

MINUTES OF THE MEETING  
LABOR & EMPLOYMENT RELATIONS COMMITTEE  
MONTANA STATE SENATE

January 27, 1979

A meeting of the Labor & Employment Relations Committee was called to order by Chairman Lowe on January 27, 1979, in Room 404 of the State Capitol at 1:30 p.m.

ROLL CALL: All members were present.

Chairman Lowe introduced Senator Paul Boylan from District 38 in Bozeman to introduce Senate Bill #155, as Senator Boylan is the sponsor of this bill.

Senator Boylan explained that this bill was designed to exempt salesman, parts distributors, mechanics, service station attendants, drivers, etc. from the overtime compensation laws. Senator Boylan felt that these people should not be covered under the overtime compensation laws as they were not covered under the Federal Act, and should not be so covered under the State Act. Senator Boylan urged a Do Pass on this bill.

Chairman Lowe then asked for proponents to this bill.

PROPOSERS: Mr. Gerald F. Raunig of the Montana Auto Dealers Association in Helena, Montana, testified that they supported this bill in that it was virtually impossible to keep their salesman on a 40 hour work week and if they had to pay overtime, the costs to the consumer would be much higher. Mr. Raunig felt that the State bill should be in line with the Federal Act covering exemptions to the overtime compensation laws.

The next proponent was Robert H. Oakland of City Motor Co., Inc., in Great Falls. Mr. Oakland said it was difficult to determine when a salesman was selling and when he was not, and that the incentives of bonuses and commissions worked much better for his employees than the overtime requirement.

Mr. George H. Selover of Selover Buick then testified as a proponent and his statement is attached as Exhibit "A".

Ms. Santovan of the Hardware & Farm Equipment Co. urged a Do Pass on this bill as the salesmen and parts employees of that company were subject to work the hours convenient to the farmers in the area and involved working at night and on weekends in order to service the farm community.

Other proponents of this bill were Vaughn D. Dutro, Conrad Implement Co.; Edwin V. Swanson, Farm Equipment Sales, Inc., Glasgow, Montana; Tom Markle, Markle's Inc., Glasgow, Montana; James T. Harrison, Jr., Montana Equipment Dealers Association, Helena, Montana; Larry Huss, Attorney representing Montana Auto Dealers Association, Helena, Montana; Ed Sheehy, Jr., representing Montana Manufactured Housing Association, Helena, Montana; C. L. Overfelt, Attorney representing the Yellow Cab and Black and White Cab Companies from Great Falls, Montana; Mr. Byron Wills, Black & White Cab Company in Great Falls; Ward Davison, Helena Cab Inc., Helena, Montana; Bob McCloud, Great Falls, Montana, and Dick Peterson, Diamond Cab Co., Great Falls, Montana. The testimony sheets for Alfred J. Wilson of Yellow Cab Co., Great Falls, and Avis Ann Tobin, Montana Valve and Implement Association, Helena, are attached.

Mr. Tom Harrison of the Montana Equipment Dealers Association suggested an amendment be included on line 23, page 1, to include industrial mining, logging or construction equipment. Mr. McCloud, motel owner, also suggested amendment to include motel employees. (Exh. "B") Mr. Ed Sheehy also proposed an amendment to the bill to include mobile homes and recreational vehicles and this amendment is attached to the minutes as Exhibit "C".

Basically, the testimony by the above individuals was basically the same with the exception of the taxi companies and most of the proponents of the bill from the taxi companies indicated that they could not afford to pay taxi drivers overtime compensation and felt that their sales would go down if the percentage of the business incentive was removed.

**OPPONENTS:** Mr. Jim Murry representing the Montana State AFL-CIO, Helena, Montana, felt that this bill was not in the best interest of the workers in the State of Montana.

Mr. Dick Kane, Administrator of the Labor Standards Division, spoke in opposition to the bill and his testimony is attached as Exhibit "D".

Mr. D. Patrick McKittrick representing the Joint Council of Teamsters No. 2 spoke in opposition to the bill and explained that he had co-sponsored the original bill which included salesmen, mechanics, etc., in the bill and explained the legislative intent at the time the original bill was introduced. He felt that the lower income people would suffer if this bill was passed.

Mr. Joe Rossman of the Montana Joint Council of Teamsters then spoke in opposition to the bill and felt that some regulation of hours and pay was needed in the State.

Other opponents of the bill were Arlyn Plowman, Cement Workers Local #239, Bozeman, Montana; Kenneth D. Clark, United Transportation Union, Miles City, Montana.

The meeting was then opened to questions from the Committee and Senator Dover asked if the commissions and bonuses would equal what they would get if they were working overtime to which Mr. Kane explained that in the case of mechanics and taxi drivers the minimum wage requirement would not be met.

