

HOUSE BILL NO. 259

INTRODUCED BY SCHWINDEN, ELLIS, WALLIN, HARPER,  
B. BROWN, CHRISTIAENS

IN THE HOUSE

JANUARY 20, 1993

INTRODUCED AND REFERRED TO COMMITTEE  
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

FEBRUARY 11, 1993

COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 12, 1993

PRINTING REPORT.

FEBRUARY 13, 1993

SECOND READING, DO PASS.

FEBRUARY 15, 1993

ENGROSSING REPORT.

FEBRUARY 16, 1993

THIRD READING, PASSED.  
AYES, 97; NOES, 3.

FEBRUARY 17, 1993

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1993

INTRODUCED AND REFERRED TO COMMITTEE  
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

MARCH 10, 1993

COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

MARCH 11, 1993

SECOND READING, CONCURRED IN.

MARCH 12, 1993

THIRD READING, CONCURRED IN.  
AYES, 48; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 13, 1993

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 259  
 2 INTRODUCED BY Schneider, Dan Wilson  
 3 Hagan Bob Brown Christiansen  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT AN  
 5 EMPLOYEE OF A SKI AREA OPERATOR IS NOT ENTITLED TO WORKERS'  
 6 COMPENSATION IF INJURED AT THE SKI AREA AT A TIME WHEN THE  
 7 EMPLOYEE IS NOT WORKING OR WHEN THE EMPLOYEE IS WORKING BUT  
 8 IS NOT ACTING IN THE SCOPE AND COURSE OF EMPLOYMENT; AND  
 9 AMENDING SECTIONS 39-71-118 AND 39-71-123, MCA."

10

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

12 **Section 1.** Section 39-71-118, MCA, is amended to read:

13 "39-71-118. Employee, worker, workman, and volunteer  
 14 firefighter defined. (1) The terms "employee", "workman", or  
 15 "worker" mean:

16 (a) each person in this state, including a contractor  
 17 other than an independent contractor, who is in the service  
 18 of an employer, as defined by 39-71-117, under any  
 19 appointment or contract of hire, expressed or implied, oral  
 20 or written. The terms include aliens and minors, whether  
 21 lawfully or unlawfully employed, and all of the elected and  
 22 appointed paid public officers and officers and members of  
 23 boards of directors of quasi-public or private corporations  
 24 while rendering actual service for such the corporations for  
 25 pay. Casual employees as defined by 39-71-116 are included

1 as employees if they are not otherwise covered by workers'  
 2 compensation and if an employer has elected to be bound by  
 3 the provisions of the compensation law for these casual  
 4 employments, as provided in 39-71-401(2). Household or  
 5 domestic service is excluded.

6 (b) a recipient of general relief who is performing  
 7 work for a county of this state under the provisions of  
 8 53-3-303 through 53-3-305 and any juvenile performing work  
 9 under authorization of a district court judge in a  
 10 delinquency prevention or rehabilitation program;

11 (c) a person receiving on-the-job vocational  
 12 rehabilitation training or other on-the-job training under a  
 13 state or federal vocational training program, whether or not  
 14 under an appointment or contract of hire with an employer as  
 15 defined in this chapter and whether or not receiving payment  
 16 from a third party. However, this subsection does not apply  
 17 to students enrolled in vocational training programs as  
 18 outlined above while they are on the premises of a public  
 19 school or community college.

20 (d) students enrolled and in attendance in programs of  
 21 vocational-technical education at designated  
 22 vocational-technical centers;

23 (e) an airman or other person employed as a volunteer  
 24 under 67-2-105; or

25 (f) a person, other than a juvenile as defined in

1 subsection (1)(b), performing community service for a  
 2 nonprofit organization or association or for a federal,  
 3 state, or local government entity under a court order, or an  
 4 order from a hearings officer as a result of a probation or  
 5 parole violation, whether or not under appointment or  
 6 contract of hire with an employer as defined in this chapter  
 7 and whether or not receiving payment from a third party. For  
 8 a person covered by the definition in this subsection (f):

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

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

19 (2) The terms defined in subsection (1) do not include  
 20 a person who is employed by a ski area operator, as that  
 21 term is defined in 23-2-732, to work at the ski area and  
 22 who:

23 (a) is working but not acting in the scope and course  
 24 of employment; or

25 (b) is on the premises at a time other than the

1 person's work hours.

