

1 SENATE BILL NO. 237
 2 INTRODUCED BY Mike Phillips HARD

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE OUTSIDE
 5 SALESMEN FROM COVERAGE UNDER THE STATE OVERTIME COMPENSATION
 6 LAWS; AND AMENDING SECTION 39-3-406, MCA."

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

10 ***39-3-406. Exclusions.** (1) The provisions of 39-3-404
 11 and 39-3-405 shall do not apply with respect to:

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

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

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

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

24 (e) any persons not regular employees thereof who
 25 voluntarily offer their services to a nonprofit organization

1 on a fully or partially reimbursed basis;

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

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

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

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

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

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

23 (l) resident managers employed in lodging
 24 establishments or personal care facilities who, under the
 25 terms of their employment, live in the establishment or

1 facility.

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

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

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

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

12 (d) ~~an--outside--salesman--paid--on--a--commission---or~~
13 ~~contract---basis---who--is--primarily--employed--in--selling~~
14 ~~advertising-for-a-newspaper~~ an employee employed in the
15 capacity of outside salesman who is excluded under 29 U.S.C.
16 213(a)(1) from the overtime compensation provisions of the
17 Fair Labor Standards Act;

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

25 (f) a salesman primarily engaged in selling trailers,

1 boats, or aircraft if he is employed by a nonmanufacturing
2 establishment primarily engaged in the business of selling
3 trailers, boats, or aircraft to ultimate purchasers;

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

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

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

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

1 (i) primarily employed during his workweek in
2 agriculture by such farmer; and

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

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

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

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

23 (n) an employee employed in planting or tending trees;
24 cruising, surveying, or felling timber; or transporting logs
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 who
8 is working under a work period not exceeding 40 hours in a
9 7-day period established through a collective bargaining
10 agreement when a collective bargaining unit represents the
11 employee or by mutual agreement of the employer and employee
12 where no bargaining unit is recognized. Employment in excess
13 of 40 hours in a 7-day, 40-hour work period must be
14 compensated at a rate of not less than 1 1/2 times the
15 hourly wage rate for the employee.

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

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1 hourly wage rate for the employee.

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

6 (s) an officer or other employee of a police department
7 in a city of the first or second class who is working under
8 a work period established by the chief of police under
9 7-32-4118;

10 (t) an employee of a department of public safety
11 working under a work period established pursuant to
12 7-32-115."

-End-

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 237

INTRODUCED BY NOBLE, PHILLIPS, HARP, THAYER

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE CERTAIN
OUTSIDE SALESMEN WHO ARE EMPLOYED IN SELLING OFFICE
EQUIPMENT FROM COVERAGE UNDER THE STATE OVERTIME
COMPENSATION LAWS; AND AMENDING SECTION 39-3-406, MCA."

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

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

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

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

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

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

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

(e) any persons not regular employees thereof who

voluntarily offer their services to a nonprofit organization
on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is
incidental to training or evaluation programs or whose
earning capacity is so severely impaired that they are
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
employment;

(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
wage rate established in this part;

(i) retired or semiretired persons performing part-time
incidental work as a condition of their residence 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;

(l) resident managers employed in lodging
establishments or personal care facilities who, under the

SECOND READING



1 terms of their employment, live in the establishment or
2 facility.

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

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

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

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

13 (d) ~~an---outside---salesman---paid---on---a---commission---or~~
14 ~~contract---basis---who---is---primarily---employed---in---selling~~
15 ~~advertising---for---a---newspaper~~ an--employee-employed-in-the
16 capacity-of-outside-salesman-who-is-excluded-under-29-U.S.C.
17 213(a)(1)-from-the-overtime-compensation-provisions-of-the
18 Fair--Labor--Standards--Act AN OUTSIDE SALESMAN PAID ON A
19 COMMISSION OR CONTRACT BASIS WHO IS PRIMARILY EMPLOYED IN
20 SELLING ADVERTISING FOR A NEWSPAPER;

21 (e) a salesman, partsman, or mechanic paid on a
22 commission or contract basis and primarily engaged in
23 selling or servicing automobiles, trucks, mobile homes,
24 recreational vehicles, or farm implements if he is employed
25 by a nonmanufacturing establishment primarily engaged in the