Senator Lowe then asked Senator Boylan how he had come to author this bill to which Senator Boylan said that he had been approached by members of his community in the farm equipment dealerships wherein they wanted to abide by the federal standards and were having difficulty complying with the state standards as these two acts were conflicting.

After more general discussion of this bill, Chairman Lowe indicated that the Committee had run out of time and appointed a sub-committee to research this bill and its effects on the people of the State. Senators Dover, Severson and Hafferman were appointed to this sub-committee.

Chairman Lowe then asked the Committee if they agreed with the amendments proposed in Senate Bill #141. Their being no objections to the amendments, Senator Palmer moved that this bill be passed as amended; seconded by Senator Dover and passed unanimously.

Due to the lack of time, Senate Bill #150 was not heard and was held over to the next meeting to be held on January 30, 1979.

The meeting adjourned at 2:57 p.m.

  
Senator William R. Lowe

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

46TH LEGISLATIVE SESSION - - 1979

Date Jan. 27, 1979.

NAME	PRESENT	ABSENT	EXCUSED
HAROLD C. NELSON, VICE CHAIRMAN	✓		
GARY AKLESTAD	✓		
HAROLD L. DOVER	✓		
WILLIAM F. HAFFERMAN	✓		
JOHN (SANDY) MEHRENS	✓		
BOB PALMER	✓		
ELMER D. SEVERSON	✓		
RICHARD G. SMITH	✓		
BILL R. LOWE, CHAIRMAN	✓		

SELOVER

SB 155

Exhibit "A"

DILLING

I AM PLEASED TO HAVE THE OPPORTUNITY TO DISCUSS WITH YOU TODAY THE PROPOSED BOYLAN-KOLSTAD BILL WHICH WOULD REAFFIRM THE OVERTIME EXEMPTION FOR PARTSMEN, SALESMEN, AND MECHANICS IN THE STATE OF MONTANA. THIS THEN WOULD BE SIMILAR TO THE FEDERAL WAGE & HOUR LAW.

TO BEGIN WITH, I WILL RECOUNT SOME OF THE HISTORY OF THE FEDERAL WAGE & HOUR LAW. IT WAS ENACTED IN 1938. THE ORIGINAL LAW EXEMPTED AUTO DEALERS FROM COVERAGE UNDER THAT LAW. DUE TO WHAT CONGRESS THOUGHT WAS MISINTERPRETATION OF THEIR INTENT, THEY AMENDED THE LAW IN 1949 MAKING IT VERY CLEAR THAT THE EXEMPTION DID INDEED APPLY TO THE RETAIL AUTOMOBILE AND TRUCK DEALER. THIS EXEMPTION WAS STRONGLY REITERATED WHEN CONGRESS EXPANDED THE LAW'S COVERAGE AND RAISED THE MINIMUM WAGE. IN 1965 CONGRESS MADE MORE AMENDMENTS AND THIS TIME DID INCLUDE DEALERSHIPS UNDER THE MINIMUM WAGE PORTION OF THE LAW. THEY ALSO, HOWEVER, PRESERVED THE OVERTIME EXEMPTION FOR PARTSMEN, SALESMEN AND MECHANICS. AMENDMENTS WERE INTRODUCED IN 1972, 1973 AND 1974 AND EACH CASE THE OVERTIME EXEMPTION FOR PARTSMEN, SALESMEN, AND MECHANICS WAS MAINTAINED. THESE ARE EIGHT AMENDMENTS I AM AWARE OF, THERE WELL COULD BE MANY MORE.

THE POINT, HOWEVER, IS THAT DURING ALL THIS DELIYERATION OVER THE MANY YEARS, CONGRESS HAS DECIDED AGAIN AND AGAIN THAT PARTSMEN, SALESMEN, AND MECHANICS SHOULD BE EXEMPT FROM THE FEDERAL WAGE AND

*40 Hour*  
~~HOW~~ LAW OVERTIME PROVISION.

I WILL <sup>now</sup> FOCUS MY ATTENTION ON THE INEQUITIES OF THE 40 HOUR NON OVERTIME LIMIT AS IT PERTAINS TO SALESMEN.

THERE ARE DIFFERENT REASONS WHY THE HISTORICAL EXEMPTION FROM OVERTIME SHOULD APPLY TO SALESMEN. IF A SALESMAN IS TO EXCEL IN HIS FIELD (IF YOU DON'T MIND, I WILL USE THE TERM SALESMAN WITH THE UNDERSTANDING THAT TERM COVERS ALL SALESPERSONS), HE CAN NOT BE LIMITED

1) Let's look at mechanics for parts.  
 Many auto mechanics in the past  
 of motels or other places are paid on  
 a flat rate system. This basically means  
 that they earn a percentage, usually  
 45 to 50%, of the hourly rate charged the  
 retail customer, by some particular dealer.  
~~This then hourly rate~~ is multiplied by  
 the flat rate hours or fraction thereof  
 that the work is measured published by  
 the manufacturer, specific a certain job  
 should take. As an example if a  
 certain transmission overhaul requires  
~~4.0~~ 4.0 hours and the hourly rate is \$15 per  
 hour, the labor charge would be \$60.00.  
 If the mechanic receives 45% of this  
 charge, his pay would be \$27.00 for  
 that particular job. If a mechanic  
 can perform that job because of  
 experience in 3 1/2 hours he naturally is  
 making more money. On the other  
 hand if it takes him 4 hours he still  
 only receives the ~~27.00~~ \$27.00.

