

1 HOUSE BILL NO. 239

2 INTRODUCED BY M. THIEL, E. TILLEMAN, S. GIST, B. LER, G. OBLANDER

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO CONSTRUCTION  
5 CONTRACTORS; TRANSFERRING CONSTRUCTION CONTRACTOR REGISTRATION TO A DEPARTMENT  
6 LICENSING PROGRAM; PROVIDING A PURPOSE; PROVIDING DEFINITIONS; PROVIDING RULEMAKING  
7 AUTHORITY; PROVIDING LICENSING REQUIREMENTS; PROVIDING FOR UNPROFESSIONAL  
8 CONDUCT; PROVIDING FOR FEES AND FINES; PROVIDING FOR PENALTIES FOR VIOLATIONS;  
9 AMENDING SECTIONS 18-2-413, 18-2-414, 37-1-401, 39-9-101, 39-9-102, 39-9-206, 39-9-207, 39-9-301, 39-  
10 9-303, AND 39-71-401, MCA; REPEALING SECTIONS 39-9-201 AND 39-9-204, MCA; AND PROVIDING A  
11 DELAYED EFFECTIVE DATE."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14  
15 NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 8] is to protect the public  
16 health, safety, and welfare of the public through the regulation of construction contractors.

17  
18 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 8], the following definitions  
19 apply:

20 (1) "Construction contractor" means, EXCEPT AS PROVIDED IN 39-9-211, a person, firm, or  
21 corporation that:

22 (a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to  
23 construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building,  
24 highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real  
25 estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other  
26 structures or works, or the installation or repair of roofing or siding; or

27 (b) in order to do work similar to that described in subsection (1)(a) upon the construction  
28 contractor's property, employs members of more than one trade on a single job or under a single building

1 permit, except as otherwise provided.

2 (2) "Department" means the department of labor and industry provided for in Title 2, chapter 15,  
3 part 17.

4  
5 **NEW SECTION. Section 3. Department rulemaking.** The department may adopt rules necessary to  
6 implement [sections 1 through 8].

7  
8 **NEW SECTION. Section 4. Construction contractor license required -- application.** (1) An  
9 individual or business entity may not engage in business as a construction contractor without a current license  
10 from the department. The license must include the following information:

- 11 (a) the applicant's social security number;
- 12 (b) proof of compliance with workers' compensation laws;
- 13 (c) the internal revenue service employer identification number, if any; and
- 14 (d) the name and address of:
  - 15 (i) each partner if the applicant is a firm or partnership;
  - 16 (ii) the owner if the applicant is an individual partnership;
  - 17 (iii) the corporate officers and registered agent if the applicant is a corporation; or
  - 18 (iv) the manager of a manager-managed limited liability company or the members of a member-  
19 managed limited liability company and the registered agent if the applicant is a limited liability company.

20 (2) Section 37-1-137 applies to all persons listed in subsection (1)(d) of this section.

21  
22 **NEW SECTION. Section 5. Licensing -- limiting liability.** A person who, pursuant to an oral or  
23 written contract, engages a construction contractor who is licensed under [sections 1 through 8] on the date of  
24 the contract is not liable as an employer for workers' compensation coverage under 39-71-405, for  
25 unemployment insurance coverage, or for wages and fringe benefits for:

- 26 (1) the licensed construction contractor;
- 27 (2) the employees of the licensed construction contractor; or
- 28 (3) a subsequent subcontractor or the employees of a subsequent subcontractor engaged to fulfill

1 a part of or all the obligations of the oral or written contract of the licensed construction contractor listed in  
2 subsection (1).

3

4 NEW SECTION. Section 6. Fees -- education fund -- fines. (1) Each applicant for a construction  
5 contractor license shall pay an application fee established by the department.

6 (2) The fees collected under [sections 1 through 8] in accordance with 37-1-134 must be deposited  
7 in a special revenue account for administration and enforcement of [sections 1 through 8].

8 (3) The department shall provide, in cooperation with building industry stakeholders, a program to  
9 educate consumers and the building industry about construction contractor licensing requirements.

10 (4) A fine collected from a construction contractor under 37-1-109 or 37-1-406 must be deposited  
11 in the uninsured employers' fund established in 39-71-503.

