trade contractors, listed in
22 major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not
23 include office workers, design professionals, salespersons, estimators, or any other related employment that
24 is not directly involved on a regular basis in the provision of physical labor at a construction or renovation
25 site.

26 ~~(9)(10)~~ "Days" means calendar days, unless otherwise specified.

27 ~~(10)(11)~~ "Department" means the department of labor and industry.

28 ~~(11)(12)~~ "Fiscal year" means the period of time between July 1 and the succeeding June 30.

29 ~~(12)(13)~~ "Household or domestic employment" means employment of persons other than members
30 of the household for the purpose of tending to the aid and comfort of the employer or members of the

1 employer's family, including but not limited to housecleaning and yard work, but does not include
 2 employment beyond the scope of normal household or domestic duties, such as home health care or
 3 domiciliary care.

4 ~~(13)~~(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
 5 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

6 ~~(14)~~(15) "Invalid" means one who is physically or mentally incapacitated.

7 ~~(15)~~(16) "Limited liability company" is as defined in 35-8-102.

8 ~~(16)~~(17) "Maintenance care" means treatment designed to provide the optimum state of health
 9 while minimizing recurrence of the clinical status.

10 ~~(17)~~(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in
 11 the healing process when further material improvement would not be reasonably expected from primary
 12 medical treatment.

13 ~~(18)~~(19) "Objective medical findings" means medical evidence, including range of motion, atrophy,
 14 muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

15 ~~(19)~~(20) "Order" means any decision, rule, direction, requirement, or standard of the department
 16 or any other determination arrived at or decision made by the department.

17 ~~(20)~~(21) "Palliative care" means treatment designed to reduce or ease symptoms without curing
 18 the underlying cause of the symptoms.

19 ~~(21)~~(22) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average
 20 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a
 21 sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the
 22 current year. However, an estimate may be made by the department for any employer starting in business
 23 if average payrolls are not available. This estimate must be adjusted by additional payment by the employer
 24 or refund by the department, as the case may actually be, on December 31 of the current year. An
 25 employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by
 26 an employer.

27 ~~(22)~~(23) "Permanent partial disability" means a physical condition in which a worker, after reaching
 28 maximum medical healing:

29 (a) has a permanent impairment established by objective medical findings;

30 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's

1 ability to work; and

2 (c) has an actual wage loss as a result of the injury.

3 ~~(23)~~(24) "Permanent total disability" means a physical condition resulting from injury as defined in
4 this chapter, after a worker reaches maximum medical healing, in which a worker does not have a
5 reasonable prospect of physically performing regular employment. Regular employment means work on a
6 recurring basis performed for remuneration in a trade, business, profession, or other occupation in this
7 state. Lack of immediate job openings is not a factor to be considered in determining if a worker is
8 permanently totally disabled.

9 ~~(24)~~(25) The "plant of the employer" includes the place of business of a third person while the
10 employer has access to or control over the place of business for the purpose of carrying on the employer's
11 usual trade, business, or occupation.

12 ~~(25)~~(26) "Primary medical services" means treatment prescribed by a treating physician, for
13 conditions resulting from the injury, necessary for achieving medical stability.

14 ~~(26)~~(27) "Public corporation" means the state or any county, municipal corporation, school district,
15 city, city under a commission form of government or special charter, town, or village.

16 ~~(27)~~(28) "Reasonably safe place to work" means that the place of employment has been made as
17 free from danger to the life or safety of the employee as the nature of the employment will reasonably
18 permit.

19 ~~(28)~~(29) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and
20 that are reasonably safe for use for the particular purpose for which they are furnished.

21 ~~(29)~~(30) (a) "Secondary medical services" means those medical services or appliances that are
22 considered not medically necessary for medical stability. The services and appliances include but are not
23 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
24 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,
25 hospitals, or rehabilitation facilities.

26 (b) (i) As used in this subsection ~~(29)~~ (30), "disability" means a condition in which a worker's
27 ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an
28 injury. The restrictions may be combined with factors, such as the worker's age, education, work history,
29 and other factors that affect the worker's ability to engage in gainful employment.

30 (ii) Disability does not mean a purely medical condition.

1 ~~(30)~~(31) "Sole proprietor" means the person who has the exclusive legal right or title to or
2 ownership of a business enterprise.

3 ~~(31)~~(32) "Temporary partial disability" means a physical condition resulting from an injury, as
4 defined in 39-71-119, in which a worker, prior to maximum healing:

5 (a) is temporarily unable to return to the position held at the time of injury because of a medically
6 determined physical restriction;

7 (b) returns to work in a modified or alternative employment; and

8 (c) suffers a partial wage loss.

9 ~~(32)~~(33) "Temporary service contractor" means a person, firm, association, partnership, limited
10 liability company, or corporation conducting business that hires its own employees and assigns them to
11 clients to fill a work assignment with a finite ending date to support or supplement the client's workforce
12 in situations resulting from employee absences, skill shortages, seasonal workloads, and special
13 assignments and projects.

14 ~~(33)~~(34) "Temporary total disability" means a physical condition resulting from an injury, as defined
15 in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum
16 medical healing.

17 ~~(34)~~(35) "Temporary worker" means a worker whose services are furnished to another on a
18 part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement
19 a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special
20 assignments and projects.

21 ~~(35)~~(36) "Treating physician" means a person who is primarily responsible for the treatment of a
22 worker's compensable injury and is:

23 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
24 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

25 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

26 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
27 there is not a physician, as defined in subsection ~~(35)(a)~~ (36)(a), in the area where the physician
28 assistant-certified is located;

29 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

30 (e) a dentist licensed by the state of Montana under Title 37, chapter 4.

1 (37) "Work-based learning activities" means job training and work experience that are provided to
2 students currently enrolled in a secondary or postsecondary educational institution and that are conducted
3 on the premises of a business partner.

4 ~~(36)~~(38) "Year", unless otherwise specified, means calendar year."

5
6 **Section 2.** Section 39-71-118, MCA, is amended to read:

7 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term
8 "employee" or "worker" means:

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

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

20 (c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under
21 a state or federal vocational training program, whether or not under an appointment or contract of hire with
22 an employer, as defined in this chapter, and, except as provided in subsection (9), whether or not receiving
23 payment from a third party. However, this subsection does not apply to students enrolled in vocational
24 training programs, as outlined in this subsection, while they are on the premises of a public school or
25 community college.

