

SENATE BILL 202

Introduced by Thayer, et al.

1/21	Introduced
1/21	Referred to Business & Industry
1/23	Fiscal Note Requested
1/26	Hearing
1/28	Fiscal Note Recieved
1/30	Fiscal Note Printed
2/03	Committee Report--Bill Passed as Amended
2/06	2nd Reading Passed
2/08	3rd Reading Passed

Transmitted to House

2/21	Referred to Labor & Employment Relations
3/09	Hearing
3/09	Tabled in Committee

1 *Senate* BILL NO. *202*  
2 INTRODUCED BY *Alamy Rammner* *David Felt*  
3 *Boyer Smith* HARP NATHC *William*  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE EMPLOYEES OF  
5 CERTAIN AMUSEMENT OR RECREATIONAL ESTABLISHMENTS, ORGANIZED  
6 CAMPS, AND RELIGIOUS OR NONPROFIT EDUCATIONAL CONFERENCE  
7 CENTERS FROM OVERTIME COMPENSATION IF CERTAIN REQUIREMENTS  
8 ARE MET; AND AMENDING SECTION 39-3-406, MCA."  
9

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

11 **Section 1.** Section 39-3-406, MCA, is amended to read:

12 **"39-3-406. Exclusions.** (1) The provisions of 39-3-404  
13 and 39-3-405 shall not apply with respect to:

14 (a) students participating in a distributive education  
15 program established under the auspices of an accredited  
16 educational agency;

17 (b) persons employed in private homes whose duties  
18 consist of menial chores such as babysitting, mowing lawns,  
19 cleaning sidewalks;

20 (c) persons employed directly by the head of a  
21 household to care for children dependent upon the head of  
22 the household;

23 (d) immediate members of the family of an employer or  
24 persons dependent upon an employer for half or more of their  
25 support in the customary sense of being a dependent;

1 (e) any persons not regular employees thereof who  
2 voluntarily offer their services to a nonprofit organization  
3 on a fully or partially reimbursed basis;

4 (f) handicapped workers engaged in work which is  
5 incidental to training or evaluation programs or whose  
6 earning capacity is so severely impaired that they are  
7 unable to engage in competitive employment;

8 (g) apprentices or learners, who may be exempted by  
9 the commissioner for a period not to exceed 30 days of their  
10 employment;

11 (h) learners under the age of 18 who are employed as  
12 farm workers, provided that such exclusion shall not exceed  
13 a period of 180 days from their initial date of employment  
14 and further provided that during this exclusion period wages  
15 paid such learners may not be less than 50% of the minimum  
16 wage rate established in this part;

17 (i) retired or semiretired persons performing  
18 part-time incidental work as a condition of their residence  
19 on a farm or ranch;

20 (j) any individual employed in a bona fide executive,  
21 administrative, or professional capacity as these terms are  
22 defined and delimited by regulations of the commissioner;

23 (k) any individual employed by the United States of  
24 America;

25 (l) resident managers employed in lodging

1 establishments or personal care facilities who, under the  
2 terms of their employment, live in the establishment or  
3 facility.

4 (2) The provisions of 39-3-405 do not apply to:

5 (a) an employee with respect to whom the United States  
6 Secretary of Transportation has power to establish  
7 qualifications and maximum hours of service pursuant to the  
8 provisions of 49 U.S.C. 304;

9 (b) an employee of an employer subject to the  
10 provisions of part I of the Interstate Commerce Act;

11 (c) an individual employed as an outside buyer of  
12 poultry, eggs, cream, or milk, in their raw or natural  
13 state;

14 (d) an outside salesman paid on a commission or  
15 contract basis who is primarily employed in selling  
16 advertising for a newspaper;

17 (e) a salesman, partsman, or mechanic paid on a  
18 commission or contract basis and primarily engaged in  
19 selling or servicing automobiles, trucks, mobile homes,  
20 recreational vehicles, or farm implements if he is employed  
21 by a nonmanufacturing establishment primarily engaged in the  
22 business of selling such vehicles or implements to ultimate  
23 purchasers;