12

13 NEW SECTION. SECTION 7. UNPROFESSIONAL CONDUCT. (1) THE FOLLOWING IS  
14 UNPROFESSIONAL CONDUCT FOR A CONSTRUCTION CONTRACTOR LICENSEE OR LICENSE  
15 APPLICANT:

16 (a) ~~subject to Title 37, chapter 1, part 2, having a conviction, including a conviction following a plea~~  
17 ~~of nolo contendere of a crime relating to or committed during practice of the profession or occupation or~~  
18 ~~involving violence, the use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;~~

19 (b) ~~engaging in conduct defined as a sexual crime in Title 45, chapter 5, part 5, regardless of~~  
20 ~~whether the conduct occurred during or is related to the licensee's profession or occupation;~~

21 (c) ~~engaging in conduct in the profession or occupation found to be a violation of the Montana~~  
22 ~~Human Rights Act, Title 49;~~

23 (d) ~~permitting aiding, abetting, or conspiring with a person to violate or circumvent a law relating to~~  
24 ~~licensure or certification;~~

25 (e) ~~engaging in fraud, misrepresentation, deception, or concealment of a material fact in~~  
26 ~~applying for or assisting in securing a license or license renewal or in taking an examination required for~~  
27 ~~licensure;~~

28 (f) ~~signing or issuing, in the licensee's professional capacity, a document or statement that the~~

1 licensee knows or reasonably ought to know contains a false or misleading statement;

2 (g) \_\_\_\_\_ using a misleading, deceptive, false, or fraudulent advertisement or other  
3 representation in the conduct of the profession or occupation;

4 (h) \_\_\_\_\_ offering, giving, or promising anything of value or benefit to a federal, state, or local  
5 government employee or official for the purpose of influencing the employee or official to circumvent a federal,  
6 state, or local law, rule, or ordinance governing the licensee's profession or occupation;

7 (i) \_\_\_\_\_ receiving a denial, suspension, revocation, probation, fine, surrender during  
8 investigation or in lieu of discipline, or other license restriction or discipline by a court, government agency, or  
9 private licensing or credentialing agency if the action is not on appeal, not under judicial review, or has not been  
10 satisfied. For the purposes of this section, a revoked license or certificate is not satisfied unless it is reinstated.

11 (j) \_\_\_\_\_ failing to comply with a term, condition, or limitation of a license by final order of the  
12 department;

13 (k) \_\_\_\_\_ misappropriating property or funds from a client or workplace;

14 (l) \_\_\_\_\_ interfering with an audit, investigation, inspection, or disciplinary proceeding by failure  
15 to respond or cooperate, willful misrepresentation of facts, use of threats or harassment against or inducement  
16 to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action  
17 or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a  
18 disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

19 (m) \_\_\_\_\_ assisting in the unlicensed practice of a profession or occupation or allowing another person or  
20 organization to practice or offer to practice the profession or occupation by use of the licensee's license, or  
21 practicing while the licensee's license is in an inactive status;

22 (n) \_\_\_\_\_ violating a federal, state, or local law or rule relating to the conduct of the profession or  
23 occupation;

24 (o) \_\_\_\_\_ failing to:

25 (i) \_\_\_\_\_ comply with the workers' compensation provisions of 39-71-401;

26 (ii) \_\_\_\_\_ obtain and retain unemployment insurance;

27 (iii) \_\_\_\_\_ comply with the wage payment, minimum wage, and overtime payment provisions of Title 39,  
28 chapter 3, and the federal Fair Labor Standards Act of 1938;

- 1           ~~\_\_\_\_\_ (p) hiring a person as an independent contractor:~~
- 2           ~~(i) \_\_\_\_\_ if the person does not have an independent contractor exemption certificate if required~~
- 3 ~~by 39-71-417;~~
- 4           ~~\_\_\_\_\_ (ii) if the department has suspended, revoked, or denied the person's independent contractor~~
- 5 ~~exemption certificate; or~~
- 6           ~~\_\_\_\_\_ (iii) if the person is hired to work in a trade, business, occupation, or profession that is not listed~~
- 7 ~~on the independent contractor's registration;~~
- 8           ~~\_\_\_\_\_ (q) allowing an independent contractor to perform work not in the trade, business, occupation,~~
- 9 ~~or profession listed on the independent contractor exemption certificate; or~~
- 10          ~~\_\_\_\_\_ (r) classifying an employee as an independent contractor if the person does not have an~~
- 11 ~~independent contractor exemption certificate required by 39-71-417.~~

