

## 1 HOUSE BILL NO. 212

2 INTRODUCED BY S. NOVAK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EMPLOYMENT LAWS RELATING TO  
5 INDEPENDENT CONTRACTORS; CLARIFYING THAT AN EMPLOYER CANNOT KNOWINGLY  
6 MISCLASSIFY WORKERS FOR PURPOSES OF AVOIDING THE EMPLOYER'S WORKERS'  
7 COMPENSATION OBLIGATIONS TO EMPLOYEES; CLARIFYING THAT A PERSON MAY NOT PERFORM  
8 WORK UNDER A SUSPENDED INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE; INCREASING  
9 THE POTENTIAL PENALTY AND REQUIRING RULES ON PENALTIES FOR KNOWINGLY  
10 MISCLASSIFYING WORKERS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 39-71-  
11 419, MCA."

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

14

15 **Section 1.** Section 39-71-419, MCA, is amended to read:16 **"39-71-419. Independent contractor violations -- penalty.** (1) A person may not:

17 (a) perform work as an independent contractor without first:

18 (i) obtaining from the department an independent contractor exemption certificate unless the  
19 individual is not required to obtain an independent contractor exemption certificate pursuant to 39-71-417(1)(a);

20 or

21 (ii) electing to be bound personally and individually by the provisions of compensation plan No. 1, 2, or

22 3;

23 (b) perform work as an independent contractor when the department has suspended, revoked, or  
24 denied the independent contractor's exemption certificate;25 (c) transfer to another person or allow another person to use an independent contractor exemption  
26 certificate that was not issued to that person;

27 (d) alter or falsify an independent contractor exemption certificate; or

28 (e) misrepresent the person's status as an independent contractor.

1 (2) An employer may not:

2 (a) require an employee through coercion, misrepresentation, or fraudulent means to adopt  
3 independent contractor status to avoid the employer's obligations to provide workers' compensation coverage;  
4 or

5 (b) exert control to a degree that causes the independent contractor to violate the provisions of 39-71-  
6 417(4);

7 (c) knowingly induce a person to apply for an independent contractor exemption certificate to avoid  
8 the employer's obligations to provide workers' compensation coverage;

9 (d) knowingly classify a person as an independent contractor when the person's independent contract  
10 exemption certificate for that work has been revoked or suspended, or when their application for an exemption  
11 certificate has been denied; or

12 (e) knowingly misrepresent to any third party that a person is an independent contractor.

13 (3) In addition to any other penalty or sanction provided in this chapter, a person or employer who  
14 violates a provision of this section ~~is~~ may be subject to a fine to be assessed by the department of up to ~~\$1,000~~  
15 \$5,000 for each violation. The department shall adopt rules setting forth applicable fines for a first offense, any  
16 subsequent offenses, and for instances of multiple violations. The department shall deposit the fines in the  
17 uninsured employers' fund. The lien provisions of 39-71-506 apply to any assessed fines.

18 (4) A person or employer who disputes a fine assessed by the department pursuant to this section  
19 may file an appeal with the department within 30 days of the date on which the fine was assessed. If, after  
20 mediation, the issue is not resolved, the issue must be transferred to the workers' compensation court for  
21 resolution."

22 - END -