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

27 (e) a person, other than a juvenile as defined in subsection (1)(b), performing community service
28 for a nonprofit organization or association or for a federal, state, or local government entity under a court
29 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under
30 appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving

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

1 member of the partnership, the owner of the sole proprietorship, or any member of the limited liability
2 company devoting full time to the partnership, proprietorship, or limited liability company business.

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

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

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

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

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

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

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

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

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

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

8 (9) A student currently enrolled in a secondary or postsecondary educational institution who is
 9 participating in work-based learning activities and who is not paid wages by the business partner or the
 10 educational institution is a volunteer and is subject to the provisions of this chapter.

11 ~~(9)(10)~~ For purposes of this section, an "employee or worker in this state" means:

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

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

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

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

20 (i) nonresident employees are hired in Montana;

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

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

23 (iv) business records are maintained in Montana.

24 ~~(10)(11)~~ An insurer may require coverage for all nonresident employees of a Montana employer who
 25 do not meet the requirements of subsection ~~(9)(b)~~ (10)(b) or ~~(9)(d)~~ (10)(d) as a condition of approving the
 26 election under subsection ~~(9)(d)~~ (10)(d)."

27
 28 **Section 3.** Section 39-71-401, MCA, is amended to read:

29 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
 30 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to

1 all employees, as defined in 39-71-118. An employer who has any employee in service under any
2 appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the
3 provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers'
4 Compensation Act is subject to and bound by the compensation plan that has been elected by the
5 employer.

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

8 (a) household and domestic employment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (r) a student currently enrolled in a secondary or postsecondary educational institution who is
6 participating in work-based learning activities and who is paid wages by the business partner or the
7 educational institution.

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

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

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

18 (d) The exemption, if approved, remains in effect for 1 year following the date of the department's
19 approval. To maintain the independent contractor status, an independent contractor shall annually submit
20 a renewal application. ~~A renewal application must be submitted for all independent contractor exemptions~~
21 ~~approved as of July 1, 1995, or thereafter.~~ The renewal application and the \$25 renewal application fee
22 must be received by the department at least 30 days prior to the anniversary date of the previously
23 approved exemption.

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

28 (f) If the department denies the application for exemption, the applicant may contest the denial by
29 petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An
30 applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with

1 the procedure established in 39-51-2403 and 39-51-2404.

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

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

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

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

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

20 (6) Each employer shall post a sign in the workplace at the locations where notices to employees
21 are normally posted, informing employees about the employer's current provision of workers' compensation
22 insurance. A workplace is any location where an employee performs any work-related act in the course of
23 employment, regardless of whether the location is temporary or permanent, and includes the place of
24 business or property of a third person while the employer has access to or control over the place of
25 business or property for the purpose of carrying on the employer's usual trade, business, or occupation.
26 The sign must be provided by the department, distributed through insurers or directly by the department,
27 and posted by employers in accordance with rules adopted by the department. An employer who purposely
28 or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."
29

30 **NEW SECTION. Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are

1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
2 applications, the part remains in effect in all valid applications that are severable from the invalid
3 applications.

4

5 **NEW SECTION. Section 5. Effective date -- applicability.** [This act] is effective July 1, 1997, and
6 applies to claims for benefits filed on or after [the effective date of this act].

7

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0251, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill clarifying workers' compensation act coverage requirements for a student who is enrolled in a secondary or postsecondary educational institution and who participates as a volunteer or for wages in work-based learning activities.

ASSUMPTIONS:

1. The proposed legislation creates an exemption from the workers' compensation act for students enrolled in secondary or postsecondary educational institutions who are participating in work-based learning activities and who are working for wages or as volunteers.
2. The State Fund will not receive premium income to provide coverage for this class of student-employee, unless coverage is elected.
3. The State Fund will not make benefit payments to compensate this class of student-employee for injuries or occupational disease, unless coverage is elected.
4. Students of the Montana University System (MUS) who participate in campus work-study programs are covered for workers' compensation by the MUS.

FISCAL IMPACT:

Passage of SB 251 will have no fiscal impact on the state.

Dave Lewis 2-5-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Barry Stang 2/6/97
BARRY STANG, PRIMARY SPONSOR DATE
Fiscal Note for SB0251, as introduced
SB 251

SENATE BILL NO. 251

INTRODUCED BY STANG, BENEDICT, MAHLUM, TOEWS, ELLIS, KITZENBERG, M. TAYLOR

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WORKERS' COMPENSATION ACT COVERAGE REQUIREMENTS FOR A STUDENT WHO IS ENROLLED IN A AN ELEMENTARY, SECONDARY, OR POSTSECONDARY EDUCATIONAL INSTITUTION AND WHO PARTICIPATES AS A VOLUNTEER OR FOR WAGES IN WORK-BASED LEARNING ACTIVITIES; DEFINING "BUSINESS PARTNER" AND "WORK-BASED LEARNING ACTIVITIES"; AMENDING SECTIONS 39-71-116, AND 39-71-118, ~~AND 39-71-401~~, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases used in this chapter have the following meanings:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means ~~any~~ a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department ~~prior to~~ before July 1 of each year.

1 (5) "Beneficiary" means:

2 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time
3 of injury;

4 (b) an unmarried child under 18 years of age;

5 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or
6 is enrolled in an accredited apprenticeship program;

7 (d) an invalid child over 18 years of age who is dependent upon the decedent for support at the
8 time of injury;

9 (e) a parent who is dependent upon the decedent for support at the time of the injury if a
10 beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

11 (f) a brother or sister under 18 years of age if dependent upon the decedent for support at the time
12 of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a)
13 through (5)(e), does not exist.

14 (6) "Business partner" means the community, GOVERNMENTAL ENTITY, or business organization
15 that provides the premises for work-based learning activities for students.

16 ~~(6)(7)~~ "Casual employment" means employment not in the usual course of the trade, business,
17 profession, or occupation of the employer.

18 ~~(7)(8)~~ "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior
19 to the injury.

20 ~~(8)(9)~~ "Construction industry" means the major group of general contractors and operative builders,
21 heavy construction (other than building construction) contractors, and special trade contractors, listed in
22 major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not
23 include office workers, design professionals, salespersons, estimators, or any other related employment that
24 is not directly involved on a regular basis in the provision of physical labor at a construction or renovation
25 site.

26 ~~(9)(10)~~ "Days" means calendar days, unless otherwise specified.