~~These mechanics then are actually  
 paid on a commission basis similar  
 to real estate. To attract the business they  
 can work without being paid overtime,  
 etc.~~

$$45\% \text{ of } 60 = 27.00$$

$$45\% \text{ of } 15/\text{hr} = 6.75 \times 3 = 20.25$$

$$15 \times 1.5 = 22.50 \times 45\% \times 1.5 = \frac{15.00}{25.50}$$

Therefore a mechanic working on this basis is paid on a commission system and as such his time should not be ~~subject~~ <sup>restricted</sup> ~~to~~ <sup>by</sup> overtime requirements. His job may be favorably compared with piece time rates where his energy, skill & work, and experience determine to a great degree what his earnings shall be. The incentive opportunity should not be destroyed by the threat of having to quit after 40 hours per week if overtime is not allowed, 2) to charge an additional fee to the customer for an overtime hour or portion thereof.

Imagine if you will the confession of explaining a bill to a customer if the following were to happen. A customer brings his car in a 2 P.M. Friday and needs about 4 hours repair job. He needs the car for the weekend. The mechanic agrees to perform the work and is able to complete it in 3 1/2 hours. Without the exemption the customer would be charged as in the previous table example. If however the exemption is not available the shop would have to be completed in 4 hours and

BY THE NUMBER OF HOURS HE WORKS. HE MUST BE READY TO SEE AND SERVE THE CUSTOMER WHEN THE CUSTOMER IS READY, NOT WHEN A PARTICULAR HOUR DICTATES THAT MEETING. WHAT WOULD ANY OF YOU THINK IF I WERE TO TELL YOU I COULD ONLY SEE YOU AT 4:30 P.M. TO SHOW YOU A CAR AND THEN I HAD TO DO IT IN 30 MINUTES. AND, IF YOU WANTED TO SPEND MORE THAN 30 MINUTES, I WOULD HAVE TO CHARGE YOU MORE FOR THE CAR BECAUSE I WOULD BE ON OVERTIME. YOU, AND I WOULD DO THE SAME--WOULD GO ELSEWHERE.

<sup>Follow</sup>  
FOLLOW WITH ME IF YOU WILL THROUGH THE FOLLOWING

EXAMPLES:

A. IF A SALESMAN MEETS SOMEONE AT THE ELKS AND THEY START TALKING CARS. IS HE WORKING? IF HE EVENTALLY SELLS HIM A CAR, IF HE EVENTUALLY SELLS HIM A DIFFERENT CAR THAN THE ONE THEY TALKED ABOUT, IF HE DOESN'T SELL HIM A CAR, IS HE WORKING?

B. WE LIKE TO TRAIN OUR SALESMEN TO SELL IMAGINATIVELY AND CREATIVELY. THEY SHOULD CONTINUALLY BE THINKING AND REMINDED OF PEOPLE TO WHOM THEY CAN SELL, NEW TECHNIQUES OF SELLING, AND HONING OLD TECHNIQUES. THIS IS NOT SOMETHING YOU CAN TURN ON AND OFF. GOOD SALESMEN WORK AT IT CONTINUALLY AND SOMETIMES SUBLIMINLY. HOW DO YOU DETERMINE HOW MANY HOURS THEY HAVE WORKED DOING THIS?

C. WHAT OF TRAVELING SALESMEN WHO MAY DRIVE 100 TO 200 MILES BEFORE THEY MAKE A CALL. IT IS POSSIBLE THAT WITHOUT THE EXEMPTION PROVIDED BY THE BOYLAN-KOLSTAD BILL A SALESMAN WOULD BE ON OVERTIME BEFORE HE MAKES HIS FIRST CALL. MONTANA IS ONE OF THE MOST SPARSLY POPULATED STATES IN THE UNITED STATES. WHILE A MONTANA SALESMAN TRAVELS 200 MILES TO MAKE A CALL, A SALESMAN IN A MORE POPULATED AREA CAN TRAVEL 20 MILES TO MAKE 10 OR MORE CALLS. TO HAVE TO PAY OVERTIME TO THE MONTANA SALESMAN AND NOT TO THE OTHER SALESMAN PUTS (A) THE MONTANA SALESMAN AT A COMPETITIVE DISADVANTAGE AND/OR (B) THE PRICING OF PRODUCTS HE SELLS AT AN EVEN HIGHER PRICE THAN IS ENJOYED ELSEWHERE IN THIS COUNTRY.

