

HOUSE BILL NO. 805

INTRODUCED BY N. NICOL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; REVISING WORKERS' COMPENSATION LAWS RELATING TO CLAIMS; PROHIBITING ALIENS THAT ARE UNLAWFULLY EMPLOYED FROM BEING ELIGIBLE FOR WORKERS' COMPENSATION; PROVIDING THAT AN INSURER SHALL CLOSE A CLAIM IN WHICH THE CLAIMANT FOR WORKERS' COMPENSATION BENEFITS HAS LEFT THE UNITED STATES OR CERTAIN TERRITORIES OF THE UNITED STATES WHILE A CLAIM IS BEING MADE OR ONGOING; AND AMENDING SECTIONS 39-71-118 AND 39-71-4003, MCA."

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

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

"39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency care provider defined -- election of coverage. (1) As used in this chapter, the term "employee" or "worker" means:

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

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

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job

1 training under a state or federal vocational training program, whether or not under an appointment or contract of
2 hire with an employer, as defined in 39-71-117, and, except as provided in subsection (7), whether or not
3 receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in
4 vocational training programs, as outlined in this subsection, while they are on the premises of a public school or
5 community college.

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

7 (e) a person, other than a juvenile as described in subsection (1)(b), who is performing community
8 service for a nonprofit organization or association or for a federal, state, or local government entity under a
9 court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not
10 under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving
11 payment from a third party. For a person covered by the definition in this subsection (1)(e):

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

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

18 (f) an inmate working in a federally certified prison industries program authorized under 53-30-
19 132;

20 (g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services
21 under Title 7, chapter 34, part 1;

22 (h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is
23 considered an employee for workers' compensation purposes only. The department of public health and human
24 services shall provide workers' compensation coverage for recipients of cash assistance, as defined in 53-4-
25 201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private
26 worksites through an endorsement to the department of public health and human services' workers'
27 compensation policy naming the public or private worksite entities as named insureds under the policy. The
28 endorsement may cover only the entity's public assistance participants and may be only for the duration of each

1 participant's training while receiving cash assistance or while participating in the food stamp program under a
2 written agreement between the department of public health and human services and each public or private
3 entity. The department of public health and human services may not provide workers' compensation coverage
4 for individuals who are covered for workers' compensation purposes by another state or federal employment
5 training program. Premiums and benefits must be based upon the wage that a probationary employee is paid
6 for work of a similar nature at the assigned worksite.

7 (i) subject to subsection (11), a member of a religious corporation, religious organization, or
8 religious trust while performing services for the religious corporation, religious organization, or religious trust, as
9 described in 39-71-117(1)(d); and

10 (j) a member of the army national guard or air national guard while performing state military duty
11 as defined in 10-1-1003.

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

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

15 (b) performing services as a volunteer, except for a person who is otherwise entitled to coverage
16 under the laws of this state. As used in this subsection (2)(b), "volunteer" means a person who performs
17 services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-
18 71-123.

19 (c) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and
20 providing care without wage compensation to no more than six foster children in the provider's own residence.
21 The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure
22 and recreational activities, and providing for other needs and activities arising in the provision of in-home foster
23 care.

24 (d) performing temporary agricultural work for an employer if the person performing the work is
25 otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with
26 respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-
27 401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417
28 because the person does not regularly perform agricultural work away from the person's own fixed business

1 location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-
2 101(1)(a).

3 (3) With the approval of the insurer, an employer may elect to include as an employee under the
4 provisions of this chapter a volunteer as defined in subsection (2)(b) or a volunteer firefighter as defined in 7-
5 33-4510.

6 (4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-
7 managed limited liability company, the employer may elect to include as an employee within the provisions of
8 this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship,
9 or any member of the limited liability company devoting full time to the partnership, limited liability partnership,
10 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 coverage
13 desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A
14 partner, sole proprietor, or member is not considered an employee within this chapter until notice has been
15 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 (4)(d). For premium ratemaking and for the
20 determination of the weekly wage for weekly compensation benefits, the electing employer may elect an
21 amount of not less than \$900 a month and not more than 1½ times the state's average weekly wage.

22 (5) (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 any
24 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 desired
27 by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate
28 officer or manager is not considered an employee within this chapter until notice has been given.