27 ~~(10)(11)~~ "Department" means the department of labor and industry.

28 ~~(11)(12)~~ "Fiscal year" means the period of time between July 1 and the succeeding June 30.

29 ~~(12)(13)~~ "Household or domestic employment" means employment of persons other than members
30 of the household for the purpose of tending to the aid and comfort of the employer or members of the

1 employer's family, including but not limited to housecleaning and yard work, but does not include
 2 employment beyond the scope of normal household or domestic duties, such as home health care or
 3 domiciliary care.

4 ~~(13)~~(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
 5 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

6 ~~(14)~~(15) "Invalid" means one who is physically or mentally incapacitated.

7 ~~(15)~~(16) "Limited liability company" is as defined in 35-8-102.

8 ~~(16)~~(17) "Maintenance care" means treatment designed to provide the optimum state of health
 9 while minimizing recurrence of the clinical status.

10 ~~(17)~~(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in
 11 the healing process when further material improvement would not be reasonably expected from primary
 12 medical treatment.

13 ~~(18)~~(19) "Objective medical findings" means medical evidence, including range of motion, atrophy,
 14 muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

15 ~~(19)~~(20) "Order" means any decision, rule, direction, requirement, or standard of the department
 16 or any other determination arrived at or decision made by the department.

17 ~~(20)~~(21) "Palliative care" means treatment designed to reduce or ease symptoms without curing
 18 the underlying cause of the symptoms.

19 ~~(21)~~(22) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average
 20 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a
 21 sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the
 22 current year. However, an estimate may be made by the department for any employer starting in business
 23 if average payrolls are not available. This estimate must be adjusted by additional payment by the employer
 24 or refund by the department, as the case may actually be, on December 31 of the current year. An
 25 employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by
 26 an employer.

27 ~~(22)~~(23) "Permanent partial disability" means a physical condition in which a worker, after reaching
 28 maximum medical healing:

29 (a) has a permanent impairment established by objective medical findings;

30 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's

1 ability to work; and

2 (c) has an actual wage loss as a result of the injury.

3 ~~(23)~~(24) "Permanent total disability" means a physical condition resulting from injury as defined in
4 this chapter, after a worker reaches maximum medical healing, in which a worker does not have a
5 reasonable prospect of physically performing regular employment. Regular employment means work on a
6 recurring basis performed for remuneration in a trade, business, profession, or other occupation in this
7 state. Lack of immediate job openings is not a factor to be considered in determining if a worker is
8 permanently totally disabled.

9 ~~(24)~~(25) The "plant of the employer" includes the place of business of a third person while the
10 employer has access to or control over the place of business for the purpose of carrying on the employer's
11 usual trade, business, or occupation.

12 ~~(25)~~(26) "Primary medical services" means treatment prescribed by a treating physician, for
13 conditions resulting from the injury, necessary for achieving medical stability.

14 ~~(26)~~(27) "Public corporation" means the state or any county, municipal corporation, school district,
15 city, city under a commission form of government or special charter, town, or village.

16 ~~(27)~~(28) "Reasonably safe place to work" means that the place of employment has been made as
17 free from danger to the life or safety of the employee as the nature of the employment will reasonably
18 permit.

19 ~~(28)~~(29) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and
20 that are reasonably safe for use for the particular purpose for which they are furnished.

21 ~~(29)~~(30) (a) "Secondary medical services" means those medical services or appliances that are
22 considered not medically necessary for medical stability. The services and appliances include but are not
23 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
24 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,
25 hospitals, or rehabilitation facilities.

26 (b) (i) As used in this subsection ~~(29)~~ (30), "disability" means a condition in which a worker's
27 ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an
28 injury. The restrictions may be combined with factors, such as the worker's age, education, work history,
29 and other factors that affect the worker's ability to engage in gainful employment.

30 (ii) Disability does not mean a purely medical condition.

1 ~~(30)~~(31) "Sole proprietor" means the person who has the exclusive legal right or title to or
2 ownership of a business enterprise.

3 ~~(34)~~(32) "Temporary partial disability" means a physical condition resulting from an injury, as
4 defined in 39-71-119, in which a worker, prior to maximum healing:

5 (a) is temporarily unable to return to the position held at the time of injury because of a medically
6 determined physical restriction;

7 (b) returns to work in a modified or alternative employment; and

8 (c) suffers a partial wage loss.

9 ~~(32)~~(33) "Temporary service contractor" means a person, firm, association, partnership, limited
10 liability company, or corporation conducting business that hires its own employees and assigns them to
11 clients to fill a work assignment with a finite ending date to support or supplement the client's workforce
12 in situations resulting from employee absences, skill shortages, seasonal workloads, and special
13 assignments and projects.

14 ~~(33)~~(34) "Temporary total disability" means a physical condition resulting from an injury, as defined
15 in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum
16 medical healing.

17 ~~(34)~~(35) "Temporary worker" means a worker whose services are furnished to another on a
18 part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement
19 a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special
20 assignments and projects.

21 ~~(35)~~(36) "Treating physician" means a person who is primarily responsible for the treatment of a
22 worker's compensable injury and is:

23 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
24 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

25 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

26 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
27 there is not a physician, as defined in subsection ~~(35)(a)~~ (36)(a), in the area where the physician
28 assistant-certified is located;

29 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

30 (e) a dentist licensed by the state of Montana under Title 37, chapter 4.

1 ~~(37) "Work-based learning activities" means job training and work experience that are provided to~~
 2 ~~students currently enrolled in a secondary or postsecondary educational institution and that are conducted~~
 3 ~~on the premises of a business partner~~ CONDUCTED ON THE PREMISES OF A BUSINESS PARTNER AS A
 4 COMPONENT OF SCHOOL-BASED LEARNING ACTIVITIES AUTHORIZED BY AN ELEMENTARY,
 5 SECONDARY, OR POSTSECONDARY EDUCATIONAL INSTITUTION.

6 ~~(36)(38)~~ "Year", unless otherwise specified, means calendar year."
 7

8 **Section 2.** Section 39-71-118, MCA, is amended to read:

9 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term
 10 "employee" or "worker" means:

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

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

22 (c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under
 23 a state or federal vocational training program, whether or not under an appointment or contract of hire with
 24 an employer, as defined in this chapter, and, except as provided in subsection (9), whether or not receiving
 25 payment from a third party. However, this subsection does not apply to students enrolled in vocational
 26 training programs, as outlined in this subsection, while they are on the premises of a public school or
 27 community college.