LET ME RECOUNT OUR EXPERIENCE UNDER THE 40 HOUR LAW AS IT NOW IS INTERPRETED. SALESMEN ARE PAID ON A COMMISSION BASIS. IF THEY DON'T PRODUCE THEY DON'T MAKE THE AMOUNT OF MONEY THEY COULD BY BEING A GOOD PRODUCER. THEIR TIME IS REALLY AT THE MERCY OF THE CUSTOMER AND THEIR TIME IS THEIR ONLY INVESTMENT IN OUR BUSINESS. SHOULD THERE BE A LAW WHICH LIMITS ONE'S INVESTMENT IN HIS BUSINESS?

THERE IS VIRTUALLY NO WAY TO SCHEDULE HOURS SO THAT A SALESMAN CAN MEET HIS CUSTOMERS WHEN IT IS CONVENIENT FOR THE SALESMAN. I CAN TELL YOU FROM PRACTICAL EXPERIENCE THAT MY MANAGERS AND I HAVE SPENT UNTOLD HOURS TRYING TO DEVISE SCHEDULES WHICH COMPLY WITH THE 40 HOUR WEEK. WHAT HAS HAPPENED IS THAT SALESMEN ARE OFTEN NOT ON HAND WHEN SOMEONE THEY HAVE TALKED TO COMES IN. I WOULD ESTIMATE THAT IN MORE THAN 50% OF THE CASES WHERE A SALESMAN SETS UP AN APPOINTMENT FOR A SPECIFIED TIME THE CUSTOMER IS AT LEAST ONE HOUR LATE. IF MANAGEMENT IS BUSY, THAT CUSTOMER IS EITHER WAITED ON BY ANOTHER SALESMAN OR FINALLY LEAVES BECAUSE NO ONE IS THERE. YOU WILL UNDOUBTEDLY ANSWER HIRE MORE SALESMEN AND THAT, OF COURSE, IS A SOLUTION. BUT ALL THAT DOES IS TO SPLIT THE SALES COMMISSION PIE UP INTO SMALLER PIECES, PRODUCES LOWER TAKE HOME PAY FOR THE SALESMAN, CREATES UNHAPPY EMPLOYEES AND MUCH MORE TURN OVER. IT ALSO WOULD MEAN TWO OR MORE WOULD WAIT ON ONE CUSTOMER--CONFUSING THE CUSTOMER AND CAUSING ALL INVOLVED TO WANT A PART OF THE COMMISSION. SALESMEN BY THE VERY DEFINITION OF THE TERM CAN NOT BE RESTRICTED TO A SPECIFIED NUMBER OF HOURS. THEY NEED TO SPEND WHATEVER TIME IT TAKES TO GET THE JOB DONE. THE AUTOMOBILE RETAILING BUSINESS IS ONE OF THE MOST COMPETITIVE BUSINESSES THERE IS. IF WE DON'T STAY WITH A CUSTOMER UNTIL HE IS SOLD, SOMEONE ELSE WILL AND WE WILL LOSE THE SALE.

THESE ARE ONLY A FEW EXAMPLES. I COULD GO ON AND ON ABOUT THE PROBLEMS OF TRYING TO ADMINISTER AND SUPERVISE SALESMEN IN AN

ATTEMPT TO HOLD THEM TO 40 HOURS PER WEEK. I WILL TELL YOU RIGHT NOW IT IS IMPOSSIBLE TO DO IT EQUITABLY.

I HAVE TRIED TO POINT OUT SO FAR HOW THE CURRENT LACK OF AN EXEMPTION CAUSES UNDO HARDSHIP AND CONFUSION AND HOW, AS FAR AS SALESMEN ARE CONCERNED, IT IS VIRTUALLY AN UNENFORCEABLE LAW. THERE IS NO ONE IN MY ORGANIZATION WHO CAN ACCURATELY STATE HOW MANY HOURS A SALESMAN WORKS. SURE, WE KNOW HOW MANY HOURS HE IS ON THE PREMISES; BUT WE DO NOT KNOW, NOR CAN WE CONTROL, HOW MANY THINKING HOURS HE SPENDS, NOR WHAT <sup>SELLING</sup> TIME IS SPENT OUTSIDE THE DEALERSHIP. TO DESTROY FURTHER THE INCENTIVE TO GO AFTER A SALE EVEN THOUGH SOME MAGICAL NUMBER OF HOURS HAS ALREADY BEEN WORKED IS COUNTER PRODUCTIVE TO THE WELFARE OF THIS STATE AND THIS COUNTRY. FOR REMEMBER EVERY DOLLAR IS A SACRED DOLLAR FIRST

I MENTIONED CONFUSION A MINUTE AGO. LET ME QUICKLY RECITE SEVERAL EXAMPLES. I HAVE IN MY HAND A BROCHURE PRINTED BY THE LABOR STANDARDS DIVISION, HELENA, MONTANA. IT STATES IT IS A HANDY REFERENCE GUIDE TO THE MONTANA MINIMUM WAGE LAW OF 1971. INSIDE ON PAGE 1 I WOULD LIKE TO READ TO YOU-----.