12          ~~(2) \_\_\_\_\_ Except as provided in 39-9-205, a person who has registered under one name as provided in~~  
13 ~~[sections 1 through 8] may not engage in the business or act in the capacity of a construction contractor under~~  
14 ~~any other name unless that name is also registered under [sections 1 through 8].~~

15          ~~(3) \_\_\_\_\_ Failure to comply with the provisions of this section constitutes unprofessional conduct and the~~  
16 ~~provisions of 37-1-402 apply. The provisions of 37-1-410 do not apply to a construction contractor license or~~  
17 ~~license applicant under [sections 1 through 8].~~

18

19          **NEW SECTION. Section 7. Unprofessional conduct -- rulemaking authority.** (1) The following is  
20 unprofessional conduct for a construction contractor licensee, a license applicant, or on behalf of the licensee  
21 as an individual listed in [section 4(1)(d)]:

- 22          (a) fraud, misrepresentation, deception, or concealment of a material fact in:
  - 23               (i) applying for or assisting in securing a license or license renewal;
  - 24               (ii) advertising;
  - 25               (iii) written communications with a client; or
  - 26               (iv) a contract, written contract negotiations, or in written communications with a person with whom
  - 27 the licensee has a contract;
- 28          (b) misappropriating funds from a client;

1 (c) interference with an investigation into a construction contractor license by the department by:

2 (i) failure to respond or cooperate with requests from the department;

3 (ii) willful misrepresentation of facts relevant to the investigation; or

4 (iii) use of threats or harassment against a client or witness to prevent the client or witness from  
5 providing evidence to the department;

6 (d) hiring or classifying a person as an independent contractor if:

7 (i) the person does not have an independent contractor exemption certificate if required by 39-71-  
8 417;

9 (ii) the department has suspended, revoked, or denied the person's independent contractor  
10 exemption certificate; or

11 (iii) the person is hired to work in a trade, business, occupation, or profession that is not listed on  
12 the independent contractor exemption certificate;

13 (e) allowing an independent contractor to perform work not in the trade, business, occupation, or  
14 profession listed on their independent contractor exemption certificate; or

15 (f) failing to comply with:

16 (i) the Workers' Compensation Act, Title 39, chapter 71;

17

18 (ii) the Unemployment Insurance Law, Title 39, chapter 51; or

19 (iii) the wage payment, minimum wage, and overtime payment provisions of Title 39, chapter 3.

20 (2) (a) Failure to comply with the provisions of this section constitutes unprofessional conduct, and  
21 the provisions of 37-1-402 apply. The provisions of 37-1-410 do not apply to a construction contractor license or  
22 license applicant under [sections 1 through 8].

23

24 (b) The department may adopt additional unprofessional conduct standards by rule.

25

26 **NEW SECTION. Section 8. Violation -- infraction -- penalty -- disposition.** (1) In addition to the  
27 penalties provided in 37-1-406, a determination by the department of unprofessional conduct under [section 7]  
28 subjects the person who commits the violation to:

- 1 (a) a penalty of up to \$5,000, as determined by the department; and
- 2 (b) a suspension or debarment of rights to public works contracts.
- 3 (2) A penalty collected under this section must be deposited in the uninsured employers' fund
- 4 established in 39-71-503.

5

6 **Section 9.** Section 18-2-413, MCA, is amended to read:

7 **"18-2-413. Standard prevailing rate of wages for building construction services.** (1) The  
8 department shall conduct an annual survey to calculate the standard prevailing rate of wages for building  
9 construction services using the process described in this section.

10 (2) The standard prevailing wage rates adopted under subsection (1) must be set for the districts  
11 established pursuant to 18-2-411.

12 (3) The department shall survey:

13 (a) electrical contractors who are licensed under Title 37, chapter 68, who perform commercial  
14 work;

15 (b) plumbers who are licensed under Title 37, chapter 69, whose work is performed according to  
16 commercial building codes; and

17 (c) construction contractors registered under ~~Title 39, chapter 9~~ sections 1 through 8, whose work  
18 is performed according to commercial building codes.

19 (4) The surveys required under subsection (3) must include those wages, including fringe benefits  
20 plus zone pay, per diem, and travel allowances if applicable, that are paid in the applicable district by other  
21 contractors for work of a similar character performed in that district by each craft, classification, or type of  
22 worker needed to complete a contract under this part.