2 ~~(2)~~(3) The term "volunteer firefighter" means a  
 3 firefighter who is an enrolled and active member of a fire  
 4 company organized and funded by a county, a rural fire  
 5 district, or a fire service area.

6 ~~(3)~~(4) (a) If the employer is a partnership or sole  
 7 proprietorship, such the employer may elect to include as an  
 8 employee within the provisions of this chapter any member of  
 9 such the partnership or the owner of the sole proprietorship  
 10 devoting full time to the partnership or proprietorship  
 11 business.

12 (b) In the event of such an election, the employer must  
 13 serve upon the employer's insurer written notice naming the  
 14 partners or sole proprietor to be covered and stating the  
 15 level of compensation coverage desired by electing the  
 16 amount of wages to be reported, subject to the limitations  
 17 in subsection ~~(3)~~(4) ~~(d)~~. A partner or sole proprietor is  
 18 not considered an employee within this chapter until such  
 19 notice has been given.

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

23 (d) All weekly compensation benefits must be based on  
 24 the amount of elected wages, subject to the minimum and  
 25 maximum limitations of this subsection. For premium

1 ratemaking and for the determination of weekly wage for  
2 weekly compensation benefits, the electing employer may  
3 elect not less than \$900 a month and not more than 1 1/2  
4 times the average weekly wage as defined in this chapter.

5 †4†(5) The trustees of a rural fire district, a county  
6 governing body providing rural fire protection, or the  
7 county commissioners or trustees for a fire service area may  
8 elect to include as an employee within the provisions of  
9 this chapter any volunteer firefighter. A volunteer  
10 firefighter who receives workers' compensation coverage  
11 under this section may not receive disability benefits under  
12 Title 19, chapter 12.

13 †5†(6) An employee, workman, or worker in this state  
14 whose services are furnished by a person, association,  
15 contractor, firm, or corporation, other than a temporary  
16 service contractor, to an employer as defined in 39-71-117  
17 is presumed to be under the control and employment of the  
18 employer. This presumption may be rebutted as provided in  
19 39-71-117(3).

20 †6†(7) For purposes of this section, an "employee,  
21 workman, or worker in this state" means:

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

25 (b) a nonresident of Montana whose principal employment

1 duties are conducted within this state on a regular basis  
2 for an employer."

3 **Section 2.** Section 39-71-123, MCA, is amended to read:

4 "39-71-123. Wages defined. (1) "Wages" means the gross  
5 remuneration paid in money, or in a substitute for money,  
6 for services rendered by an employee. Wages include but are  
7 not limited to:

8 (a) commissions, bonuses, and remuneration at the  
9 regular hourly rate for overtime work, holidays, vacations,  
10 and sickness periods;

11 (b) board, lodging, rent, or housing if it constitutes  
12 a part of the employee's remuneration and is based on its  
13 actual value; and

14 (c) payments made to an employee on any basis other  
15 than time worked, including but not limited to piecework, an  
16 incentive plan, or profit-sharing arrangement.

17 (2) Wages do not include:

18 (a) employee expense reimbursements or allowances for  
19 meals, lodging, travel, subsistence, and other expenses, as  
20 set forth in department rules;

21 (b) special rewards for individual invention or  
22 discovery;

23 (c) tips and other gratuities received by the employee  
24 in excess of those documented to the employer for tax  
25 purposes;

1 (d) contributions made by the employer to a group  
2 insurance or pension plan; or

3 (e) vacation or sick leave benefits accrued but not  
4 paid.

5 (3) For compensation benefit purposes, the average  
6 actual earnings for the four pay periods immediately  
7 preceding the injury are the employee's wages, except if:

8 (a) the term of employment for the same employer is  
9 less than four pay periods, in which case the employee's  
10 wages are the hourly rate times the number of hours in a  
11 week for which the employee was hired to work; or

12 (b) for good cause shown by the claimant, the use of  
13 the four pay periods does not accurately reflect the  
14 claimant's employment history with the employer, in which  
15 case the insurer may use additional pay periods.