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

29 (e) a person, other than a juvenile as defined in subsection (1)(b), performing community service
 30 for a nonprofit organization or association or for a federal, state, or local government entity under a court

1 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under
2 appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving
3 payment from a third party. For a person covered by the definition in this subsection (1)(e):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection,
30 or the county commissioners or trustees for a fire service area may elect to include as an employee within

1 the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
2 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

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

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

10 (9) A student currently enrolled in a AN ELEMENTARY, secondary, or postsecondary educational
11 institution who is participating in work-based learning activities and WHO IS PAID WAGES BY THE
12 EDUCATIONAL INSTITUTION OR BUSINESS PARTNER IS THE EMPLOYEE OF THE ENTITY THAT PAYS
13 THE STUDENT'S WAGES FOR ALL PURPOSES UNDER THIS CHAPTER. A STUDENT who is not paid
14 wages by the business partner or the educational institution is a volunteer and is subject to the provisions
15 of this chapter.

16 ~~(9)(10)~~ 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)(11)~~ An insurer may require coverage for all nonresident employees of a Montana employer who
30 do not meet the requirements of subsection ~~(9)(b)~~ (10)(b) or ~~(9)(d)~~ (10)(d) as a condition of approving the

1 election under subsection ~~(9)(d)~~ (10)(d)."

2

3 **Section 3.** ~~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 ~~(iii) 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 ~~or~~

10 ~~(f) a student currently enrolled in a secondary or postsecondary educational institution who is~~
 11 ~~participating in work based learning activities and who is paid wages by the business partner or the~~
 12 ~~educational institution.~~

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 39-71-201 to offset~~
 20 ~~the costs of administering the program.~~

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

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

29 ~~(e) A person who makes a false statement or misrepresentation concerning that person's status~~
 30 ~~as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose~~

1 ~~the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured~~
2 ~~employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.~~

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

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

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

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

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

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

25 ~~(6) Each employer shall post a sign in the workplace at the locations where notices to employees~~
26 ~~are normally posted, informing employees about the employer's current provision of workers' compensation~~
27 ~~insurance. A workplace is any location where an employee performs any work related act in the course of~~
28 ~~employment, regardless of whether the location is temporary or permanent, and includes the place of~~
29 ~~business or property of a third person while the employer has access to or control over the place of~~
30 ~~business or property for the purpose of carrying on the employer's usual trade, business, or occupation.~~

1 ~~The sign must be provided by the department, distributed through insurers or directly by the department,~~
2 ~~and posted by employers in accordance with rules adopted by the department. An employer who purposely~~
3 ~~or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."~~

4
5 NEW SECTION. **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
7 applications, the part remains in effect in all valid applications that are severable from the invalid
8 applications.

9
10 NEW SECTION. **Section 4. Effective date -- applicability.** [This act] is effective July 1, 1997, and
11 applies to ~~claims for benefits filed~~ INJURIES OCCURRING on or after [the effective date of this act].

12 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0251, Second Reading

DESCRIPTION OF PROPOSED LEGISLATION:

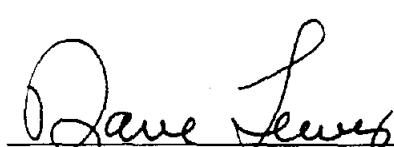
Clarifies workers' compensation act coverage requirements for a student who is enrolled in an elementary, secondary, or postsecondary educational institution and who participates as a volunteer or for wages in work-based learning activities; defines 'business partner' and 'work-based learning activities'.


ASSUMPTIONS:

1. The proposed legislation requires workers' compensation coverage under the workers' compensation act for students enrolled in elementary, secondary, or postsecondary educational institutions who are participating in work-based learning activities and who are working for wages.
2. It allows employers to elect coverage for students where wages are not paid and are treated as volunteers.
3. The State Fund will receive premium income to provide coverage for this class of student-employee any time coverage is elected for volunteers.
4. The State Fund will make benefit payments to compensate this class of student-employee for injuries or occupational disease.
5. Students of the Montana University System (MUS) who participate in campus work-study programs are covered for workers' compensation by the MUS.

FISCAL IMPACT:

The fiscal impact is unknown, but it is expected that premium revenues and benefit payments will both increase.

 3-27-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 3/27/97
BARRY STANG, PRIMARY SPONSOR DATE

1 SENATE BILL NO. 251

2 INTRODUCED BY STANG, BENEDICT, MAHLUM, TOEWS, ELLIS, KITZENBERG, M. TAYLOR

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WORKERS' COMPENSATION ACT COVERAGE
5 REQUIREMENTS FOR A STUDENT WHO IS ENROLLED IN A AN ELEMENTARY, SECONDARY, OR
6 POSTSECONDARY EDUCATIONAL INSTITUTION AND WHO PARTICIPATES AS A VOLUNTEER OR FOR
7 WAGES IN WORK-BASED LEARNING ACTIVITIES; DEFINING "BUSINESS PARTNER" AND "WORK-BASED
8 LEARNING ACTIVITIES"; AMENDING SECTIONS 39-71-116, AND 39-71-118, ~~AND 39-71-401~~, MCA; AND
9 PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

10

11 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.**

1 SENATE BILL NO. 251

2 INTRODUCED BY STANG, BENEDICT, MAHLUM, TOEWS, ELLIS, KITZENBERG, M. TAYLOR

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 7 WAGES IN WORK-BASED LEARNING ACTIVITIES OR FOR A STUDENT WHO IS PARTICIPATING IN AN
 8 OFF-CAMPUS PRACTICUM THAT IS REQUIRED FOR A POSTSECONDARY DEGREE OR CERTIFICATE AND
 9 WHO DOES NOT RECEIVE WAGES; DEFINING "BUSINESS PARTNER" AND "WORK-BASED LEARNING
 10 ACTIVITIES"; AMENDING SECTIONS 39-71-116, AND 39-71-118, ~~AND 39-71-401~~, MCA; AND
 11 PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14
15 **Section 1.** Section 39-71-116, MCA, is amended to read:16 **"39-71-116. Definitions.** Unless the context otherwise requires, words and phrases used in this
17 chapter have the following meanings:18 (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the
19 worker reaches maximum healing are less than the actual wages the worker received at the time of the
20 injury.21 (2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation
22 Act and the Occupational Disease Act of Montana necessary to:

23 (a) investigation, review, and settlement of claims;

24 (b) payment of benefits;

25 (c) setting of reserves;

26 (d) furnishing of services and facilities; and

27 (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

28 (3) "Aid or sustenance" means ~~any~~ a public or private subsidy made to provide a means of support,
29 maintenance, or subsistence for the recipient.

