

## 1 HOUSE BILL NO. 538

2 INTRODUCED BY M. MILLER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A MONTANA EMPLOYER TO BE SUBJECT TO  
5 WORKERS' COMPENSATION LAWS OF ANOTHER STATE UNDER CERTAIN CONDITIONS FOR THEIR  
6 MONTANA WORKERS SOLELY WORKING IN THE OTHER STATE; AMENDING SECTION 39-71-401, MCA;  
7 AND PROVIDING AN EFFECTIVE DATE."

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

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11 NEW SECTION. **Section 1. Employer option for extraterritorial coverage.** (1) In the absence of an  
12 agreement under 39-71-402, an employer from this state that employs residents of this state for work solely in  
13 another state may obtain coverage for the employees working in that other state from that state but shall retain  
14 coverage under the provisions of this chapter until able to show proof of coverage in the other state to the insurer  
15 providing coverage under this chapter. On obtaining proof of coverage for the employees working in the other  
16 state, the insurer in this state shall, at the request of the employer, cancel coverage in this state for that employer  
17 for those employees.

18 (2) An employer that has employees operating concurrently in both Montana and another state must have  
19 coverage under this chapter, unless covered by an agreement under 39-71-402.

20 (3) Under this section, the employer is responsible for providing evidence that the employee's course  
21 and scope of employment is solely in the state in which the employee is insured.

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23 **Section 2.** Section 39-71-401, MCA, is amended to read:

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

30 (2) Unless the employer elects coverage for these employments under this chapter and an insurer allows

1 an election, the Workers' Compensation Act does not apply to any of the following:

2 (a) household or domestic employment;

3 (b) casual employment;

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

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

9 (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and  
10 without a guarantee of minimum earnings;

11 (f) employment as a direct seller as defined by 26 U.S.C. 3508;

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

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

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

18 (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

19 (k) employment of a person performing services as a newspaper carrier or freelance correspondent if  
20 the person performing the services or a parent or guardian of the person performing the services in the case of  
21 a minor has acknowledged in writing that the person performing the services and the services are not covered.

22 As used in this subsection (2)(k):

23 (i) "freelance correspondent" means a person who submits articles or photographs for publication and  
24 is paid by the article or by the photograph; and

25 (ii) "newspaper carrier":

26 (A) means a person who provides a newspaper with the service of delivering newspapers singly or in  
27 bundles; and

28 (B) does not include an employee of the paper who, incidentally to the employee's main duties, carries  
29 or delivers papers.

30 (l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);

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

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

8 (o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing  
9 services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

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

12 (q) a person who performs services as a petroleum land professional. As used in this subsection, a  
13 "petroleum land professional" is a person who:

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

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

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

19 (r) an officer of a quasi-public or a private corporation or, except as provided in subsection (3), a  
20 manager of a manager-managed limited liability company who qualifies under one or more of the following  
21 provisions:

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

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

27 (iii) the officer or manager either:

28 (A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the  
29 limited liability company; or

30 (B) owns less than 20% of the number of shares of stock in the corporation or limited liability company

- 1 if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in  
2 subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or  
3 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,  
4 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection  
5 (2)(r)(iii)(A) or (2)(r)(iii)(B);  
6 (s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;  
7 (t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of  
8 the church's ministry or by a member of a religious order in the exercise of duties required by the order;  
9 (u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care  
10 for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the  
11 service is employed directly by a family member or an individual who is a legal guardian;  
12 (v) employment of a person performing the services of an intrastate or interstate common or contract  
13 motor carrier when hired by an individual or entity who meets the definition of a broker or freight forwarder, as  
14 provided in 49 U.S.C. 13102;  
15 (w) employment of a person who is not an employee or worker in this state as defined in 39-71-118(8);  
16 (x) employment of a person who is working under an independent contractor exemption certificate;  
17 (y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this  
18 subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved.  
19 Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.  
20 (z) a musician performing under a written contract.  
21 (3) (a) (i) A person who regularly and customarily performs services at locations other than the person's  
22 own fixed business location shall elect to be bound personally and individually by the provisions of compensation  
23 plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by  
24 obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.  
25 (ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited  
26 in the state special revenue account established in 39-9-206 and must be used to offset the certification  
27 administration costs.  
28 (b) A person who holds an independent contractor exemption certificate may purchase a workers'  
29 compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.  
30 (c) For the purposes of this subsection (3), "person" means:

- 1 (i) a sole proprietor;  
2 (ii) a working member of a partnership;  
3 (iii) a working member of a limited liability partnership;  
4 (iv) a working member of a member-managed limited liability company; or  
5 (v) a manager of a manager-managed limited liability company that is engaged in the work of the  
6 construction industry as defined in 39-71-116.

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 or  
10 managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

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

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

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

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

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

1 accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign  
2 as provided in this subsection is subject to a \$50 fine for each citation."

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4 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an  
5 integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [section 1].

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7 NEW SECTION. Section 4. Effective date. [This act] is effective July 1, 2015.

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