16 (4) (a) For the purpose of calculating compensation  
17 benefits for an employee working concurrent employments, the  
18 average actual wages must be calculated as provided in  
19 subsection (3).

20 (b) The compensation benefits for a covered volunteer  
21 must be based on the average actual wages in his the  
22 volunteer's regular employment, except self-employment as a  
23 sole proprietor or partner who elected not to be covered,  
24 from which he the volunteer is disabled by the injury  
25 incurred.

1 (c) The compensation benefits for an employee working  
2 at two or more concurrent remunerated employments must be  
3 based on the aggregate of average actual wages of all  
4 employments, except self-employment as a sole proprietor or  
5 partner who elected not to be covered, from which the  
6 employee is disabled by the injury incurred.

7 (5) The compensation benefits and the payroll, for  
8 premium purposes, for a volunteer firefighter covered  
9 pursuant to 39-71-118(4) must be based upon a wage of not  
10 less than \$900 a month and not more than 1 1/2 times the  
11 average weekly wage as defined in this chapter."

-End-

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

HOUSE BILL NO. 259

INTRODUCED BY SCHWINDEN, ELLIS, WALLIN, HARPER,

B. BROWN, CHRISTIAENS

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT AN  
EMPLOYEE OF A SKI-AREA OPERATOR INJURED WHILE PARTICIPATING  
IN A RECREATIONAL ACTIVITY IS NOT ENTITLED TO WORKERS'  
COMPENSATION IF--INJURED AT THE SKI-AREA AT A TIME WHEN THE  
EMPLOYEE IS NOT WORKING OR WHEN THE EMPLOYEE IS WORKING--BUT  
IS--NOT--ACTING--IN--THE SCOPE AND COURSE OF EMPLOYMENT; AND  
AMENDING SECTIONS 39-71-118 AND 39-71-123, MCA."

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

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, workman, and volunteer  
firefighter defined. (1) The terms "employee", "workman", or  
"worker" mean:

(a) each person in this state, including a contractor  
other than an independent contractor, who is in the service  
of an employer, as defined by 39-71-117, under any  
appointment or contract of hire, expressed or implied, oral  
or written. The terms include aliens and minors, whether  
lawfully or unlawfully employed, and all of the elected and  
appointed, paid public officers and officers and members of  
boards of directors of quasi-public or private corporations

while rendering actual service for such the corporations for  
pay. Casual employees as defined by 39-71-116 are included  
as employees if they are not otherwise covered by workers'  
compensation and if an employer has elected to be bound by  
the provisions of the compensation law for these casual  
employments, as provided in 39-71-401(2). Household or  
domestic service is excluded.

(b) a recipient of general relief who is performing  
work for a county of this state under the provisions of  
53-3-303 through 53-3-305 and any juvenile performing work  
under authorization of a district court judge in a  
delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational  
rehabilitation training or other on-the-job training under a  
state or federal vocational training program, whether or not  
under an appointment or contract of hire with an employer as  
defined in this chapter and whether or not receiving payment  
from a third party. However, this subsection does not apply  
to students enrolled in vocational training programs as  
outlined above while they are on the premises of a public  
school or community college.

(d) students enrolled and in attendance in programs of  
vocational-technical education at designated  
vocational-technical centers;

(e) an airman or other person employed as a volunteer

under 67-2-105; or

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

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

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

(2) The terms defined in subsection (1) do not include a person who is employed by a ski area operator as that term is defined in 23-2-732, to work at the ski area and who

(a) is working but not acting in the scope and course

of employment; or

(b) is on the premises at a time other than the person's work hours;

(A) PARTICIPATING IN RECREATIONAL ACTIVITY AND WHO AT THE TIME IS RELIEVED OF AND IS NOT PERFORMING PRESCRIBED DUTIES, REGARDLESS OF WHETHER THE PERSON IS USING, BY DISCOUNT OR OTHERWISE, A PASS, TICKET, PERMIT, DEVICE, OR OTHER EMOLUMENT OF EMPLOYMENT; OR

(B) PERFORMING VOLUNTARY SERVICE AT A RECREATIONAL FACILITY AND WHO RECEIVES NO COMPENSATION FOR THOSE SERVICES OTHER THAN MEALS, LODGING, OR THE USE OF THE RECREATIONAL FACILITIES.