FURTHER, I HAVE A COPY OF THE STATUTES OF THE STATE OF MONTANA 41-2307 REFERRING TO THE MONTANA MINIMUM WAGE LAW OF 1971. IT STATES -----.

EVEN THE LABOR STANDARDS DIVISION AND THE LEGISLATURE APPARENTLY INTENDED THAT PARTSMEN, SALESMEN AND MECHANICS BE EXEMPTED FROM THE OVERTIME PROVISION, YET, WE ARE TODAY, TOLD THEY ARE NOT EXEMPTED.

THE UNITED STATES CONGRESS IN AT LEAST 8 AMENDMENTS HAS SPENT UNTOLD HOURS DEBATING THE HISTORIC EXCLUSION FROM OVERTIME PAY FOR PARTSMEN, SALESMEN AND MECHANICS. CERTAINLY, THEIR DELIVERATIONS OVER 40 YEARS LENDS MUCH CREDIBILITY FOR THE NEED TO PASS JUST SUCH A BILL AS ENVISIONED BY SENATOR BOYLAND AND SENATOR KOLSTAD.

LADIES AND GENTLEMEN, I SUBMIT TO YOU THAT THERE ARE OVERRIDING PRICING AND COMPETITIVE SITUATIONS WHICH BEG FOR THE PASSAGE OF THE BOYLAN-KOLSTAD BILL. I FURTHER SUBMIT TO YOU THAT THE OVERTIME LAW OF THE STATE OF MONTANA AS IT PERTAINS TO SALESMEN IS A TOTALLY UNENFORCEABLE LAW, AND ANY LAW WHICH IS UNENFORCEABLE IS A BAD LAW. IT SHOULD BE CHANGED. I URGE YOUR SUPPORT AND PASSAGE OF THE BOYLAN-KILSTAD BILL.

THANK YOU VERY MUCH FOR ALLOWING ME THE OPPORTUNITY TO APPEAR BEFORE YOU THIS AFTERNOON.

IN OUR BUSINESS DEALING AS WE DO WITH SALESMEN, IT IS VIRTUALLY IMPOSSIBLE TO CONTROL OR PREVENT WORK HOUR ABUSE. ALL WE COULD DO IS THREATEN TO FIRE A HARD-WORKING - INDUSTRIOUS SALESMAN IF WE THOUGHT HE WERE VIOLATING WORKING HOURS - TO OBTAIN ADDITIONAL SALES - AND THAT IS IN DIRECT CONFLICT WITH HIS OBJECTIVE AND OURS. SO, MANAGEMENT ENDS UP WITH A LIABILITY EXPOSURE FOR AN ACTIVITY OVER WHICH THEY HAVE LITTLE IF ANY CONTROL AND ONE WHICH IS CONTRARY TO THE BASICS OF SELLING.

Exhibit "B"  
Bob McCloud  
Great Falls -

PROPOSED AMENDMENTS TO SB 155

2. Page 4, line 2.

Following line 2.

Insert: "(15) an employee who resides full-time in a facility  
and who has agreed in writing to work for a fixed salary."

Exhibit "C"  
Shucky

PROPOSED AMENDMENT TO SENATE BILL 155

Mr. President:

We, your committee on Labor & Employment Relations, having had under consideration Senate Bill No. 155, respectfully report as follows: That Senate Bill No. 155, second reading (yellow), be amended as follows:

1. Page 1, line 23.

Following: "trucks"

Insert: "mobile homes, recreational vehicles,"

Exhibit "D"  
1-27-79

Mr. Chairman, members of the committee, I am Dick Kane, Administrator of the Labor Standards Division. I am here to testify in opposition to Senate Bill 155.

In reading this proposed legislation, I am shocked to see that in some cases it is aimed at reducing the income of those persons who are at the very bottom of the wage ladder, and in other cases it is asking for exemptions covering groups of employees with no consideration for those employees in the group who are working for marginal wages.

When I first examined this proposed bill, I recognized that the language was taken from the federal Fair Labor Standards Act. A closer study revealed that the language was taken from outdated material.

It appears that the intent of this proposed law is to grant the exemptions provided by federal law to those persons employed with firms that are subject to the state minimum wage law. However, the proposed exemption is far broader than that granted by federal law. And, in fact, at least two of the exemptions have been repealed from the federal law. They are the exemptions for the employees of street, suburban, or inter-urban electric railways or local trolley or motorbus carrier and the employees of gasoline service stations.