23 (5) (a) The contractor survey must include information pertaining to the number of skilled workers  
24 employed in the contractor's peak month of employment and the wages and fringe benefits paid for each craft,  
25 classification, or type of work.

26 (b) (i) In setting the prevailing wages from the survey for each craft, classification, or type of work,  
27 the department shall use a weighted average wage for each craft, classification, or type of work, except in those  
28 cases in which the survey shows that at least 50% of the skilled workers are receiving the same wage.

1           (ii)     If the survey shows that at least 50% of the skilled workers are receiving the same wage, then  
2 the higher of the collective bargaining agreement rate or the surveyed rate is the prevailing wage for that craft,  
3 classification, or type of work.

4           (c)     (i) In setting the prevailing fringe benefits from the survey for each craft, classification, or type  
5 of work, the department shall use a weighted average fringe benefit for each craft, classification, or type of  
6 work, except in those cases in which the survey shows that at least 50% of the skilled workers are receiving  
7 fringe benefits pursuant to a collective bargaining agreement or pursuant to an employer's fringe benefit fund,  
8 plan, or program that meets the requirements of the Employment Retirement Income Security Act of 1974 or  
9 that is approved by the U.S. department of labor.

10          (ii)     If the survey shows that at least 50% of the skilled workers are receiving fringe benefits  
11 pursuant to a collective bargaining agreement or pursuant to an employer's fringe benefit fund, plan, or program  
12 that meets the requirements of the Employment Retirement Income Security Act of 1974 or that is approved by  
13 the U.S. department of labor, the higher of fringe benefits received under collective bargaining agreements and  
14 employers' fringe benefit funds, plans, or programs is the prevailing fringe benefit for that craft, classification, or  
15 type of work.

16          (6)     The work performed must be work of a similar character to the work performed in the  
17 applicable district unless the survey in the applicable district does not generate sufficient data. If the survey  
18 produces insufficient data, the rate may be established by the use of other information or methods that the  
19 commissioner determines fairly establish the standard prevailing rate of wages.

20          (7)     (a) The commissioner shall establish by rule the methodology for determining the standard  
21 prevailing rate of wages. The rules must include an alternate methodology to determine the standard prevailing  
22 rate of wages whenever insufficient data is generated by the survey of contractors in the applicable district. The  
23 rules must identify the amount of data that constitutes insufficient data.

24          (b)     The commissioner shall use an alternate methodology provided by rule to determine the  
25 standard prevailing rate of wages whenever insufficient data exists.

26          (c)     The alternative method of determining the prevailing rate of wages must provide for review and  
27 the incorporation of data from work of a similar character, which must be based on a survey that is conducted  
28 as closely as possible to the original district.

1 (8) Whenever work of a similar character is not being performed in the district, the standard  
2 prevailing rate of wages, including fringe benefits and the rate of travel allowance, must be those rates  
3 established by collective bargaining agreements in effect in the applicable district for each craft, classification,  
4 or type of skilled worker needed to complete the contract."  
5

6 **Section 10.** Section 18-2-414, MCA, is amended to read:

7 **"18-2-414. Standard prevailing rate of wages for heavy construction services and for highway**  
8 **construction services -- definition.** (1) The department shall establish the standard prevailing rate of wages  
9 for heavy construction services and for highway construction services annually.

10 (2) In establishing the standard prevailing rate of wages for heavy construction services and for  
11 highway construction services, the department may:

12 (a) conduct a survey of construction contractors registered under ~~Title 39, chapter 9~~ sections 1  
13 through 8], who perform heavy construction services or highway construction services, electrical contractors  
14 licensed under Title 37, chapter 68, who perform commercial work, or plumbers licensed under Title 37, chapter  
15 69, whose work is performed according to commercial building codes;

16 (b) adopt by reference through rulemaking the rates established by the U.S. department of labor  
17 under the federal Davis-Bacon Act, 29 CFR 1, et seq., for projects in Montana; or

18 (c) use, as provided by rule, a combination of surveyed rates, as provided in subsection (2)(a), and  
19 rates adopted by reference, as provided in subsection (2)(b).