~~(2)~~(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

~~(3)~~(4) (a) If the employer is a partnership or sole proprietorship, such the employer may elect to include as an employee within the provisions of this chapter any member of such the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the

1 level of compensation coverage desired by electing the  
2 amount of wages to be reported, subject to the limitations  
3 in subsection ~~(3)(d)~~ (4)(d). A partner or sole proprietor is  
4 not considered an employee within this chapter until such  
5 notice has been given.

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

9 (d) All weekly compensation benefits must be based on  
10 the amount of elected wages, subject to the minimum and  
11 maximum limitations of this subsection. For premium  
12 ratemaking and for the determination of weekly wage for  
13 weekly compensation benefits, the electing employer may  
14 elect not less than \$900 a month and not more than 1 1/2  
15 times the average weekly wage as defined in this chapter.

16 ~~(4)(5)~~ The trustees of a rural fire district, a county  
17 governing body providing rural fire protection, or the  
18 county commissioners or trustees for a fire service area may  
19 elect to include as an employee within the provisions of  
20 this chapter any volunteer firefighter. A volunteer  
21 firefighter who receives workers' compensation coverage  
22 under this section may not receive disability benefits under  
23 Title 19, chapter 12.

24 ~~(5)(6)~~ An employee, workman, or worker in this state  
25 whose services are furnished by a person, association,

1 contractor, firm, or corporation, other than a temporary  
2 service contractor, to an employer as defined in 39-71-117  
3 is presumed to be under the control and employment of the  
4 employer. This presumption may be rebutted as provided in  
5 39-71-117(3).

6 ~~(6)(7)~~ For purposes of this section, an "employee,  
7 workman, or worker in this state" means:

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

11 (b) a nonresident of Montana whose principal employment  
12 duties are conducted within this state on a regular basis  
13 for an employer."

14 **Section 2.** Section 39-71-123, MCA, is amended to read:

15 "39-71-123. Wages defined. (1) "Wages" means the gross  
16 remuneration paid in money, or in a substitute for money,  
17 for services rendered by an employee. Wages include but are  
18 not limited to:

19 (a) commissions, bonuses, and remuneration at the  
20 regular hourly rate for overtime work, holidays, vacations,  
21 and sickness periods;

22 (b) board, lodging, rent, or housing if it constitutes  
23 a part of the employee's remuneration and is based on its  
24 actual value; and

25 (c) payments made to an employee on any basis other



1 than time worked, including but not limited to piecework, an  
2 incentive plan, or profit-sharing arrangement.

3 (2) Wages do not include:

4 (a) employee expense reimbursements or allowances for  
5 meals, lodging, travel, subsistence, and other expenses, as  
6 set forth in department rules;

7 (b) special rewards for individual invention or  
8 discovery;

9 (c) tips and other gratuities received by the employee  
10 in excess of those documented to the employer for tax  
11 purposes;

12 (d) contributions made by the employer to a group  
13 insurance or pension plan; or

14 (e) vacation or sick leave benefits accrued but not  
15 paid.

16 (3) For compensation benefit purposes, the average  
17 actual earnings for the four pay periods immediately  
18 preceding the injury are the employee's wages, except if:

19 (a) the term of employment for the same employer is  
20 less than four pay periods, in which case the employee's  
21 wages are the hourly rate times the number of hours in a  
22 week for which the employee was hired to work; or

23 (b) for good cause shown by the claimant, the use of  
24 the four pay periods does not accurately reflect the  
25 claimant's employment history with the employer, in which

1 case the insurer may use additional pay periods.

2 (4) (a) For the purpose of calculating compensation  
3 benefits for an employee working concurrent employments, the  
4 average actual wages must be calculated as provided in  
5 subsection (3).

6 (b) The compensation benefits for a covered volunteer  
7 must be based on the average actual wages in his the  
8 volunteer's regular employment, except self-employment as a  
9 sole proprietor or partner who elected not to be covered,  
10 from which he the volunteer is disabled by the injury  
11 incurred.

12 (c) The compensation benefits for an employee working  
13 at two or more concurrent remunerated employments must be  
14 based on the aggregate of average actual wages of all  
15 employments, except self-employment as a sole proprietor or  
16 partner who elected not to be covered, from which the  
17 employee is disabled by the injury incurred.

