

SENATE BILL NO. 29

INTRODUCED BY F. THOMAS

BY REQUEST OF THE LOCAL GOVERNMENT INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING WORKERS' COMPENSATION COVERAGE FOR ALL VOLUNTEER FIREFIGHTERS; CLARIFYING THAT THE DISABILITY AND PENSION FUND'S USES INCLUDE PAYING WORKERS' COMPENSATION PREMIUMS PLUS ADMINISTRATIVE EXPENSES; DELAYING IMPLEMENTATION; SUPERSEDING THE UNFUNDED MANDATE LAWS; AND AMENDING SECTIONS 7-33-4510, 19-18-203, 19-18-601, AND 39-71-118, MCA."

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

Section 1. Section 7-33-4510, MCA, is amended to read:

"7-33-4510. Workers' compensation for volunteer firefighters --notification if coverage not provided -- definitions. (1) An employer ~~may, on or after October 1, 2022, shall~~ provide workers' compensation coverage as provided in Title 39, chapter 71, to any volunteer firefighter and prior to October 1, 2022, may provide workers' compensation coverage to any volunteer firefighter who is listed on a roster of service.

(2) An employer may purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage under plan No. 1, 2, or 3 as provided in Title 39, chapter 71.

(3) ~~If an~~ An employer that provides workers' compensation coverage as provided in this section, ~~the employer may, shall,~~ upon payment of the filing fee provided for in 7-4-2631(1)(a), file a roster of service with the clerk and recorder in the county in which the employer is located and update the roster of service monthly if necessary to report changes in the number of volunteers on the roster of service. The clerk and recorder shall file the original and replace it with updates whenever necessary. The employer shall maintain the roster of service with the effective date of membership for each volunteer firefighter.

(4) ~~ff~~ Prior to October 1, 2022, if an employer does not provide workers' compensation coverage, the employer shall annually notify the employer's volunteer firefighters that coverage is not provided.

(5) For the purposes of this section, the following definitions apply:

(a) (i) "Employer" means the governing body of a fire agency organized under Title 7, chapter 33, including a rural fire district, a fire service area, a volunteer fire department, a volunteer fire company, or a

1 volunteer rural fire control crew.

2 (ii) The term does not mean a governing body of a city of the first class or second class, including a city
3 to which 7-33-4109 applies, that provides workers' compensation coverage to employees as defined in
4 39-71-118.

5 (b) "Roster of service" means the list of volunteer firefighters who have filled out a membership card prior
6 to performing services as a volunteer firefighter.

7 (c) (i) "Volunteer firefighter" means a volunteer who is on the employer's roster of service. A volunteer
8 firefighter includes a volunteer emergency medical technician as defined in 50-6-202 who is on the roster of
9 service. A volunteer firefighter is not required to be an active member as defined in 19-17-102.

10 (ii) The term does not mean an individual who is not listed on a roster of service or a member of a
11 volunteer fire department provided for in 7-33-4109."

12

13 **Section 2.** Section 19-18-203, MCA, is amended to read:

14 **"19-18-203. Use of disability and pension fund.** (1) The fund may not be used for any purpose other
15 than investment, as provided in part 4 of this chapter, and ~~the payment of the following:~~ as provided in subsection
16 (2).

17 ~~(1) a service pension to a member who, by reason of service, has become entitled to a service pension;~~

18 ~~—— (2) a pension to a member who has become permanently maimed or disabled;~~

19 ~~—— (3) a benefit or allowance to a member who has suffered a permanent disabling injury;~~

20 ~~—— (4) a benefit or allowance to a member who has contracted a permanent disabling sickness;~~

21 ~~—— (5) a benefit, not exceeding \$750, to defray the funeral expenses of a member;~~

22 ~~—— (6) benefits to the surviving spouse, child, or children of a deceased member as provided in this chapter;~~

23 ~~(7)~~(2) The fund may be used to pay for benefits allowed under 19-18-601 and for:

24 (a) premiums on a blanket policy of insurance covering the members of the fire department and providing
25 for payment of compensation in case of the death of or injury to any such member;

26 ~~(8)~~(b) the return of employee contributions as provided in this chapter; or

27 (c) minor administrative expenses, as defined by the board of trustees formed under 19-18-104 and
28 approved by the governing body that created the fire department relief association. The minor administrative
29 expenses may cover the bond required by 19-18-202."