20 (3) For the purposes of this section, the term "standard prevailing rate of wages for heavy  
21 construction services and for highway construction services" means wage rates, including fringe benefits plus  
22 zone pay, per diem, and travel allowances, if applicable, that are determined and established statewide for  
23 heavy construction projects and highway construction projects. The department may define by rule the terms  
24 heavy construction projects and highway construction projects. The definitions of heavy construction projects  
25 and highway construction projects must include but are not limited to projects the same as or similar to the  
26 construction, alteration, or repair of roads, streets, highways, alleys, runways, airport runways and ramps,  
27 dams, powerhouses, canals, channels, pipelines, parking areas, utility rights-of-way, staging yards located on  
28 or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the

1 pit does not normally sell to the general public."

2

3 **Section 11.** Section 37-1-401, MCA, is amended to read:

4 **"37-1-401. (Temporary) Uniform regulation for licensing programs without boards --**

5 **definitions.** As used in this part, the following definitions apply:

6 (1) "Complaint" means a written allegation filed with the department that, if true, warrants an  
7 injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

8 (2) "Department" means the department of labor and industry provided for in 2-15-1701.

9 (3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the  
10 department, with respect to a complaint or other information before the department, that is carried out for the  
11 purpose of determining:

12 (a) whether a person has violated a provision of law justifying discipline against the person;

13 (b) the status of compliance with a stipulation or order of the department;

14 (c) whether a license should be granted, denied, or conditionally issued; or

15 (d) whether the department should seek an injunction.

16 (4) "License" means permission in the form of a license, permit, endorsement, certificate,  
17 recognition, or registration granted by the state of Montana to engage in a business activity or practice at a  
18 specific level in a profession or occupation governed by:

19 (a) Title 37, chapter 2, part 6;

20 (b) Title 37, chapter 16, 40, 56, 60, 72, ~~or 73~~, or [sections 1 through 8]; or

21 (c) Title 50, chapter 39, 74, or 76.

22 (5) "Profession" or "occupation" means a profession or occupation regulated by the department  
23 under the provisions of:

24 (a) Title 37, chapter 2, part 6;

25 (b) Title 37, chapter 16, 40, 49, 56, 60, 72, ~~or 73~~, or [sections 1 through 8]; or

26 (c) Title 50, chapter 39, 74, or 76. (Terminates June 30, 2031--sec. 10, Ch. 628, L. 2023.)

27 **37-1-401. (Effective July 1, 2031) Uniform regulation for licensing programs without boards --**

28 **definitions.** As used in this part, the following definitions apply:

1 (1) "Complaint" means a written allegation filed with the department that, if true, warrants an  
2 injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

3 (2) "Department" means the department of labor and industry provided for in 2-15-1701.

4 (3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the  
5 department, with respect to a complaint or other information before the department, that is carried out for the  
6 purpose of determining:

7 (a) whether a person has violated a provision of law justifying discipline against the person;

8 (b) the status of compliance with a stipulation or order of the department;

9 (c) whether a license should be granted, denied, or conditionally issued; or

10 (d) whether the department should seek an injunction.

11 (4) "License" means permission in the form of a license, permit, endorsement, certificate,  
12 recognition, or registration granted by the state of Montana to engage in a business activity or practice at a  
13 specific level in a profession or occupation governed by:

14 (a) Title 37, chapter 16, 40, 56, 60, 72, ~~or 73~~, or [sections 1 through 8]; or

15 (b) Title 50, chapter 39, 74, or 76.

16 (5) "Profession" or "occupation" means a profession or occupation regulated by the department  
17 under the provisions of:

18 (a) Title 37, chapter 16, 40, 49, 56, 60, 72, ~~or 73~~, or [sections 1 through 8]; or

19 (b) Title 50, chapter 39, 74, or 76."

20

21 **Section 12.** Section 39-9-101, MCA, is amended to read:

22 **"39-9-101. Purpose.** It is the purpose of this chapter to ensure that all ~~construction contractors and~~  
23 home inspectors are competing fairly and in compliance with state laws."

24

25 **Section 13.** Section 39-9-102, MCA, is amended to read:

26 **"39-9-102. Definitions.** As used in this chapter, the following definitions apply:

27 (1) ~~"Construction contractor" means a person, firm, or corporation that:~~

28 (a) ~~in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to~~

1 ~~construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building,~~  
2 ~~highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real~~  
3 ~~estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other~~  
4 ~~structures or works, or the installation or repair of roofing or siding; or~~

5 ~~(b) — in order to do work similar to that described in subsection (1)(a) upon the construction~~  
6 ~~contractor's property, employs members of more than one trade on a single job or under a single building~~  
7 ~~permit, except as otherwise provided.~~

8 ~~(2)(1)~~ "Department" means the department of labor and industry.