30 (4) "Average weekly wage" means the mean weekly earnings of all employees under covered

1 employment, as defined and established annually by the department. It is established at the nearest whole
 2 dollar number and must be adopted by the department ~~prior to~~ before July 1 of each year.

3 (5) "Beneficiary" means:

4 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time
 5 of injury;

6 (b) an unmarried child under 18 years of age;

7 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or
 8 is enrolled in an accredited apprenticeship program;

9 (d) an invalid child over 18 years of age who is dependent upon the decedent for support at the
 10 time of injury;

11 (e) a parent who is dependent upon the decedent for support at the time of the injury if a
 12 beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

13 (f) a brother or sister under 18 years of age if dependent upon the decedent for support at the time
 14 of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a)
 15 through (5)(e), does not exist.

16 (6) "Business partner" means the community, GOVERNMENTAL ENTITY, or business organization
 17 that provides the premises for work-based learning activities for students.

18 ~~(6)~~(7) "Casual employment" means employment not in the usual course of the trade, business,
 19 profession, or occupation of the employer.

20 ~~(7)~~(8) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior
 21 to the injury.

22 ~~(8)~~(9) "Construction industry" means the major group of general contractors and operative builders,
 23 heavy construction (other than building construction) contractors, and special trade contractors, listed in
 24 major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not
 25 include office workers, design professionals, salespersons, estimators, or any other related employment that
 26 is not directly involved on a regular basis in the provision of physical labor at a construction or renovation
 27 site.

28 ~~(9)~~(10) "Days" means calendar days, unless otherwise specified.

29 ~~(10)~~(11) "Department" means the department of labor and industry.

30 ~~(11)~~(12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

1 ~~(12)~~(13) "Household or domestic employment" means employment of persons other than members
2 of the household for the purpose of tending to the aid and comfort of the employer or members of the
3 employer's family, including but not limited to housecleaning and yard work, but does not include
4 employment beyond the scope of normal household or domestic duties, such as home health care or
5 domiciliary care.

6 ~~(13)~~(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
7 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

8 ~~(14)~~(15) "Invalid" means one who is physically or mentally incapacitated.

9 ~~(15)~~(16) "Limited liability company" is as defined in 35-8-102.

10 ~~(16)~~(17) "Maintenance care" means treatment designed to provide the optimum state of health
11 while minimizing recurrence of the clinical status.

12 ~~(17)~~(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in
13 the healing process when further material improvement would not be reasonably expected from primary
14 medical treatment.

15 ~~(18)~~(19) "Objective medical findings" means medical evidence, including range of motion, atrophy,
16 muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

17 ~~(19)~~(20) "Order" means any decision, rule, direction, requirement, or standard of the department
18 or any other determination arrived at or decision made by the department.

19 ~~(20)~~(21) "Palliative care" means treatment designed to reduce or ease symptoms without curing
20 the underlying cause of the symptoms.

21 ~~(21)~~(22) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average
22 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a
23 sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the
24 current year. However, an estimate may be made by the department for any employer starting in business
25 if average payrolls are not available. This estimate must be adjusted by additional payment by the employer
26 or refund by the department, as the case may actually be, on December 31 of the current year. An
27 employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by
28 an employer.

29 ~~(22)~~(23) "Permanent partial disability" means a physical condition in which a worker, after reaching
30 maximum medical healing:

- 1 (a) has a permanent impairment established by objective medical findings;
- 2 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's
- 3 ability to work; and
- 4 (c) has an actual wage loss as a result of the injury.
- 5 ~~(23)~~(24) "Permanent total disability" means a physical condition resulting from injury as defined in
- 6 this chapter, after a worker reaches maximum medical healing, in which a worker does not have a
- 7 reasonable prospect of physically performing regular employment. Regular employment means work on a
- 8 recurring basis performed for remuneration in a trade, business, profession, or other occupation in this
- 9 state. Lack of immediate job openings is not a factor to be considered in determining if a worker is
- 10 permanently totally disabled.
- 11 ~~(24)~~(25) The "plant of the employer" includes the place of business of a third person while the
- 12 employer has access to or control over the place of business for the purpose of carrying on the employer's
- 13 usual trade, business, or occupation.
- 14 ~~(25)~~(26) "Primary medical services" means treatment prescribed by a treating physician, for
- 15 conditions resulting from the injury, necessary for achieving medical stability.
- 16 ~~(26)~~(27) "Public corporation" means the state or any county, municipal corporation, school district,
- 17 city, city under a commission form of government or special charter, town, or village.
- 18 ~~(27)~~(28) "Reasonably safe place to work" means that the place of employment has been made as
- 19 free from danger to the life or safety of the employee as the nature of the employment will reasonably
- 20 permit.
- 21 ~~(28)~~(29) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and
- 22 that are reasonably safe for use for the particular purpose for which they are furnished.
- 23 ~~(29)~~(30) (a) "Secondary medical services" means those medical services or appliances that are
- 24 considered not medically necessary for medical stability. The services and appliances include but are not
- 25 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
- 26 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,
- 27 hospitals, or rehabilitation facilities.
- 28 (b) (i) As used in this subsection ~~(29)~~ (30), "disability" means a condition in which a worker's
- 29 ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an
- 30 injury. The restrictions may be combined with factors, such as the worker's age, education, work history,

1 and other factors that affect the worker's ability to engage in gainful employment.

2 (ii) Disability does not mean a purely medical condition.

3 ~~(30)~~(31) "Sole proprietor" means the person who has the exclusive legal right or title to or
4 ownership of a business enterprise.

5 ~~(31)~~(32) "Temporary partial disability" means a physical condition resulting from an injury, as
6 defined in 39-71-119, in which a worker, prior to maximum healing:

7 (a) is temporarily unable to return to the position held at the time of injury because of a medically
8 determined physical restriction;

9 (b) returns to work in a modified or alternative employment; and

10 (c) suffers a partial wage loss.

