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

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

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

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

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

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

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

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

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

(4) The application of the overtime provisions of subsection (1) to the employment of firefighters and law enforcement officers by the state must be consistent with the Fair Labor Standards Act of 1938, as amended, and consistent with regulations promulgated under the act."
Section 2. Section 39-3-407, MCA, is amended to read:

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

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

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

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

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