9 ~~(3)(2)~~ (a) "Home inspection" means a physical examination of a residential dwelling to identify major  
10 defects in various attributes of or attachments to the dwelling, including mechanical, electrical, and plumbing  
11 systems in addition to structural and other essential components. Home inspections are performed for  
12 compensation and employ visual observation and the testing of user controls but not mathematical or  
13 specialized engineering sciences.

14 (b) The term does not mean a physical examination of a residential dwelling when the owner or a  
15 representative of the owner requests the examination by an individual who is licensed, certified, or registered in  
16 this state and who is acting within the scope of practice of the individual's profession or occupation.

17 ~~(4)(3)~~ "Home inspection report" means a written document prepared by a home inspector for a client  
18 and issued to the client in exchange for compensation after a home inspection has been completed. The report  
19 must clearly identify and describe:

20 (a) the inspected systems, structures, and other relevant components of the dwelling;

21 (b) any major visible defects in the inspected systems, structures, and other relevant components  
22 of the dwelling; and

23 (c) any recommendations for further evaluation of the property by other appropriate persons.

24 ~~(5)(4)~~ "Home inspector" means a person who performs a home inspection for compensation."  
25

26 **Section 14.** Section 39-9-206, MCA, is amended to read:

27 **"39-9-206. Fees -- education program.** (1) The department shall charge fees to construction  
28 ~~contractors and home inspectors for:~~

1 (a) issuance, renewal, and reinstatement of certificates of registration; and

2 (b) change of name, address, or business structure.

3 (2) The department shall set the fees by administrative rule. The fees must cover the full cost of  
4 issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs include  
5 reproduction, travel, per diem, and administrative and legal support costs.

6 (3) The fees charged in subsection (1)(a) may not exceed:

7 (a) ~~for a construction contractor:~~

8 (i) ~~\$70 for the initial registration certificate; or~~

9 (ii) ~~\$70 for the renewal or reinstatement of a registration certificate; or~~

10 (b) ~~for a home inspector, an amount determined in rule for the initial registration certificate or for~~  
11 ~~the renewal or reinstatement of a registration certificate.~~

12 (4) The fees collected under this section must be deposited in a state special revenue account to  
13 the credit of the department for the administration and enforcement of this chapter and independent contractor  
14 certification provided for in Title 39, chapter 71, part 4.

15 (5) The department shall establish, cooperatively with representatives of ~~the building industry and~~  
16 ~~the home inspection industry, an industry and consumer information program, funded with 15% of the fees, to~~  
17 ~~educate the building industry and home inspectors about the registration requirements and to educate the~~  
18 ~~public regarding the hiring of building construction contractors and home inspectors.~~

19 (6) The fee for a joint application for a certificate of registration and an independent contractor  
20 exemption certificate may not exceed the total fee charged for a certificate of registration and an independent  
21 contractor exemption certificate that are obtained separately. The fee paid for the independent contractor  
22 exemption certificate may be used by the department to offset the cost of administering independent contractor  
23 certification provided for in Title 39, chapter 71, part 4."

24

25 **Section 15.** Section 39-9-207, MCA, is amended to read:

26 **"39-9-207. Registration -- limiting liability.** A person who, pursuant to an oral or written contract,  
27 engages a ~~construction contractor or a~~ home inspector who is registered under this chapter on the date of the  
28 contract is not liable as an employer for workers' compensation coverage under 39-71-405, for unemployment

- 1 insurance coverage, or for wages and fringe benefits for:
- 2 (1) the registered ~~construction contractor or~~ home inspector;
- 3 (2) the employees of the registered ~~construction contractor or~~ home inspector; or
- 4 (3) any subsequent subcontractor or the employees of any subsequent subcontractor engaged to
- 5 fulfill a part of or all of the obligations of the oral or written contract of the registered ~~construction contractor or~~
- 6 home inspector listed in subsection (1)."