18 (5) The compensation benefits and the payroll, for  
19 premium purposes, for a volunteer firefighter covered  
20 pursuant to 39-71-118(4) must be based upon a wage of not  
21 less than \$900 a month and not more than 1 1/2 times the  
22 average weekly wage as defined in this chapter."

-End-

## HOUSE BILL NO. 259

INTRODUCED BY SCHWINDEN, ELLIS, WALLIN, HARPER,

B. BROWN, CHRISTIAENS

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT AN  
EMPLOYEE ~~OF-A-SKI-AREA-OPERATOR~~ INJURED WHILE PARTICIPATING  
IN A RECREATIONAL ACTIVITY IS NOT ENTITLED TO WORKERS'  
COMPENSATION ~~IF--INJURED-AT-THE-SKI-AREA-AT-A-TIME-WHEN-THE~~  
~~EMPLOYEE-IS-NOT-WORKING-OR-WHEN-THE-EMPLOYEE-IS-WORKING--BUT~~  
~~IS--NOT--ACTING--IN--THE-SCOPE-AND-COURSE-OF-EMPLOYMENT;~~ AND  
AMENDING SECTIONS 39-71-118 AND 39-71-123, MCA."

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

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, workman, and volunteer  
firefighter defined. (1) The terms "employee", "workman", or  
"worker" mean:

(a) each person in this state, including a contractor  
other than an independent contractor, who is in the service  
of an employer, as defined by 39-71-117, under any  
appointment or contract of hire, expressed or implied, oral  
or written. The terms include aliens and minors, whether  
lawfully or unlawfully employed, and all of the elected and  
appointed paid public officers and officers and members of  
boards of directors of quasi-public or private corporations

while rendering actual service for such the corporations for  
pay. Casual employees as defined by 39-71-116 are included  
as employees if they are not otherwise covered by workers'  
compensation and if an employer has elected to be bound by  
the provisions of the compensation law for these casual  
employments, as provided in 39-71-401(2). Household or  
domestic service is excluded.

(b) a recipient of general relief who is performing  
work for a county of this state under the provisions of  
53-3-303 through 53-3-305 and any juvenile performing work  
under authorization of a district court judge in a  
delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational  
rehabilitation training or other on-the-job training under a  
state or federal vocational training program, whether or not  
under an appointment or contract of hire with an employer as  
defined in this chapter and whether or not receiving payment  
from a third party. However, this subsection does not apply  
to students enrolled in vocational training programs as  
outlined above while they are on the premises of a public  
school or community college.

(d) students enrolled and in attendance in programs of  
vocational-technical education at designated  
vocational-technical centers;

(e) an airman or other person employed as a volunteer

1 under 67-2-105; or

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

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

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

21 (2) The terms defined in subsection (1) do not include  
22 a person who is employed-by-a-ski-area-operator-as-that  
23 term-is-defined-in-23-2-732,-to-work-at-the-ski-area-and  
24 who:

25 (a)-is-working-but-not-acting-in-the-scope-and-course

1 of-employment;-or

2 (b)-is-on-the-premises-at-a-time-other-than-the  
3 person's-work-hours:

4 (A) PARTICIPATING IN RECREATIONAL ACTIVITY AND WHO AT  
5 THE TIME IS RELIEVED OF AND IS NOT PERFORMING PRESCRIBED  
6 DUTIES, REGARDLESS OF WHETHER THE PERSON IS USING, BY  
7 DISCOUNT OR OTHERWISE, A PASS, TICKET, PERMIT, DEVICE, OR  
8 OTHER EMOLUMENT OF EMPLOYMENT; OR

9 (B) PERFORMING VOLUNTARY SERVICE AT A RECREATIONAL  
10 FACILITY AND WHO RECEIVES NO COMPENSATION FOR THOSE SERVICES  
11 OTHER THAN MEALS, LODGING, OR THE USE OF THE RECREATIONAL  
12 FACILITIES.

13 (3)(3) The term "volunteer firefighter" means a  
14 firefighter who is an enrolled and active member of a fire  
15 company organized and funded by a county, a rural fire  
16 district, or a fire service area.