1 business of selling such vehicles or implements to ultimate
2 purchasers;

3 (f) a salesman primarily engaged in selling trailers,
4 boats, or aircraft if he is employed by a nonmanufacturing
5 establishment primarily engaged in the business of selling
6 trailers, boats, or aircraft to ultimate purchasers;

7 (G) AN OUTSIDE SALESMAN PAID ON A COMMISSION OR
8 CONTRACT BASIS WHO IS PRIMARILY EMPLOYED IN SELLING OFFICE
9 SUPPLIES, COMPUTERS, OR OTHER OFFICE EQUIPMENT FOR AN OFFICE
10 EQUIPMENT DEALER;

11 ~~(g)(H)~~ a salesman paid on a commission or contract
12 basis who is primarily engaged in selling advertising for a
13 radio or television station employer;

14 ~~(h)(I)~~ an employee employed as a driver or driver's
15 helper making local deliveries who is compensated for such
16 employment on the basis of trip rates, or other delivery
17 payment plan, if the commissioner finds that such plan has
18 the general purpose and effect of reducing hours worked by
19 such employees to or below the maximum workweek applicable
20 to them under 39-3-405;

21 ~~(i)(J)~~ an employee employed in agriculture or in
22 connection with the operation or maintenance of ditches,
23 canals, reservoirs, or waterways not owned or operated for
24 profit and not operated on a sharecrop basis and which are
25 used exclusively for supply and storing of water for

1 agricultural purposes;

2 {~~f~~}(K) an employee with respect to his employment in
3 agriculture by a farmer, notwithstanding other employment of
4 such employee in connection with livestock auction
5 operations in which such farmer is engaged as an adjunct to
6 the raising of livestock, either on his own account or in
7 conjunction with other farmers, if such employee is:

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9 agriculture by such farmer; and

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11 livestock auction operations at a wage rate not less than
12 that prescribed by 39-3-404;

13 {~~f~~}(L) an employee of an establishment commonly
14 recognized as a country elevator, including an establishment
15 which sells products and services used in the operation of a
16 farm, if no more than five employees are employed by the
17 establishment;

18 {~~f~~}(M) a driver employed by an employer engaged in the
19 business of operating taxicabs;

20 {~~m~~}(N) an employee who is employed with his spouse by a
21 nonprofit educational institution to serve as the parents of
22 children who are orphans or one of whose natural parents is
23 deceased or who are enrolled in such institution and reside
24 in residential facilities of the institution so long as the
25 children are in residence at the institution and so long as

1 such employee and his spouse reside in such facilities and
2 receive, without cost, board and lodging from the
3 institution and are together compensated, on a cash basis,
4 at an annual rate of not less than \$10,000;

5 {~~m~~}(O) an employee employed in planting or tending
6 trees; cruising, surveying, or felling timber; or
7 transporting logs or other forestry products to a mill,
8 processing plant, railroad, or other transportation terminal
9 if the number of employees employed by his employer in such
10 forestry or lumbering operations does not exceed eight;

11 {~~o~~}(P) an employee of a sheriff's department who is
12 working under an established work period in lieu of a
13 workweek pursuant to 7-4-2509(1);

14 {~~p~~}(Q) an employee of a municipal or county government
15 who is working under a work period not exceeding 40 hours in
16 a 7-day period established through a collective bargaining
17 agreement when a collective bargaining unit represents the
18 employee or by mutual agreement of the employer and employee
19 where no bargaining unit is recognized. Employment in excess
20 of 40 hours in a 7-day, 40-hour work period must be
21 compensated at a rate of not less than 1 1/2 times the
22 hourly wage rate for the employee.

23 {~~q~~}(R) an employee of a hospital or other establishment
24 primarily engaged in the care of the sick, disabled, aged,
25 or mentally ill or defective who is working under a work

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1 period not exceeding 80 hours in a 14-day period established
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6 hours per day or 80 hours in a 14-day period must be
7 compensated for at a rate of not less than 1 1/2 times the
8 hourly wage rate for the employee.