24 (f) a salesman primarily engaged in selling trailers,  
25 boats, or aircraft if he is employed by a nonmanufacturing

1 establishment primarily engaged in the business of selling  
2 trailers, boats, or aircraft to ultimate purchasers;

3 (g) a salesman paid on a commission or contract basis  
4 who is primarily engaged in selling advertising for a radio  
5 or television station employer;

6 (h) an employee employed as a driver or driver's  
7 helper making local deliveries who is compensated for such  
8 employment on the basis of trip rates, or other delivery  
9 payment plan, if the commissioner finds that such plan has  
10 the general purpose and effect of reducing hours worked by  
11 such employees to or below the maximum workweek applicable  
12 to them under 39-3-405;

13 (i) an employee employed in agriculture or in  
14 connection with the operation or maintenance of ditches,  
15 canals, reservoirs, or waterways not owned or operated for  
16 profit and not operated on a sharecrop basis and which are  
17 used exclusively for supply and storing of water for  
18 agricultural purposes;

19 (j) an employee with respect to his employment in  
20 agriculture by a farmer, notwithstanding other employment of  
21 such employee in connection with livestock auction  
22 operations in which such farmer is engaged as an adjunct to  
23 the raising of livestock, either on his own account or in  
24 conjunction with other farmers, if such employee is:

25 (i) primarily employed during his workweek in

1 agriculture by such farmer; and

2 (ii) paid for his employment in connection with such  
3 livestock auction operations at a wage rate not less than  
4 that prescribed by 39-3-404;

5 (k) an employee of an establishment commonly  
6 recognized as a country elevator, including an establishment  
7 which sells products and services used in the operation of a  
8 farm, if no more than five employees are employed by the  
9 establishment;

10 (l) a driver employed by an employer engaged in the  
11 business of operating taxicabs;

12 (m) an employee who is employed with his spouse by a  
13 nonprofit educational institution to serve as the parents of  
14 children who are orphans or one of whose natural parents is  
15 deceased or who are enrolled in such institution and reside  
16 in residential facilities of the institution so long as the  
17 children are in residence at the institution and so long as  
18 such employee and his spouse reside in such facilities and  
19 receive, without cost, board and lodging from the  
20 institution and are together compensated, on a cash basis,  
21 at an annual rate of not less than \$10,000;

22 (n) an employee employed in planting or tending trees;  
23 cruising, surveying, or felling timber; or transporting logs  
24 or other forestry products to a mill, processing plant,  
25 railroad, or other transportation terminal if the number of

1 employees employed by his employer in such forestry or  
2 lumbering operations does not exceed eight;

3 (o) an employee of a sheriff's department who is  
4 working under an established work period in lieu of a  
5 workweek pursuant to 7-4-2509(1);

6 (p) an employee of a municipal or county government  
7 who is working under a work period not exceeding 40 hours in  
8 a 7-day period established through a collective bargaining  
9 agreement when a collective bargaining unit represents the  
10 employee or by mutual agreement of the employer and employee  
11 where no bargaining unit is recognized. Employment in  
12 excess of 40 hours in a 7-day, 40-hour work period must be  
13 compensated at a rate of not less than 1 1/2 times the  
14 hourly wage rate for the employee.

15 (q) an employee of a hospital or other establishment  
16 primarily engaged in the care of the sick, disabled, aged,  
17 or mentally ill or defective who is working under a work  
18 period not exceeding 80 hours in a 14-day period established  
19 through either a collective bargaining agreement when a  
20 collective bargaining unit represents the employee or by  
21 mutual agreement of the employer and employee where no  
22 bargaining unit is recognized. Employment in excess of 8  
23 hours per day or 80 hours in a 14-day period must be  
24 compensated for at a rate of not less than 1 1/2 times the  
25 hourly wage rate for the employee.