11 ~~(32)~~(33) "Temporary service contractor" means a person, firm, association, partnership, limited
12 liability company, or corporation conducting business that hires its own employees and assigns them to
13 clients to fill a work assignment with a finite ending date to support or supplement the client's workforce
14 in situations resulting from employee absences, skill shortages, seasonal workloads, and special
15 assignments and projects.

16 ~~(33)~~(34) "Temporary total disability" means a physical condition resulting from an injury, as defined
17 in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum
18 medical healing.

19 ~~(34)~~(35) "Temporary worker" means a worker whose services are furnished to another on a
20 part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement
21 a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special
22 assignments and projects.

23 ~~(35)~~(36) "Treating physician" means a person who is primarily responsible for the treatment of a
24 worker's compensable injury and is:

25 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
26 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

27 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

28 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
29 there is not a physician, as defined in subsection ~~(35)(a)~~ (36)(a), in the area where the physician
30 assistant-certified is located;

1 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

2 (e) a dentist licensed by the state of Montana under Title 37, chapter 4.

3 (37) "Work-based learning activities" means job training and work experience that are provided to
 4 students currently enrolled in a secondary or postsecondary educational institution and that are conducted
 5 on the premises of a business partner CONDUCTED ON THE PREMISES OF A BUSINESS PARTNER AS A
 6 COMPONENT OF SCHOOL-BASED LEARNING ACTIVITIES AUTHORIZED BY AN ELEMENTARY,
 7 SECONDARY, OR POSTSECONDARY EDUCATIONAL INSTITUTION.

8 ~~(36)~~(38) "Year", unless otherwise specified, means calendar year."
 9

10 **Section 2.** Section 39-71-118, MCA, is amended to read:

11 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term
 12 "employee" or "worker" means:

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

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

24 (c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under
 25 a state or federal vocational training program, whether or not under an appointment or contract of hire with
 26 an employer, as defined in this chapter, and, except as provided in subsection (9), whether or not receiving
 27 payment from a third party. However, this subsection does not apply to students enrolled in vocational
 28 training programs, as outlined in this subsection, while they are on the premises of a public school or
 29 community college.

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

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

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

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

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

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

16 (H) A STUDENT WHO IS PARTICIPATING IN AN OFF-CAMPUS PRACTICUM THAT IS REQUIRED
 17 FOR A POSTSECONDARY DEGREE OR CERTIFICATE AND WHO DOES NOT RECEIVE WAGES. FOR
 18 PURPOSES OF THIS SUBSECTION, THE PARTICIPATING STUDENT IS CONSIDERED THE EMPLOYEE OF
 19 THE POSTSECONDARY INSTITUTION.

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) A student currently enrolled in a AN ELEMENTARY, secondary, or postsecondary educational
 17 institution who is participating in work-based learning activities and WHO IS PAID WAGES BY THE
 18 EDUCATIONAL INSTITUTION OR BUSINESS PARTNER IS THE EMPLOYEE OF THE ENTITY THAT PAYS
 19 THE STUDENT'S WAGES FOR ALL PURPOSES UNDER THIS CHAPTER. A STUDENT who is not paid
 20 wages by the business partner or the educational institution is a volunteer and is subject to the provisions
 21 of this chapter.

22 ~~(9)~~(10) For purposes of this section, an "employee or worker in this state" means:

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

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

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

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

- 1 (i) nonresident employees are hired in Montana;
- 2 (ii) nonresident employees' wages are paid in Montana;
- 3 (iii) nonresident employees are supervised in Montana; and
- 4 (iv) business records are maintained in Montana.

5 ~~(10)(11)~~ An insurer may require coverage for all nonresident employees of a Montana employer who
 6 do not meet the requirements of subsection ~~(9)(b)~~ (10)(b) or ~~(9)(d)~~ (10)(d) as a condition of approving the
 7 election under subsection ~~(9)(d)~~ (10)(d)."

8
 9 **Section 3.** ~~Section 39-71-401, MCA, is amended to read:~~

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

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

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

1 ~~employment of a volunteer under 67-2-105;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 ~~(ii) the officer or manager is engaged primarily in household employment for the corporation or the~~
 9 ~~limited liability company;~~

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

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

15 ~~or~~

16 ~~(r) a student currently enrolled in a secondary or postsecondary educational institution who is~~
 17 ~~participating in work-based learning activities and who is paid wages by the business partner or the~~
 18 ~~educational institution.~~

19 ~~(3) (a) A sole proprietor, a working member of a partnership, or a working member of a~~
 20 ~~member-managed limited liability company who represents to the public that the person is an independent~~
 21 ~~contractor shall elect to be bound personally and individually by the provisions of compensation plan No.~~
 22 ~~1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.~~

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

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

29 ~~(d) The exemption, if approved, remains in effect for 1 year following the date of the department's~~
 30 ~~approval. To maintain the independent contractor status, an independent contractor shall annually submit~~

1 ~~a renewal application. A renewal application must be submitted for all independent contractor exemptions~~
2 ~~approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee~~
3 ~~must be received by the department at least 30 days prior to the anniversary date of the previously~~
4 ~~approved exemption.~~

5 ~~(e) A person who makes a false statement or misrepresentation concerning that person's status~~
6 ~~as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose~~
7 ~~the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured~~
8 ~~employers' fund. The lion 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.~~

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

NEW SECTION. Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 4. Effective date -- applicability. [This act] is effective July 1, 1997, and applies to ~~claims for benefits filed~~ INJURIES OCCURRING on or after [the effective date of this act].

-END-



CONFERENCE COMMITTEE

on Senate Bill 251
Report No. 1, April 16, 1997

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Conference Committee on Senate Bill 251, met and considered the House Committee of the Whole Amendments.

We recommend that Senate Bill 251 (reference copy - salmon) be amended as follows:

- 1. Title, lines 7 through 9.
Following: "ACTIVITIES"
Strike: remainder of line 7 through "WAGES" on line 9
- 2. Page 7, line 13.
Following: "~~and~~"
Insert: "and"
- 3. Page 7, line 15
Following: "; AND"
Insert: "."
- 4. Page 7, lines 16 through 19.
Strike: subsection (H) in its entirety

And that this Conference Committee report be adopted.

For the Senate:

Keating
Senator Thomas F. Keating, Chair

Dale Mahlum
Senator Dale Mahlum

Barry "Spook" Stang
Senator Barry "Spook" Stang

TS
Amd. Coord.

