

HOUSE BILL NO. 71

INTRODUCED BY G. VANCE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT CERTAIN ILLEGAL ALIENS ARE NOT ENTITLED TO WORKERS' COMPENSATION WAGE-LOSS AND MEDICAL BENEFITS FOR A WORK-RELATED INJURY OR DISEASE; AND AMENDING SECTION 39-71-118, MCA."

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

NEW SECTION. Section 1. Payment of benefits to aliens. (1) Wage-loss and medical benefits for a work-related injury or disease may not be paid under this chapter to an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the injury occurred, was lawfully present for the purposes of performing the services that resulted in the work-related injury or disease, or was permanently residing in the United States under color of law at the time the services that resulted in the work-related injury or disease were performed.

(2) Any data or information required of an individual applying for benefits to determine whether benefits are not payable to the individual because of the individual's alien status must be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, a determination that benefits to the individual are not payable because of the individual's alien status may not be made except upon a preponderance of the evidence.

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

"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (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 ~~and who are lawfully employed,~~ 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



1 actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as
2 employees if they are not otherwise covered by workers' compensation and if an employer has elected to be
3 bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2).
4 Household or domestic employment is excluded.

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

7 (c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training
8 under a state or federal vocational training program, whether or not under an appointment or contract of hire with
9 an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving
10 payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational
11 training programs, as outlined in this subsection, while they are on the premises of a public school or community
12 college.

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

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

19 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment
20 award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part
21 4, for a full-time employee at the time of the injury; and

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

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

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

28 (h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is
29 considered an employee for workers' compensation purposes only. The department of public health and human
30 services shall provide workers' compensation coverage for recipients of financial assistance, as defined in

1 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or
2 private worksites through an endorsement to the department of public health and human services' workers'
3 compensation policy naming the public or private worksite entities as named insureds under the policy. The
4 endorsement may cover only the entity's public assistance participants and may be only for the duration of each
5 participant's training while receiving financial assistance or while participating in the food stamp program under
6 a written agreement between the department of public health and human services and each public or private
7 entity. The department of public health and human services may not provide workers' compensation coverage
8 for individuals who are covered for workers' compensation purposes by another state or federal employment
9 training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for
10 work of a similar nature at the assigned worksite.

11 (i) a member of a religious corporation, religious organization, or religious trust while performing services
12 for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

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

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

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

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

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

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

29 (4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a
30 governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

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

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

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

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

14 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the
15 minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination
16 of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than
17 \$900 a month and not more than 1 1/2 times the state's average weekly wage.

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

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

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

27 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the
28 minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination
29 of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than
30 \$200 a week and not more than 1 1/2 times the state's average weekly wage.

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

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

8 (c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but
9 who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope
10 of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible
11 for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080
12 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the
13 county commissioners or trustees for a fire service area may make an election for benefits. If an election is made,
14 payrolls must be reported and premiums must be assessed on the assumed wage.

15 (8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are
16 furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or
17 corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to
18 be under the control and employment of the employer. This presumption may be rebutted as provided in
19 39-71-117(3).

20 (9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution
21 who is participating in work-based learning activities and who is paid wages by the educational institution or
22 business partner is the employee of the entity that pays the student's wages for all purposes under this chapter.
23 A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject
24 to the provisions of this chapter.

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

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

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

30 (c) a nonresident employee of an employer from another state engaged in the construction industry, as

1 defined in 39-71-116, within this state; or

2 (d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose
3 employer elects coverage with an insurer that allows an election for an employer whose:

4 (i) nonresident employees are hired in Montana;

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

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

7 (iv) business records are maintained in Montana.

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

11

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

14

- END -