17 (3)(4) (a) If the employer is a partnership or sole  
18 proprietorship, such the employer may elect to include as an  
19 employee within the provisions of this chapter any member of  
20 such the partnership or the owner of the sole proprietorship  
21 devoting full time to the partnership or proprietorship  
22 business.

23 (b) In the event of such an election, the employer must  
24 serve upon the employer's insurer written notice naming the  
25 partners or sole proprietor to be covered and stating the

1 level of compensation coverage desired by electing the  
2 amount of wages to be reported, subject to the limitations  
3 in subsection ~~(3)(d)~~ (4)(d). A partner or sole proprietor is  
4 not considered an employee within this chapter until such  
5 notice has been given.

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

9 (d) All weekly compensation benefits must be based on  
10 the amount of elected wages, subject to the minimum and  
11 maximum limitations of this subsection. For premium  
12 ratemaking and for the determination of weekly wage for  
13 weekly compensation benefits, the electing employer may  
14 elect not less than \$900 a month and not more than 1 1/2  
15 times the average weekly wage as defined in this chapter.

16 ~~(4)(5)~~ The trustees of a rural fire district, a county  
17 governing body providing rural fire protection, or the  
18 county commissioners or trustees for a fire service area may  
19 elect to include as an employee within the provisions of  
20 this chapter any volunteer firefighter. A volunteer  
21 firefighter who receives workers' compensation coverage  
22 under this section may not receive disability benefits under  
23 Title 19, chapter 12.

24 ~~(5)(6)~~ An employee, workman, or worker in this state  
25 whose services are furnished by a person, association,

1 contractor, firm, or corporation, other than a temporary  
2 service contractor, to an employer as defined in 39-71-117  
3 is presumed to be under the control and employment of the  
4 employer. This presumption may be rebutted as provided in  
5 39-71-117(3).

6 ~~(6)(7)~~ For purposes of this section, an "employee,  
7 workman, or worker in this state" means:

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

11 (b) a nonresident of Montana whose principal employment  
12 duties are conducted within this state on a regular basis  
13 for an employer."

14 **Section 2.** Section 39-71-123, MCA, is amended to read:

15 "39-71-123. Wages defined. (1) "Wages" means the gross  
16 remuneration paid in money, or in a substitute for money,  
17 for services rendered by an employee. Wages include but are  
18 not limited to:

19 (a) commissions, bonuses, and remuneration at the  
20 regular hourly rate for overtime work, holidays, vacations,  
21 and sickness periods;

22 (b) board, lodging, rent, or housing if it constitutes  
23 a part of the employee's remuneration and is based on its  
24 actual value; and

25 (c) payments made to an employee on any basis other

1 than time worked, including but not limited to piecework, an  
2 incentive plan, or profit-sharing arrangement.

3 (2) Wages do not include:

4 (a) employee expense reimbursements or allowances for  
5 meals, lodging, travel, subsistence, and other expenses, as  
6 set forth in department rules;

7 (b) special rewards for individual invention or  
8 discovery;

9 (c) tips and other gratuities received by the employee  
10 in excess of those documented to the employer for tax  
11 purposes;

12 (d) contributions made by the employer to a group  
13 insurance or pension plan; or

14 (e) vacation or sick leave benefits accrued but not  
15 paid.

16 (3) For compensation benefit purposes, the average  
17 actual earnings for the four pay periods immediately  
18 preceding the injury are the employee's wages, except if:

19 (a) the term of employment for the same employer is  
20 less than four pay periods, in which case the employee's  
21 wages are the hourly rate times the number of hours in a  
22 week for which the employee was hired to work; or

23 (b) for good cause shown by the claimant, the use of  
24 the four pay periods does not accurately reflect the  
25 claimant's employment history with the employer, in which

1 case the insurer may use additional pay periods.

2 (4) (a) For the purpose of calculating compensation  
3 benefits for an employee working concurrent employments, the  
4 average actual wages must be calculated as provided in  
5 subsection (3).

6 (b) The compensation benefits for a covered volunteer  
7 must be based on the average actual wages in his the  
8 volunteer's regular employment, except self-employment as a  
9 sole proprietor or partner who elected not to be covered,  
10 from which he the volunteer is disabled by the injury  
11 incurred.