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

(d) For the purposes of an election under this subsection (5), all weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1½ times the state's average weekly wage.

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

(7) (a) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter.

(b) An elementary or secondary student who is not paid wages by the business partner or the educational institution in which the student is enrolled is a volunteer for whom coverage must be provided. The business partner and the educational institution shall mutually determine and agree in writing whether the business partner or the educational institution shall elect coverage for the student.

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

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

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

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

(d) a nonresident of Montana who does not meet the requirements of subsection (8)(b) and whose

1 employer elects coverage with an insurer that allows an election for an employer whose:

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

6 (9) An insurer may require coverage for all nonresident employees of a Montana employer who do

7 not meet the requirements of subsection (8)(b) or (8)(d) as a condition of approving the election under

8 subsection (8)(d).

9 (10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer

10 nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as

11 an employee within the provisions of this chapter a volunteer emergency care provider who serves public safety

12 through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer

13 nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers'

14 compensation coverage from any entity authorized to provide workers' compensation coverage under plan No.

15 1, 2, or 3 as provided in this chapter.

16 (b) If there is an election under subsection (10)(a), the employer shall report payroll for all

17 volunteer emergency care providers for premium and weekly benefit purposes based on the number of

18 volunteer hours of each emergency care provider, but no more than 60 hours, times the state's average weekly

19 wage divided by 40 hours.

20 (c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer

21 nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as

22 described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has

23 elected not to be covered under this chapter, but who is covered as a volunteer emergency care provider

24 pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency

25 care provider, a member may instead of the benefits described in subsection (10)(b) be eligible for benefits at

26 an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If

27 the separate election is made as provided in this subsection (10), payroll information for those self-employed

28 sole proprietors or partners must be reported and premiums must be assessed on the assumed weekly wage.

(d) A volunteer emergency care provider who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer firefighter.

(e) An ambulance service not otherwise covered by subsection (1)(g) or a nontransporting medical unit, as defined in 50-6-302, that does not elect to purchase workers' compensation coverage for its volunteer emergency care providers under the provisions of this section shall annually notify its volunteer emergency care providers that coverage is not provided.

(f) (i) The term "volunteer emergency care provider" means a person who is licensed by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.

(ii) The term does not include a volunteer emergency care provider who serves an employer as defined in 7-33-4510.

(g) The term "volunteer hours" means the time spent by a volunteer emergency care provider in the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time, response time, and time spent at the employer's premises.

(11) The definition of "employee" or "worker" in subsection (1)(i) is limited to implementing the administrative purposes of this chapter and may not be interpreted or construed to create an employment relationship in any other context."

NEW SECTION. Section 2. Termination of claims -- illegal aliens -- foreign travel. An insurer under any plan for the payment of workers' compensation benefits shall deny any claim or close any claim in which the claimant:

(1) is an illegal alien; or

(2) has left the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or American Samoa in the process of making a claim for workers' compensation benefits or while a claim for workers' compensation benefits is ongoing.

1 **Section 3.** Section 39-71-4003, MCA, is amended to read:

2 **"39-71-4003. Definitions.** As used in this part, the following definitions apply:

3 (1) "Catastrophically injured" means a physical injury or occupational disease incurred by a worker
4 to the extent that treatment for the injury or occupational disease:

5 (a) requires inpatient care for at least 21 consecutive days in a hospital or rehabilitation center that
6 is in Montana but that is more than 100 miles from the worker's place of residence; or

7 (b) requires inpatient care for at least 21 consecutive days in a hospital or rehabilitation center that
8 is located outside Montana and complies with the United States territorial requirements of [section 2]; and

9 (c) occurs within 90 days of the accident or events causing the worker to be catastrophically
10 injured.

11 (2) "Community service organization" means a community-based, nonprofit, tax-exempt
12 organization under section 501(c)(3) of the Internal Revenue Code that raises money to assist the
13 catastrophically injured worker.

14 (3) "Worker" has the meaning as provided in 39-71-118."
15

16 NEW SECTION. **Section 4. Codification instruction.** [Section 2] is intended to be codified as an
17 integral part of Title 39, chapter 71, part 6, and the provisions of Title 39, chapter 71, part 6, apply to [section 2].

18 - END -