7

8 **Section 16.** Section 39-9-301, MCA, is amended to read:

9 **"39-9-301. Business practices -- penalty.** (1) ~~Except as provided in 39-9-205, a~~ A person who has

10 registered under one name as provided in this chapter may not engage in the business or act in the capacity of

11 ~~a construction contractor or a home inspector~~ under any other name unless that name also is registered under

12 this chapter.

13 (2) Use of a falsified registration number in connection with a solicitation or identification as a

14 ~~construction contractor or a home inspector~~ is prohibited.

15 (3) A partner, associate, agent, salesperson, solicitor, officer, or employee of ~~a construction~~

16 ~~contractor or a home inspector~~ shall use a true name and address at all times while engaged in the business or

17 capacity of ~~a construction contractor or a home inspector~~ or in activities related to a ~~construction contractor or a~~

18 home inspector.

19 (4) — A ~~construction contractor~~ may not:

20 (a) — ~~hire a person as an independent contractor who does not have an independent contractor~~

21 ~~exemption certificate if required by 39-71-417;~~

22 (b) — ~~hire a person as an independent contractor if the department has suspended, revoked, or~~

23 ~~denied the person's independent contractor's exemption certificate;~~

24 (c) — ~~hire an independent contractor to work in a trade, business, occupation, or profession not listed~~

25 ~~on the independent contractor's registration;~~

26 (d) — ~~allow an independent contractor to perform work not in the trade, business, occupation, or~~

27 ~~profession listed on the independent contractor exemption certificate; or~~

28 (e) — ~~classify an employee as an independent contractor if the person does not have an independent~~

1 contractor exemption certificate required by 39-71-417.

2 (5)(4) (a) The finding of a violation of this section by the department at a hearing held in accordance  
3 with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of  
4 not more than \$5,000, as determined by the department. The required hearing may be held by telephone or by  
5 videoconference. A penalty collected under this section must be deposited in the state special revenue account  
6 to the credit of the department for administration and enforcement of this chapter.

7 (b) Penalties under this section do not apply to a violation that is determined to be an inadvertent  
8 error."

9

10 **Section 17.** Section 39-9-303, MCA, is amended to read:

11 **"39-9-303. Department to compile and update registration lists -- availability -- fee.** (1) The  
12 department shall compile a list of all ~~construction contractors and~~ home inspectors registered under this chapter  
13 and update ~~the list of construction contractors at least bimonthly and~~ the list of home inspectors as provided by  
14 rule. The list is public information and must be available to the public upon request for a reasonable fee or  
15 posted on the department's website.

16 (2) The department shall inform a person, firm, or corporation whether ~~a construction contractor or~~  
17 a home inspector is registered. The department shall provide the information without charge, except for a  
18 reasonable fee for any copies made."

19

20 **Section 18.** Section 39-71-401, MCA, is amended to read:

21 **"39-71-401. Employments covered and exemptions -- elections -- notice.** (1) Except as provided  
22 in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer  
23 who has any employee in service under any appointment or contract of hire, expressed or implied, oral or  
24 written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3 unless the provisions of  
25 39-71-442 apply. Each employee whose employer is bound by the Workers' Compensation Act is subject to  
26 and bound by the compensation plan that has been elected by the employer.

27 (2) Unless the employer elects coverage for these employments under this chapter and an insurer  
28 allows an election, the Workers' Compensation Act does not apply to any of the following:

- 1 (a) household or domestic employment;
- 2 (b) casual employment;
- 3 (c) employment of a dependent member of an employer's family for whom an exemption may be  
4 claimed by the employer under the federal Internal Revenue Code;
- 5 (d) employment of sole proprietors, working members of a partnership, working members of a  
6 limited liability partnership, or working members of a member-managed limited liability company, except as  
7 provided in subsection (3);
- 8 (e) employment of a real estate, securities, or insurance salesperson paid solely by commission  
9 and without a guarantee of minimum earnings;
- 10 (f) employment as a direct seller as defined by 26 U.S.C. 3508;
- 11 (g) employment for which a rule of liability for injury, occupational disease, or death is provided  
12 under the laws of the United States;
- 13 (h) employment of a person performing services in return for aid or sustenance only, except  
14 employment of a volunteer under 67-2-105;
- 15 (i) employment with a railroad engaged in interstate commerce, except that railroad construction  
16 work is included in and subject to the provisions of this chapter;
- 17 (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic  
18 event;
- 19 (k) employment of a person performing services as a newspaper carrier or freelance  
20 correspondent if the person performing the services or a parent or guardian of the person performing the  
21 services in the case of a minor has acknowledged in writing that the person performing the services and the  
22 services are not covered. As used in this subsection (2)(k):
- 23 (i) "freelance correspondent" means a person who submits articles or photographs for publication  
24 and 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  
27 in bundles; and
- 28 (B) does not include an employee of the paper who, incidentally to the employee's main duties,

1 carries or delivers papers.