SA
Sec. of Senate

For the House:

Norman Mills
Rep. Norman Mills, Chair

Lila Taylor
Rep. Lila Taylor

Kim Gillan
Rep. Kim Gillan

ADOPT

REJECT

CCR #1
SB 251
811519CC.STS

SENATE BILL NO. 251

INTRODUCED BY STANG, BENEDICT, MAHLUM, TOEWS, ELLIS, KITZENBERG, M. TAYLOR

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING WORKERS' COMPENSATION ACT COVERAGE REQUIREMENTS FOR A STUDENT WHO IS ENROLLED IN A AN ELEMENTARY, SECONDARY, OR POSTSECONDARY EDUCATIONAL INSTITUTION AND WHO PARTICIPATES AS A VOLUNTEER OR FOR WAGES IN WORK-BASED LEARNING ACTIVITIES ~~OR FOR A STUDENT WHO IS PARTICIPATING IN AN OFF-CAMPUS PRACTICUM THAT IS REQUIRED FOR A POSTSECONDARY DEGREE OR CERTIFICATE AND WHO DOES NOT RECEIVE WAGES~~; DEFINING "BUSINESS PARTNER" AND "WORK-BASED LEARNING ACTIVITIES"; AMENDING SECTIONS 39-71-116, AND 39-71-118, ~~AND 39-71-401~~, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases used in this chapter have the following meanings:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

- (a) investigation, review, and settlement of claims;
- (b) payment of benefits;
- (c) setting of reserves;
- (d) furnishing of services and facilities; and
- (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means ~~any~~ a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Average weekly wage" means the mean weekly earnings of all employees under covered

1 employment, as defined and established annually by the department. It is established at the nearest whole
2 dollar number and must be adopted by the department ~~prior to~~ before July 1 of each year.

3 (5) "Beneficiary" means:

4 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time
5 of injury;

6 (b) an unmarried child under 18 years of age;

7 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or
8 is enrolled in an accredited apprenticeship program;

9 (d) an invalid child over 18 years of age who is dependent upon the decedent for support at the
10 time of injury;

11 (e) a parent who is dependent upon the decedent for support at the time of the injury if a
12 beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

13 (f) a brother or sister under 18 years of age if dependent upon the decedent for support at the time
14 of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a)
15 through (5)(e), does not exist.

16 (6) "Business partner" means the community, GOVERNMENTAL ENTITY, or business organization
17 that provides the premises for work-based learning activities for students.

18 ~~(6)(7)~~ "Casual employment" means employment not in the usual course of the trade, business,
19 profession, or occupation of the employer.

20 ~~(7)(8)~~ "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior
21 to the injury.

22 ~~(8)(9)~~ "Construction industry" means the major group of general contractors and operative builders,
23 heavy construction (other than building construction) contractors, and special trade contractors, listed in
24 major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not
25 include office workers, design professionals, salespersons, estimators, or any other related employment that
26 is not directly involved on a regular basis in the provision of physical labor at a construction or renovation
27 site.

28 ~~(9)(10)~~ "Days" means calendar days, unless otherwise specified.

29 ~~(10)(11)~~ "Department" means the department of labor and industry.

30 ~~(11)(12)~~ "Fiscal year" means the period of time between July 1 and the succeeding June 30.

1 ~~(12)~~(13) "Household or domestic employment" means employment of persons other than members
2 of the household for the purpose of tending to the aid and comfort of the employer or members of the
3 employer's family, including but not limited to housecleaning and yard work, but does not include
4 employment beyond the scope of normal household or domestic duties, such as home health care or
5 domiciliary care.

6 ~~(13)~~(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
7 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

8 ~~(14)~~(15) "Invalid" means one who is physically or mentally incapacitated.

9 ~~(15)~~(16) "Limited liability company" is as defined in 35-8-102.

10 ~~(16)~~(17) "Maintenance care" means treatment designed to provide the optimum state of health
11 while minimizing recurrence of the clinical status.

12 ~~(17)~~(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in
13 the healing process when further material improvement would not be reasonably expected from primary
14 medical treatment.

15 ~~(18)~~(19) "Objective medical findings" means medical evidence, including range of motion, atrophy,
16 muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

17 ~~(19)~~(20) "Order" means any decision, rule, direction, requirement, or standard of the department
18 or any other determination arrived at or decision made by the department.

19 ~~(20)~~(21) "Palliative care" means treatment designed to reduce or ease symptoms without curing
20 the underlying cause of the symptoms.

21 ~~(21)~~(22) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average
22 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a
23 sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the
24 current year. However, an estimate may be made by the department for any employer starting in business
25 if average payrolls are not available. This estimate must be adjusted by additional payment by the employer
26 or refund by the department, as the case may actually be, on December 31 of the current year. An
27 employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by
28 an employer.

29 ~~(22)~~(23) "Permanent partial disability" means a physical condition in which a worker, after reaching
30 maximum medical healing:

1 (a) has a permanent impairment established by objective medical findings;

2 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's
3 ability to work; and

4 (c) has an actual wage loss as a result of the injury.

5 ~~(23)~~(24) "Permanent total disability" means a physical condition resulting from injury as defined in
6 this chapter, after a worker reaches maximum medical healing, in which a worker does not have a
7 reasonable prospect of physically performing regular employment. Regular employment means work on a
8 recurring basis performed for remuneration in a trade, business, profession, or other occupation in this
9 state. Lack of immediate job openings is not a factor to be considered in determining if a worker is
10 permanently totally disabled.

11 ~~(24)~~(25) The "plant of the employer" includes the place of business of a third person while the
12 employer has access to or control over the place of business for the purpose of carrying on the employer's
13 usual trade, business, or occupation.

14 ~~(25)~~(26) "Primary medical services" means treatment prescribed by a treating physician, for
15 conditions resulting from the injury, necessary for achieving medical stability.

16 ~~(26)~~(27) "Public corporation" means the state or any county, municipal corporation, school district,
17 city, city under a commission form of government or special charter, town, or village.

18 ~~(27)~~(28) "Reasonably safe place to work" means that the place of employment has been made as
19 free from danger to the life or safety of the employee as the nature of the employment will reasonably
20 permit.

21 ~~(28)~~(29) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and
22 that are reasonably safe for use for the particular purpose for which they are furnished.

23 ~~(29)~~(30) (a) "Secondary medical services" means those medical services or appliances that are
24 considered not medically necessary for medical stability. The services and appliances include but are not
25 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
26 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,
27 hospitals, or rehabilitation facilities.