12 (c) The compensation benefits for an employee working  
13 at two or more concurrent remunerated employments must be  
14 based on the aggregate of average actual wages of all  
15 employments, except self-employment as a sole proprietor or  
16 partner who elected not to be covered, from which the  
17 employee is disabled by the injury incurred.

18 (5) The compensation benefits and the payroll, for  
19 premium purposes, for a volunteer firefighter covered  
20 pursuant to 39-71-118(4) must be based upon a wage of not  
21 less than \$900 a month and not more than 1 1/2 times the  
22 average weekly wage as defined in this chapter."

-End-

## HOUSE BILL NO. 259

INTRODUCED BY SCHWINDEN, ELLIS, WALLIN, HARPER,

B. BROWN, CHRISTIAENS

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT AN  
EMPLOYEE OF A SKI-AREA OPERATOR INJURED WHILE PARTICIPATING  
IN A RECREATIONAL ACTIVITY IS NOT ENTITLED TO WORKERS'  
COMPENSATION IF--INJURED AT THE SKI-AREA AT A TIME WHEN THE  
EMPLOYEE IS NOT WORKING OR WHEN THE EMPLOYEE IS WORKING--BUT  
IS--NOT--ACTING--IN--THE SCOPE AND COURSE OF EMPLOYMENT; AND  
AMENDING SECTIONS 39-71-118 AND 39-71-123, MCA."

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

**Section 1.** Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, workman, and volunteer  
firefighter defined. (1) The terms "employee", "workman", or  
"worker" mean:

(a) each person in this state, including a contractor  
other than an independent contractor, who is in the service  
of an employer, as defined by 39-71-117, under any  
appointment or contract of hire, expressed or implied, oral  
or written. The terms include aliens and minors, whether  
lawfully or unlawfully employed, and all of the elected and  
appointed paid public officers and officers and members of  
boards of directors of quasi-public or private corporations

while rendering actual service for such the corporations for  
pay. Casual employees as defined by 39-71-116 are included  
as employees if they are not otherwise covered by workers'  
compensation and if an employer has elected to be bound by  
the provisions of the compensation law for these casual  
employments, as provided in 39-71-401(2). Household or  
domestic service is excluded.

(b) a recipient of general relief who is performing  
work for a county of this state under the provisions of  
53-3-303 through 53-3-305 and any juvenile performing work  
under authorization of a district court judge in a  
delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational  
rehabilitation training or other on-the-job training under a  
state or federal vocational training program, whether or not  
under an appointment or contract of hire with an employer as  
defined in this chapter and whether or not receiving payment  
from a third party. However, this subsection does not apply  
to students enrolled in vocational training programs as  
outlined above while they are on the premises of a public  
school or community college.

(d) students enrolled and in attendance in programs of  
vocational-technical education at designated  
vocational-technical centers;

(e) an airman or other person employed as a volunteer

under 67-2-105; or

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

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

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

(2) The terms defined in subsection (1) do not include a person who is employed by a ski area operator, as that term is defined in 23-2-732, to work at the ski area and who:

(a) is working but not acting in the scope and course

of employment; or

(b) is on the premises at a time other than the person's work hours;

(A) PARTICIPATING IN RECREATIONAL ACTIVITY AND WHO AT THE TIME IS RELIEVED OF AND IS NOT PERFORMING PRESCRIBED DUTIES, REGARDLESS OF WHETHER THE PERSON IS USING, BY DISCOUNT OR OTHERWISE, A PASS, TICKET, PERMIT, DEVICE, OR OTHER EMOLUMENT OF EMPLOYMENT; OR

(B) PERFORMING VOLUNTARY SERVICE AT A RECREATIONAL FACILITY AND WHO RECEIVES NO COMPENSATION FOR THOSE SERVICES OTHER THAN MEALS, LODGING, OR THE USE OF THE RECREATIONAL FACILITIES.

~~(2)~~(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

~~(3)~~(4) (a) If the employer is a partnership or sole proprietorship, such the employer may elect to include as an employee within the provisions of this chapter any member of such the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the

1 level of compensation coverage desired by electing the  
2 amount of wages to be reported, subject to the limitations  
3 in subsection ~~(3)~~(4) (4)(d). A partner or sole proprietor is  
4 not considered an employee within this chapter until such  
5 notice has been given.