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

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

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

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

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

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

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

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

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

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

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

28 (ii) the officer or manager is engaged primarily in household employment for the corporation or the

- 1 limited liability company;
- 2 (iii) the officer or manager either:
- 3 (A) owns 10% or more of the number of shares of stock in the corporation or owns 10% or more of
- 4 the limited liability company; or
- 5 (B) owns less than 10% of the number of shares of stock in the corporation or limited liability
- 6 company if the officer's or manager's shares when aggregated with the shares owned by a person or persons
- 7 listed in subsection (2)(r)(iv) total 10% or more of the number of shares in the corporation or limited liability
- 8 company; or
- 9 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
- 10 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of
- 11 subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);
- 12 (s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;
- 13 (t) service performed by an ordained, commissioned, or licensed minister of a church in the
- 14 exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the
- 15 order;
- 16 (u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite
- 17 care for individuals who, because of age or infirmity, are unable to care for themselves when the person
- 18 providing the service is employed directly by a family member or an individual who is a legal guardian;
- 19 (v) employment of a person performing the services of an intrastate or interstate common or
- 20 contract motor carrier when hired by an individual or entity who meets the definition of a broker or freight
- 21 forwarder, as provided in 49 U.S.C. 13102;
- 22 (w) employment of a person who is not an employee or worker in this state as defined in 39-71-
- 23 118(8);
- 24 (x) employment of a person who is working under an independent contractor exemption certificate;
- 25 (y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in
- 26 this subsection, "contact sport" means a sport that includes significant physical contact between the athletes
- 27 involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling,
- 28 and boxing.

1 (z) a musician performing under a written contract.

2 (3) (a) (i) A person who regularly and customarily performs services at locations other than the  
3 person's own fixed business location shall elect to be bound personally and individually by the provisions of  
4 compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers'  
5 Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant  
6 to 39-71-417.

7 (ii) Application fees or renewal fees for independent contractor exemption certificates must be  
8 deposited in the state special revenue account established in ~~39-9-206~~ 39-71-417 and must be used to offset  
9 the certification administration costs.

10 (b) A person who holds an independent contractor exemption certificate may purchase a workers'  
11 compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

12 (c) For the purposes of this subsection (3), "person" means:

13 (i) a sole proprietor;

14 (ii) a working member of a partnership;

15 (iii) a working member of a limited liability partnership;

16 (iv) a working member of a member-managed limited liability company; or

17 (v) a manager of a manager-managed limited liability company that is engaged in the work of the  
18 construction industry as defined in 39-71-116.

19 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its  
20 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private  
21 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or  
22 managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

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

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

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

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

8 (6) Each employer shall post a sign in the workplace at the locations where notices to employees  
9 are normally posted, informing employees about the employer's current provision of workers' compensation  
10 insurance. A workplace is any location where an employee performs any work-related act in the course of  
11 employment, regardless of whether the location is temporary or permanent, and includes the place of business  
12 or property of a third person while the employer has access to or control over the place of business or property  
13 for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided  
14 by the department, distributed through insurers or directly by the department, and posted by employers in  
15 accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign  
16 as provided in this subsection is subject to a \$50 fine for each citation."  
17

18 NEW SECTION. Section 19. Repealer. The following sections of the Montana Code Annotated are  
19 repealed:

- 20 39-9-201. Registration required -- application.  
21 39-9-204. Certificate of registration -- issuance -- duration.

22  
23 NEW SECTION. Section 20. Directions to code commissioner. Sections 39-9-205, 39-9-211, and  
24 39-9-304 are intended to be renumbered and codified in a new chapter of Title 37 with [sections 1 through 8].

25  
26 NEW SECTION. Section 21. Codification instruction. [Sections 1 through 8] are intended to be  
27 codified as a new chapter in Title 37, and the provisions of Title 37 apply to [sections 1 through 8].  
28