9 †*†(S) a firefighter who is working under a work period
10 established in a collective bargaining agreement entered
11 into between a public employer and a firefighters'
12 organization or its exclusive representative;

13 †*(T) an officer or other employee of a police
14 department in a city of the first or second class who is
15 working under a work period established by the chief of
16 police under 7-32-4118;

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8 commissioner for a period not to exceed 30 days of their
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11 farm workers, provided that such exclusion shall not exceed
12 a period of 180 days from their initial date of employment
13 and further provided that during this exclusion period wages
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THIRD READING

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REFERENCE BILL



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14 ~~(h)(I)~~ an employee employed as a driver or driver's
15 helper making local deliveries who is compensated for such
16 employment on the basis of trip rates, or other delivery
17 payment plan, if the commissioner finds that such plan has
18 the general purpose and effect of reducing hours worked by
19 such employees to or below the maximum workweek applicable
20 to them under 39-3-405;

21 ~~(i)(J)~~ an employee employed in agriculture or in
22 connection with the operation or maintenance of ditches,
23 canals, reservoirs, or waterways not owned or operated for
24 profit and not operated on a sharecrop basis and which are
25 used exclusively for supply and storing of water for

1 agricultural purposes;

2 †j†(K) an employee with respect to his employment in
3 agriculture by a farmer, notwithstanding other employment of
4 such employee in connection with livestock auction
5 operations in which such farmer is engaged as an adjunct to
6 the raising of livestock, either on his own account or in
7 conjunction with other farmers, if such employee is:

8 (i) primarily employed during his workweek in
9 agriculture by such farmer; and

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

13 †k†(L) an employee of an establishment commonly
14 recognized as a country elevator, including an establishment
15 which sells products and services used in the operation of a
16 farm, if no more than five employees are employed by the
17 establishment;

18 †l†(M) a driver employed by an employer engaged in the
19 business of operating taxicabs;

20 †m†(N) an employee who is employed with his spouse by a
21 nonprofit educational institution to serve as the parents of
22 children who are orphans or one of whose natural parents is
23 deceased or who are enrolled in such institution and reside
24 in residential facilities of the institution so long as the
25 children are in residence at the institution and so long as

1 such employee and his spouse reside in such facilities and
2 receive, without cost, board and lodging from the
3 institution and are together compensated, on a cash basis,
4 at an annual rate of not less than \$10,000;

5 †n†(O) an employee employed in planting or tending
6 trees; cruising, surveying, or felling timber; or
7 transporting logs or other forestry products to a mill,
8 processing plant, railroad, or other transportation terminal
9 if the number of employees employed by his employer in such
10 forestry or lumbering operations does not exceed eight;

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

14 †p†(Q) an employee of a municipal or county government
15 who is working under a work period not exceeding 40 hours in
16 a 7-day period established through a collective bargaining
17 agreement when a collective bargaining unit represents the
18 employee or by mutual agreement of the employer and employee
19 where no bargaining unit is recognized. Employment in excess
20 of 40 hours in a 7-day, 40-hour work period must be
21 compensated at a rate of not less than 1 1/2 times the
22 hourly wage rate for the employee.

23 †q†(R) an employee of a hospital or other establishment
24 primarily engaged in the care of the sick, disabled, aged,
25 or mentally ill or defective who is working under a work

1 period not exceeding 80 hours in a 14-day period established
2 through either a collective bargaining agreement when a
3 collective bargaining unit represents the employee or by
4 mutual agreement of the employer and employee where no
5 bargaining unit is recognized. Employment in excess of 8
6 hours per day or 80 hours in a 14-day period must be
7 compensated for at a rate of not less than 1 1/2 times the
8 hourly wage rate for the employee.

9 ††) (S) a firefighter who is working under a work period
10 established in a collective bargaining agreement entered
11 into between a public employer and a firefighters'
12 organization or its exclusive representative;

13 ††) (T) an officer or other employee of a police
14 department in a city of the first or second class who is
15 working under a work period established by the chief of
16 police under 7-32-4118;

17 ††) (U) an employee of a department of public safety
18 working under a work period established pursuant to
19 7-32-115."

-End-