28 (b) (i) As used in this subsection ~~(29)~~ (30), "disability" means a condition in which a worker's
29 ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an
30 injury. The restrictions may be combined with factors, such as the worker's age, education, work history,

1 and other factors that affect the worker's ability to engage in gainful employment.

2 (ii) Disability does not mean a purely medical condition.

3 ~~(30)~~(31) "Sole proprietor" means the person who has the exclusive legal right or title to or
4 ownership of a business enterprise.

5 ~~(31)~~(32) "Temporary partial disability" means a physical condition resulting from an injury, as
6 defined in 39-71-119, in which a worker, prior to maximum healing:

7 (a) is temporarily unable to return to the position held at the time of injury because of a medically
8 determined physical restriction;

9 (b) returns to work in a modified or alternative employment; and

10 (c) suffers a partial wage loss.

11 ~~(32)~~(33) "Temporary service contractor" means a person, firm, association, partnership, limited
12 liability company, or corporation conducting business that hires its own employees and assigns them to
13 clients to fill a work assignment with a finite ending date to support or supplement the client's workforce
14 in situations resulting from employee absences, skill shortages, seasonal workloads, and special
15 assignments and projects.

16 ~~(33)~~(34) "Temporary total disability" means a physical condition resulting from an injury, as defined
17 in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum
18 medical healing.

19 ~~(34)~~(35) "Temporary worker" means a worker whose services are furnished to another on a
20 part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement
21 a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special
22 assignments and projects.

23 ~~(35)~~(36) "Treating physician" means a person who is primarily responsible for the treatment of a
24 worker's compensable injury and is:

25 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
26 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

27 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

28 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
29 there is not a physician, as defined in subsection ~~(35)(a)~~ (36)(a), in the area where the physician
30 assistant-certified is located;

1 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

2 (e) a dentist licensed by the state of Montana under Title 37, chapter 4.

3 ~~(37) "Work-based learning activities" means job training and work experience that are provided to~~
 4 ~~students currently enrolled in a secondary or postsecondary educational institution and that are conducted~~
 5 ~~on the premises of a business partner~~ CONDUCTED ON THE PREMISES OF A BUSINESS PARTNER AS A
 6 COMPONENT OF SCHOOL-BASED LEARNING ACTIVITIES AUTHORIZED BY AN ELEMENTARY,
 7 SECONDARY, OR POSTSECONDARY EDUCATIONAL INSTITUTION.

8 ~~(36)~~(38) "Year", unless otherwise specified, means calendar year."
 9

10 **Section 2.** Section 39-71-118, MCA, is amended to read:

11 **"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term
 12 "employee" or "worker" means:

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

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

24 (c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under
 25 a state or federal vocational training program, whether or not under an appointment or contract of hire with
 26 an employer, as defined in this chapter, and, except as provided in subsection (9), whether or not receiving
 27 payment from a third party. However, this subsection does not apply to students enrolled in vocational
 28 training programs, as outlined in this subsection, while they are on the premises of a public school or
 29 community college.

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

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

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

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

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

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

16 ~~(H) A STUDENT WHO IS PARTICIPATING IN AN OFF-CAMPUS PRACTICUM THAT IS REQUIRED~~
 17 ~~FOR A POSTSECONDARY DEGREE OR CERTIFICATE AND WHO DOES NOT RECEIVE WAGES. FOR~~
 18 ~~PURPOSES OF THIS SUBSECTION, THE PARTICIPATING STUDENT IS CONSIDERED THE EMPLOYEE OF~~
 19 ~~THE POSTSECONDARY INSTITUTION.~~

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) A student currently enrolled in a AN ELEMENTARY, secondary, or postsecondary educational
 17 institution who is participating in work-based learning activities and WHO IS PAID WAGES BY THE
 18 EDUCATIONAL INSTITUTION OR BUSINESS PARTNER IS THE EMPLOYEE OF THE ENTITY THAT PAYS
 19 THE STUDENT'S WAGES FOR ALL PURPOSES UNDER THIS CHAPTER. A STUDENT who is not paid
 20 wages by the business partner or the educational institution is a volunteer and is subject to the provisions
 21 of this chapter.

22 ~~(9)(10)~~ For purposes of this section, an "employee or worker in this state" means:

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

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

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

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

- 1 (i) nonresident employees are hired in Montana;
- 2 (ii) nonresident employees' wages are paid in Montana;
- 3 (iii) nonresident employees are supervised in Montana; and
- 4 (iv) business records are maintained in Montana.

5 ~~(10)(11)~~ An insurer may require coverage for all nonresident employees of a Montana employer who
 6 do not meet the requirements of subsection ~~(9)(b)~~ (10)(b) or ~~(9)(d)~~ (10)(d) as a condition of approving the
 7 election under subsection ~~(9)(d)~~ (10)(d)."

8

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

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

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

19 ~~(a) household and domestic employment;~~

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

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

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

25 ~~(e) employment of a broker or salesman performing under a license issued by the board of realty~~
 26 ~~regulation;~~

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

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

30 ~~(h) employment of a person performing services in return for aid or custenance only, except~~

1 ~~employment of a volunteer under 67-2-105;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 ~~(ii) the officer or manager is engaged primarily in household employment for the corporation or the~~
9 ~~limited liability company;~~

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

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

15 ~~or~~

16 ~~(r) a student currently enrolled in a secondary or postsecondary educational institution who is~~
17 ~~participating in work-based learning activities and who is paid wages by the business partner or the~~
18 ~~educational institution.~~

19 ~~(3) (a) A sole proprietor, a working member of a partnership, or a working member of a~~
20 ~~member-managed limited liability company who represents to the public that the person is an independent~~
21 ~~contractor shall elect to be bound personally and individually by the provisions of compensation plan No.~~
22 ~~1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.~~

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

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

29 ~~(d) The exemption, if approved, remains in effect for 1 year following the date of the department's~~
30 ~~approval. To maintain the independent contractor status, an independent contractor shall annually submit~~

1 ~~a renewal application. A renewal application must be submitted for all independent contractor exemptions~~
2 ~~approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee~~
3 ~~must be received by the department at least 30 days prior to the anniversary date of the previously~~
4 ~~approved exemption.~~

5 ~~(e) A person who makes a false statement or misrepresentation concerning that person's status~~
6 ~~as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose~~
7 ~~the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured~~
8 ~~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.~~