The exemption proposed for partsmen, salesmen, and mechanics is inequitable in that it will give a blanket exemption from overtime to three distinct types of employment, each with a different wage scale. I have firsthand knowledge of this having been both a mechanic and a franchised new car dealer.

Partsmen are usually paid on an hourly or monthly salary basis and some employers have bonus plans based on total sales. Mechanics work on an hourly or commission basis or a combination of these. Salesmen work on a straight commission or a draw plus commission.

I don't know of a single logical reason why partsmen or mechanics should be exempt from overtime. Mechanics are required to purchase a set of tools to use in their work. They are expensive and are a major investment of the mechanics funds. On numerous occasions, I have seen employers initiate commission and bonus plans for mechanics and, as soon as the mechanic began earning top commissions or bonuses, the plan would be changed. Mechanic's wages are, in most cases, tied directly to the flat rate charged by the shop for the services performed. Shop time in many areas is charged out at \$20 per hour or more and those mechanics working commission get about 40 percent of that.

I have been told on a number of occasions by the owners or operators of farm implement dealerships, auto and truck dealerships, as well as trailer dealerships, that their salesmen make in excess of \$20,000 per year. These employers do not feel that a salesman earning this income needs the benefits of overtime. I guess that I might feel the same way if I was the employer. However, no mention is made by them of the fact that good salesmen earning these high commissions are not all that plentiful, and that there are literally hundreds of salesmen who are relatively unsuccessful and who are literally working for starvation wages. There is a steady flow of mediocre salesmen who are employed for a trial period and who don't make the grade. After a month or two they are let go. These are the people who need the protection of an overtime law.

If the committee believes that the successful salesman making in excess of \$20,000 is not entitled to overtime, then perhaps the law should exempt only those salesmen and not the ones who work long hours for little or no commission.

The exemption for house parents contains a provision for a \$10,000 per year salary plus board and room. This sounds like a princely sum until you stop and think about it. Here are two people, on duty 24 hours per day, 7 days per week. When you look at the hours worked, the princely sum becomes a pittance. Allowing 8 hours per day sleeping time, each of the house parents would have an hourly wage of .85 cents per hour plus board and room. This is based on a 16 hour day, 7 days a week.

Truck drivers, and these are the persons who are mentioned in the first section of the bill, are in many instances subject to what is now called Department of Transportation regulations. The hours of these workers are regulated by the federal regulations. My comments on this type of employment would be very similar to the comments I made on the employment of salespeople.

Employees who work in service stations are, in the most part, working for minimum wage and sometimes less. Our field inspections and claims processing have disclosed that there are often times minimum wage violation. In many cases, the employer has made deductions from the worker's wages for bad credit cards, bad checks, and shortages thus further reducing the worker's income. This is done in spite of the fact that such withholdings are not permitted by our state laws.

The exemption provision for the country elevator is very broad, it appears that it would include any establishment that sold products to a farm as long as it did not employ more than five persons. I don't believe that it is logical to create an exemption based only on the fact that there are less than five employees and the firm sells its product or services to farms.

I know of no instance where we have audited a taxi company where we didn't find one or more minimum wage violations. This means that the driver is working for less than \$2 per hour. While there are some drivers who earn more than the minimum wage, they accomplish this by working long shifts, usually 12 hours or longer.

Our records show that some taxi companys are repeated violators of more than just one of the laws administered by the Labor Standards Division. One company, in particular, has had a list of reoccurring violations dating back to 1971. Another operator of a taxi company had overtime violations in a business he had operated prior to acquiring the taxi business. It isn't just the overtime these employers don't want to pay, they don't want to comply with any of our wage laws.

Our investigations have established that there are taxi companys that owe their employees many thousands of dollars in back wages because of minimum wage and overtime violations.

The exemption for farm labor in Section 9 and 10 is unnecessary. The present Montana Law in Section 39-3-405, Subsection (2) provides

that no overtime provision shall apply to farm workers. I am unaware of any existant claims for overtime filed by farm workers. If such claims would be filed, the claimant would be advised that the employment such as is cited in Secion 9 and 10 of Senate Bill 155 is farm employment and is not subject to the overtime provision of Montana law.

If there are any questions on the farm exemption from overtime, I am sure that they can be addressed in the rules making procedure.

In closing, I believe it would be appropriate to take note of the comments of the Montana Supreme Court in the recent case of a mechanic who successfully sued his employer for overtime wages:

"The employer argues that it is covered by all provisions of the Fair Labor Standards Act except the overtime pay provision indicating an intention by Congress to occupy the whole field and in so preempting to grant it a specific exemption from payment of overtime wages based on a legislative policy to protect agriculture, a financially fragile industry.

The time is long past for this contention to prevail."

