

HOUSE BILL NO. 679

INTRODUCED BY J. KARJALA

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING WORKWEEK TERMS FOR EMPLOYEES ELIGIBLE
 5 FOR OVERTIME; PROVIDING RULEMAKING AUTHORITY; PROVIDING A PENALTY; AMENDING SECTIONS
 6 39-3-405 AND 39-3-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY
 7 DATE."

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

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 11 **Section 1.** Section 39-3-405, MCA, is amended to read:

12 **"39-3-405. Overtime compensation.** (1) An Except as provided in 7-4-2509, 7-32-115, 7-32-4118, or
 13 the provisions of this part, an employer may not:

14 (a) employ any employee for a workweek longer than 40 hours in a consecutive 7-day period unless the
 15 employee receives compensation for employment in excess of 40 hours in a workweek at a rate of not less than
 16 1 1/2 times the hourly wage rate at which the employee is employed;

17 (b) average the hours in a workweek over 2 or more weeks to avoid the requirement to pay overtime as
 18 required; or

19 (c) use a fluctuating workweek except as allowed in 29 CFR 778.114 and only if the employer provided
 20 the terms of the fixed salary and fluctuating hours to the employee in writing in advance of the change in hours.
 21 The fluctuating workweek must be part of the employment agreement or described in the employee manual and
 22 may not be used to avoid paying overtime.

23 (2) An overtime provision does not apply for farm workers.

24 (3) Employers of students at an amusement or recreational area that operates on a seasonal basis who
 25 furnish the students with board, lodging, or other facilities may not employ the students for a workweek longer
 26 than 48 hours, unless the students receive compensation for their employment in excess of 48 hours in a
 27 workweek at a rate of not less than 1 1/2 times the hourly wage rate at which they are employed.

28 (4) The application of the overtime provisions of subsection (1) to the employment of firefighters and law
 29 enforcement officers by the state must be consistent with the Fair Labor Standards Act of 1938, as amended, and
 30 consistent with regulations promulgated under the act."

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2 **Section 2.** Section 39-3-407, MCA, is amended to read:

3 "**39-3-407. Enforcement.** (1) Enforcement An employee may seek enforcement of this part ~~shall be~~
4 ~~treated~~ as a wage claim action ~~and shall be pursued~~ in accordance with part 2 of this chapter, ~~as amended~~.

5 (2) This part may also be enforced in accordance with part 5 of this chapter for the benefit of certain
6 employees in the mineral and oil industry.

7 (3) In addition to the penalty provided under 39-3-206 or as otherwise provided in part 2 of this chapter,
8 an employer is subject to payment of a penalty of up to 110% of the amount of the overtime wages not properly
9 paid pursuant to 39-3-405(1)(b) or (1)(c). The penalty imposed by this subsection is payable to the worker.

10 (4) The commissioner may enforce this part without the necessity of a wage assignment and may adopt
11 rules to implement this section."

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13 NEW SECTION. **Section 3. Effective date -- applicability.** [This act] is effective on passage and
14 approval and applies to employment contracts signed on or after [the effective date of this act].

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