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1 (r) a firefighter who is working under a work period  
2 established in a collective bargaining agreement entered  
3 into between a public employer and a firefighters'  
4 organization or its exclusive representative;

5 (s) an officer or other employee of a police  
6 department in a city of the first or second class who is  
7 working under a work period established by the chief of  
8 police under 7-32-4118;

9 (t) an employee of a department of public safety  
10 working under a work period established pursuant to  
11 7-32-1157;

12 (u) an employee of an amusement or recreational  
13 establishment, an organized camp, or a religious or  
14 nonprofit educational conference center if it does not  
15 operate for more than 7 months in any calendar year or if,  
16 during the preceding calendar year, its average receipts for  
17 any 6 months were not more than 33 1/3% of its average  
18 receipts for the other 6 months of that year. However, the  
19 employee shall receive compensation for his employment in  
20 excess of 56 hours in a workweek at a rate not less than  
21 1 1/2 times the hourly rate at which he is employed."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15


In compliance with a written request, there is hereby submitted a Fiscal Note for SB202, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an Act entitled: "An act to exclude employees of certain amusement or recreational establishments, organized camps, and religious or nonprofit educational conference centers from overtime compensation if certain requirements are met; and amending Section 39-3-406, MCA."

ASSUMPTIONS:

No changes in the number of staff or operating costs will be created by the implementation of this proposed legislation because the employees impacted are relatively few in numbers and the way their wage information is processed would not be affected.

  
RAY SHACKLEFORD, BUDGET DIRECTOR      1/28/89  
OFFICE OF BUDGET AND PROGRAM PLANNING      DATE

  
GENE THAYER, PRIMARY SPONSOR      1/29/89  
DATE

Fiscal Note for SB202, as introduced

SB 202

APPROVED BY COMM. ON  
BUSINESS & INDUSTRY

## SENATE BILL NO. 202

INTRODUCED BY THAYER, RASMUSSEN, GRADY, KEATING,  
BOYLAN, SPAETH, HARP, NATHE, WILLIAMS, NOBLE

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE EMPLOYEES OF  
CERTAIN AMUSEMENT OR RECREATIONAL ESTABLISHMENTS, AND  
ORGANIZED CAMPS, ~~AND RELIGIOUS OR NONPROFIT EDUCATIONAL~~  
~~CONFERENCE CENTERS~~ FROM OVERTIME COMPENSATION IF CERTAIN  
REQUIREMENTS ARE MET; AND AMENDING SECTION 39-3-406, MCA."

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educational agency;

(b) persons employed in private homes whose duties  
consist of menial chores such as babysitting, mowing lawns,  
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(c) persons employed directly by the head of a  
household to care for children dependent upon the head of  
the household;

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persons dependent upon an employer for half or more of their

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incidental to training or evaluation programs or whose  
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unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by  
the commissioner for a period not to exceed 30 days of their  
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(h) learners under the age of 18 who are employed as  
farm workers, provided that such exclusion shall not exceed  
a period of 180 days from their initial date of employment  
and further provided that during this exclusion period wages  
paid such learners may not be less than 50% of the minimum  
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(i) retired or semiretired persons performing  
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on a farm or ranch;

(j) any individual employed in a bona fide executive,  
administrative, or professional capacity as these terms are  
defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of  
America;

1 (1) resident managers employed in lodging  
2 establishments or personal care facilities who, under the  
3 terms of their employment, live in the establishment or  
4 facility.

5 (2) The provisions of 39-3-405 do not apply to:

6 (a) an employee with respect to whom the United States  
7 Secretary of Transportation has power to establish  
8 qualifications and maximum hours of service pursuant to the  
9 provisions of 49 U.S.C. 304;

10 (b) an employee of an employer subject to the  
11 provisions of part I of the Interstate Commerce Act;

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14 state;

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17 profit and not operated on a sharecrop basis and which are  
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25 or other forestry products to a mill, processing plant,

1 railroad, or other transportation terminal if the number of  
2 employees employed by his employer in such forestry or  
3 lumbering operations does not exceed eight;

4 (o) an employee of a sheriff's department who is  
5 working under an established work period in lieu of a  
6 workweek pursuant to 7-4-2509(1);

7 (p) an employee of a municipal or county government  
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9 police under 7-32-4118;

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