Exempting low income workers from overtime is unfair and defeats the purpose of the law. The people who are receiving marginal wages are the very ones that the law intended to help. An exemption from overtime would be nothing more than exploitation of these workers by the employer. For the employee who is making \$2 per hour, the state overtime rate is \$3 per hour, just 10 cents more than the federal minimum wage.

SENATE Labor & Engr. Bils COMMITTEE

BILL ~~155~~ 155

VISITORS' REGISTER

DATE 1-29-78

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOSE
<del>Ed Sheehy, Jr.</del>				
Ed Sheehy, Jr.	City of Billings			
Ed Sheehy, Jr.	Mont. Manufactured Housing	155	L	
Carole Fallon	also MT Chamber of Commerce			
Wm L. Pharrman	Cement Workers # 39	155		X
J. Roseman	Joint Council of Labor & Operating Engineers & Teamsters	155		X
R. St. Pierre		155		L
Norman Clark	United Transportation Union	155		X
David A. O'Hara	Aid			
Dick Kane	Labor Standards Div	155		
Jerry Driscoll	Laborers Local # 98	155		X
Jim Wherry	Mont. State AFL-CIO	155		X
Jim Wherry	Mont. State AFL-CIO	150	X	
Jerry Driscoll	Laborers Local # 98			X
B. Paton & Co.	J. C. Transducers	SB 155		X
Jim Wherry	Mont. Engr. & Builders Assoc	B 155	X	
Chris Van Tol	Mont. House & Ingless	SB 155	X	

NAME: Gerald F. Rausig DATE: 1-27-79

ADDRESS: 501 N. Sanders Helena

PHONE: 442-1233

REPRESENTING WHOM? Montana Auto Dealers Assoc.

APPEARING ON WHICH PROPOSAL: SB 155

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Robert H Cahill DATE: 1-27-79

ADDRESS: 40 Prospect Dr. Groton Falls, N.H.

PHONE: 452 0975

REPRESENTING WHOM? CITY OF GROTON

APPEARING ON WHICH PROPOSAL: SB 155 Groton Falls

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: GEORGE H. SELLOER DATE: 1/27/79

ADDRESS: 2801 CIZHARD DR BILLINGS

PHONE: 252 - 5101

REPRESENTING WHOM? SELLOER BUCK

APPEARING ON WHICH PROPOSAL: 155

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

VAUGHN D. DUTRO

DATE:

1/27/79

ADDRESS:

Box 1707  
CONRAD, MONT, 59425

PHONE:

278-5917

REPRESENTING WHOM?

Conrad Implement. Co - farm machinery dealer

APPEARING ON WHICH PROPOSAL:

SB155 -

DO YOU:

SUPPORT?

X

AMEND?

OPPOSE?

COMMENTS:

We need the same exemption as we  
have had with the Federal government -

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Edwin V. Swanson DATE: 1-27-79

ADDRESS: Box 1071 Glasgow, Mt

PHONE: 228-2496

REPRESENTING WHOM? Farm Equipment Sales, Inc.

APPEARING ON WHICH PROPOSAL: SB 155

DO YOU: SUPPORT? SB 155 AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: it will help the employee, Employer and Consumer.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: TOM MARKLE DATE: 27 Jan 76

ADDRESS: Box 71 Glasgow, Mont

PHONE: 406-228-89365

REPRESENTING WHOM? MARKLE'S INC.

APPEARING ON WHICH PROPOSAL: SB 155

DO YOU: SUPPORT? YES AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

Montana Law should conform  
to federal law exempting farm equipment  
dealers from the overtime provisions of  
Wage & Hour Law - to promote small  
business, agriculture and employees  
of farm equipment dealerships -

Tom Markle

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: James F. Harrison Jr DATE: 1/27/19

ADDRESS: 2225 11<sup>th</sup> Ave. Helena, MT 59601

PHONE: 442-6350

REPRESENTING WHOM? Mont. Egypt. Dist. Assoc.

APPEARING ON WHICH PROPOSAL: SB 155

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: LARRY HUSS DATE: 1/27/79

ADDRESS: 107 7th

PHONE: 442-8070

REPRESENTING WHOM? MADAF

APPEARING ON WHICH PROPOSAL: SB 155

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ed Sheehy, Jr. DATE: 1-27-79

ADDRESS: 2031 N+L Ave. W. Seneca, N.Y.

PHONE: 442-9930

REPRESENTING WHOM? Mont. Manufactured Housing Co. Inc

APPEARING ON WHICH PROPOSAL: SB 155

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: C L Overfelt - attorney DATE: Jan 27 1977

ADDRESS: Suite 527 - 600 Central Plaza - St. Paul, Minn.

PHONE: 727-4600

REPRESENTING WHOM? dyllon Cab + Bell + White Cab.