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

9 (d) All weekly compensation benefits must be based on  
10 the amount of elected wages, subject to the minimum and  
11 maximum limitations of this subsection. For premium  
12 ratemaking and for the determination of weekly wage for  
13 weekly compensation benefits, the electing employer may  
14 elect not less than \$900 a month and not more than 1 1/2  
15 times the average weekly wage as defined in this chapter.

16 ~~(4)~~(5) The trustees of a rural fire district, a county  
17 governing body providing rural fire protection, or the  
18 county commissioners or trustees for a fire service area may  
19 elect to include as an employee within the provisions of  
20 this chapter any volunteer firefighter. A volunteer  
21 firefighter who receives workers' compensation coverage  
22 under this section may not receive disability benefits under  
23 Title 19, chapter 12.

24 ~~(5)~~(6) An employee, workman, or worker in this state  
25 whose services are furnished by a person, association,

1 contractor, firm, or corporation, other than a temporary  
2 service contractor, to an employer as defined in 39-71-117  
3 is presumed to be under the control and employment of the  
4 employer. This presumption may be rebutted as provided in  
5 39-71-117(3).

6 ~~(6)~~(7) For purposes of this section, an "employee,  
7 workman, or worker in this state" means:

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

11 (b) a nonresident of Montana whose principal employment  
12 duties are conducted within this state on a regular basis  
13 for an employer."

14 **Section 2.** Section 39-71-123, MCA, is amended to read:

15 "39-71-123. Wages defined. (1) "Wages" means the gross  
16 remuneration paid in money, or in a substitute for money,  
17 for services rendered by an employee. Wages include but are  
18 not limited to:

19 (a) commissions, bonuses, and remuneration at the  
20 regular hourly rate for overtime work, holidays, vacations,  
21 and sickness periods;

22 (b) board, lodging, rent, or housing if it constitutes  
23 a part of the employee's remuneration and is based on its  
24 actual value; and

25 (c) payments made to an employee on any basis other



1 than time worked, including but not limited to piecework, an  
2 incentive plan, or profit-sharing arrangement.

3 (2) Wages do not include:

4 (a) employee expense reimbursements or allowances for  
5 meals, lodging, travel, subsistence, and other expenses, as  
6 set forth in department rules;

7 (b) special rewards for individual invention or  
8 discovery;

9 (c) tips and other gratuities received by the employee  
10 in excess of those documented to the employer for tax  
11 purposes;

12 (d) contributions made by the employer to a group  
13 insurance or pension plan; or

14 (e) vacation or sick leave benefits accrued but not  
15 paid.

16 (3) For compensation benefit purposes, the average  
17 actual earnings for the four pay periods immediately  
18 preceding the injury are the employee's wages, except if:

19 (a) the term of employment for the same employer is  
20 less than four pay periods, in which case the employee's  
21 wages are the hourly rate times the number of hours in a  
22 week for which the employee was hired to work; or

23 (b) for good cause shown by the claimant, the use of  
24 the four pay periods does not accurately reflect the  
25 claimant's employment history with the employer, in which

1 case the insurer may use additional pay periods.

2 (4) (a) For the purpose of calculating compensation  
3 benefits for an employee working concurrent employments, the  
4 average actual wages must be calculated as provided in  
5 subsection (3).

6 (b) The compensation benefits for a covered volunteer  
7 must be based on the average actual wages in his the  
8 volunteer's regular employment, except self-employment as a  
9 sole proprietor or partner who elected not to be covered,  
10 from which he the volunteer is disabled by the injury  
11 incurred.

12 (c) The compensation benefits for an employee working  
13 at two or more concurrent remunerated employments must be  
14 based on the aggregate of average actual wages of all  
15 employments, except self-employment as a sole proprietor or  
16 partner who elected not to be covered, from which the  
17 employee is disabled by the injury incurred.

18 (5) The compensation benefits and the payroll, for  
19 premium purposes, for a volunteer firefighter covered  
20 pursuant to 39-71-118(4) must be based upon a wage of not  
21 less than \$900 a month and not more than 1 1/2 times the  
22 average weekly wage as defined in this chapter."

-End-