30

1 **Section 3.** Section 19-18-601, MCA, is amended to read:

2 **"19-18-601. Benefits the association may provide allowed.** Every A fire department relief association
3 may ~~allow to its members benefits for the following causes, as provided by law~~ use the disability and pension fund
4 as provided in 19-18-203 and to pay for the following:

5 (1) a service pension to a member who, by reason of service, has become entitled to a service pension;

6 (2) a disability pension to a member who:

7 (a) has become maimed or disabled for life in line of duty;

8 ~~(3)~~(b) ~~to a member who~~ has suffered injury in line of duty;

9 ~~(4)~~(c) ~~to a member who~~ has contracted sickness in line of duty;

10 ~~(5)~~(3) funeral expenses of a member;

11 ~~(6)~~(4) pensions to the surviving spouse, or orphan, ~~or orphans~~ of a deceased member; or

12 (5) workers' compensation coverage for a volunteer firefighter who is a member of the fire department
13 relief association."

14

15 **Section 4.** Section 39-71-118, MCA, is amended to read:

16 **"39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical**
17 **technician defined -- election of coverage.** (1) As used in this chapter, the term "employee" or "worker" means:

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

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

29 (c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training
30 under a state or federal vocational training program, whether or not under an appointment or contract of hire with

1 an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving
2 payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational
3 training programs, as outlined in this subsection, while they are on the premises of a public school or community
4 college.

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

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

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

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

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

18 (g) a volunteer firefighter as described in 7-33-4109 or 7-33-4510 or a person who provides ambulance
19 services under Title 7, chapter 34, part 1; Determination of premiums and benefits for volunteer firefighters must
20 be made as provided in 39-71-745.

21 (h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is
22 considered an employee for workers' compensation purposes only. The department of public health and human
23 services shall provide workers' compensation coverage for recipients of financial assistance, as defined in
24 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or
25 private worksites through an endorsement to the department of public health and human services' workers'
26 compensation policy naming the public or private worksite entities as named insureds under the policy. The
27 endorsement may cover only the entity's public assistance participants and may be only for the duration of each
28 participant's training while receiving financial assistance or while participating in the food stamp program under
29 a written agreement between the department of public health and human services and each public or private
30 entity. The department of public health and human services may not provide workers' compensation coverage

1 for individuals who are covered for workers' compensation purposes by another state or federal employment
2 training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for
3 work of a similar nature at the assigned worksite.

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

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

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

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

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

18 (d) performing temporary agricultural work for an employer if the person performing the work is otherwise
19 exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to
20 a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is
21 not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person
22 does not regularly perform agricultural work away from the person's own fixed business location. For the
23 purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

24 (3) With the approval of the insurer, an employer may elect to include as an employee under the
25 provisions of this chapter a volunteer as defined in subsection (2)(b) or a volunteer firefighter as defined in
26 7-33-4510 prior to mandatory coverage being required on or after October 1, 2022.

27 (4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed
28 limited liability company, the employer may elect to include as an employee within the provisions of this chapter
29 any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member
30 of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or

1 limited liability company business.

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

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

8 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the
9 minimum and maximum limitations of this subsection (4)(d). For premium ratemaking and for the determination
10 of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than
11 \$900 a month and not more than 1 1/2 times the state's average weekly wage.

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

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

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

21 (d) For the purposes of an election under this subsection (5), all weekly compensation benefits must be
22 based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d).
23 For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the
24 electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's
25 average weekly wage.

26 (6) Except as provided in Title 39, chapter 8, an employee or worker in this state whose services are
27 furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or
28 corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to
29 be under the control and employment of the employer. This presumption may be rebutted as provided in
30 39-71-117(3).

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

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

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

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

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

13 (d) a nonresident of Montana who does not meet the requirements of subsection (8)(b) and whose
14 employer elects coverage with an insurer that allows an election for an employer whose:

15 (i) nonresident employees are hired in Montana;

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

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

18 (iv) business records are maintained in Montana.

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

22 (10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer
23 nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as
24 an employee within the provisions of this chapter a volunteer emergency medical technician who serves public
25 safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer
26 nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers'
27 compensation coverage from any entity authorized to provide workers' compensation coverage under plan No.
28 1, 2, or 3 as provided in this chapter.

29 (b) If there is an election under subsection (10)(a), the employer shall report payroll for all volunteer
30 emergency medical technicians for premium and weekly benefit purposes based on the number of volunteer

1 hours of each emergency medical technician, but no more than 60 hours, times the state's average weekly wage
2 divided by 40 hours.

3 (c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer
4 nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as
5 described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has
6 elected not to be covered under this chapter, but who is covered as a volunteer emergency medical technician
7 pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency
8 medical technician, a member may instead of the benefits described in subsection (10)(b) be eligible for benefits
9 at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year.
10 If the separate election is made as provided in this subsection (10), payroll information for those self-employed
11 sole proprietors or partners must be reported and premiums must be assessed on the assumed weekly wage.

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

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

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

23 (ii) The term does not include a volunteer emergency medical technician who serves an employer as
24 defined in 7-33-4510.

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

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