APPEARING ON WHICH PROPOSAL: Bill No. 155

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: the typical business operates by means of a public certificate granted by the State based upon public need, convenience and necessity. Required to operate on a 24 hr, 365 day basis by law. As essential to the public health + welfare in the community it serves as a fireman and policeman who are exempt.  
The nature of the business requires the giving of drivers on a commission basis rather than a strict hourly basis.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Byron E. Will DATE: Jan 27 1979

ADDRESS: 782 33rd Ave NE

PHONE: 453-4656

REPRESENTING WHOM? Jeff Bick White Cab 1st Fall

APPEARING ON WHICH PROPOSAL: Bill # 155

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: How can I hire a cab driver  
by the hour he loses interest in working  
we are forced by P.S.C. to operate 24  
hrs a day to take people to work Hosp.  
Clinic & Doctors. Traffic handle  
approximately 600 people per 24 hrs  
police make 200 fine 50 people

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ronald Davison DATE: 1/27/79

ADDRESS: 211 N. Rodney

PHONE: 442-2340

REPRESENTING WHOM? Helena Cab Inca

APPEARING ON WHICH PROPOSAL: SB 155

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: This cab co operates to serve many vital needs of the community including transportation of the elderly & handicapped & also transporting blood to hospitals. If cab co are going to continue in these services, passage of this bill is a must. This also adds incentive to the drivers, good drivers can't make enough money in 8 hr to make a good living, poor drivers don't care. There fore you end up with all poor drivers & poor service to the community.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: DICK PETERSON DATE: 1/27/79

ADDRESS: GREAT FALLS MONTANA

PHONE: 454-3354

REPRESENTING WHOM? DIAMOND CAB Co. GREAT FALLS

APPEARING ON WHICH PROPOSAL: SB 155

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS:

TAXI CAB OPERATIONS ARE UNDER SUPERVISION OF PSC RULES AND REGULATIONS. UNDER PSC REGULATIONS TAXI CAB COMPANIES ARE REQUIRED TO SERVE THE PUBLIC ON CALL ON A 24 HOUR BASIS.

THE NET RESULT OF THIS IS TO FORCE TAXI CAB OPERATIONS TO A COMMISSION FORM OF PAYMENT TO DRIVERS. OVERTIME ~~HELP~~ WOULD FORCE EXISTING TAXI COMPANIES OUT OF BUSINESS. AT PRESENT TAXI DRIVERS ARE EXEMPT UNDER FEDERAL LAW WHICH TAKES INTO CONSIDERATION THE PECULIARITY OF THE BUSINESS.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Alfred J. Wilson DATE: 27 Jan 79

ADDRESS: 1105 Lawrence Ave. N.W. Wash. D.C.

PHONE: 761-0671

REPRESENTING WHOM? Yellow Cab Co.

APPEARING ON WHICH PROPOSAL: SB 155

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: Cab Co. at the present time operates on a 24 hrs a day basis. Co cannot afford to operate under present wage laws of Md., it will eventually cease in financial difficulty.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



NAME: Jim Murray DATE: 1-27-79

ADDRESS: P.O. Box 1176 Helena, Mont.

PHONE: 442-1708

REPRESENTING WHOM? Mont. State AFL-CIO

APPEARING ON WHICH PROPOSAL: SB 155

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? X

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Dick Kane DATE: 1/27/79

ADDRESS: 35 S Last Chance Gulch

PHONE: 449-5600

REPRESENTING WHOM? Labor Standards Div

APPEARING ON WHICH PROPOSAL: SB 155

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE?

COMMENTS: Written comments have been given secretary

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.





NAME: Alyon L. Plowman DATE: 1-27-79

ADDRESS: 414 North 4th Bozeman

PHONE: 586-2077

REPRESENTING WHOM? Cement Workers Local 447

APPEARING ON WHICH PROPOSAL: SF 15.5

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? X

COMMENTS: We oppose SF 15.5 and do support  
the position of the UAW-112010



NAME: Jim Murray DATE: 1-27-79

ADDRESS: P.O. Box 1176 Helena, Mont.

PHONE: 442-1708

REPRESENTING WHOM? Mont. State AFL-CIO

APPEARING ON WHICH PROPOSAL: SB 150

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

# STANDING COMMITTEE REPORT

January 27

1979

MR. President:

We, your committee on Labor & Employment Relations

having had under consideration Senate

Bill No. 141

Respectfully report as follows: That Senate introduced bill was unanimously passed as amended.

1. Page 2, line 22.

Following: "of"

Insert: "not exceeding"

2. Page 9, line 21 through line 24.

Following: "certification." on line 21.

Strike: Line 21 through line 24 in their entirety.

Insert: "An employee who is employed at the time of application for certification may be certified as vocationally handicapped. An employee who is not employed at the time of application for certification must be certified as vocationally handicapped before entering new employment in order for the new employer to receive the benefits of this part."

And, as so amended  
DO PASS

W.C.