

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Richard Manning, on February 5, 1991,
at 3:15 p.m.

ROLL CALL

Members Present:

Richard Manning, Chairman (D)
Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Temporarily Excused: Thomas Keating (R), J.D. Lynch (D)

Staff Present: Tom Gomez (Legislative Council).

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion: NONE.

HEARING ON SENATE BILL 237

Presentation and Opening Statement by Sponsor:

Senator Jerry Noble told the Committee that Senate Bill 237 would exclude outside salesmen from coverage under the state overtime compensation laws. Senator Noble explained this would bring the Montana code in compliance with Federal wage and hour standards.

Proponents' Testimony:

Loren Davis, President of Davis Business Machines, Inc. spoke in favor of Senate Bill 237 from prepared testimony.
(Exhibit #1)

Tim Schroeder of C.S.I. Office Products in Helena spoke in favor of Senate Bill 237. Mr. Schroeder told the Committee that he has been a salesperson, owner, and manager of stores. He explained that a salesperson cannot work on an eight-hour day

because they must determine their time based on their clients' needs. He cited examples in which certain services must take place at other than normal business hours. Mr. Schroeder explained that estimated hours of overtime may be wrong which would cause the salesperson's commission to be reduced.

Ellen Bell of Office Mart in Helena spoke in favor of Senate Bill 237. Ms. Bell explained that as a small business owner she asked for simplicity in the law by bringing Montana law into compliance with Federal law. She told the Committee that a salesperson should be provided with an environment wherein they can earn as much as they desire. Ms. Bell said that a commission system does not fit when recording hours and calculating overtime pay. (Exhibit #2)

Sierra Wolf of Davis Business Machines told the Committee that as an outside salesperson she did not want to be limited to a 40 hour week. She explained that the hours she worked over 40 would benefit her in commission more than that of overtime pay. (Exhibit #3)

Charles Brooks, Executive Vice President of the Montana Retail Association spoke from prepared testimony in favor of Senate Bill 237. (Exhibit #4)

James Tutwiler of the Montana Chamber of Commerce told the Committee it was clear that Senate Bill 237 would affect, favorably, many small businesses across Montana. It would help both the employer and the employee in the industries with outside salespeople.

Riley Johnson of the National Federation of Independent Business urged support of Senate Bill 237.

Opponents' Testimony:

Christian MacKay of the Montana State AFL-CIO spoke from prepared testimony in opposition to Senate Bill 237. (Exhibit #5)

Bob Heiser of the United Food and Commercial Workers International Union spoke in opposition to Senate Bill 237. Mr. Heiser told the Committee that "labor has one thing to sell, and that's its labor". He explained that salespeople should be compensated at a fair rate, and should be included under overtime compensation.

Questions From Committee Members:

Senator Manning asked Ms. Wolf if she was paid salary plus commission. Ms. Wolf told the Committee she was paid straight commission.

Senator Devlin asked Bob Heiser if salespeople were excluded

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that has commission and salary. Senator Towe told the Committee that an individual, spending more than 20% of their time "in the shop", is entitled to overtime. If 80% or more is spent "out of the shop", the person can be exempt if they are making sales or obtaining orders and contracts.

Senator Aklestad asked about individuals with their "shop on wheels".

Tom Gomez of the Legislative Council cited Section 541.502 of the Fair Labor Standards Act. He explained that it speaks of a fixed site, that must be construed as the employers place of business.

Tom Gomez explained that the employer (for Montana) must be an employer who is not subject to the Federal law. Those employers are employers who make \$500,000 or more in annual sales.

Senator Manning told the Committee that the Schwann salespeople are strictly commission.

Senator Pipinich asked Mr. Brooks about individuals who deliver. Mr. Brooks explained that those individuals are subject to overtime.

Senator Pipinich asked if the Federal Code was amended in 1990, and revised with the last administration, and if this bill would have the state of Montana come in compliance with the Federal. Mr. Brooks said that was what they were proposing.

Senator Towe asked Mr. Brooks if it were valid for the overtime law to apply to individuals spending more than 20% of their time in sales inside the office supply store. Mr. Brooks said it was. Senator Towe asked what difference there was between the individuals involved in sales inside the store and those going outside. Mr. Brooks told the Committee that outside sales people work on a commission and want it that way.

Senator Towe asked Riley Johnson to respond to the same question. Mr. Johnson explained that while working inside the store the client has conformed his time to that of the stores, but outside sales positions must work at the clients' pleasure. He told the Committee that inside sales allows for controlled time.

Senator Pipinich asked Riley Johnson about telephone solicitors. Mr. Johnson said these individuals are not excluded. Mr. Johnson also explained that in most cases salespeople in the "on wheels" situation have an office in their homes, and the vehicle is not their office.

Senator Manning asked Bob Heiser if beer delivery people were also salespersons. Mr. Heiser told the Committee that is

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true.

Closing by Sponsor:

Senator Noble asked the Committee to help small business in Montana. He explained that an outside salesperson should be allowed to work 14 or 16 hours a day because that would allow them a higher income. He said an outside salespersons time cannot be regulated. He explained that this would conform state law with the federal.

EXECUTIVE ACTION ON SENATE BILL 73

Motion:

Senator Towe moved amendment number SB007306.ATG to Senate Bill 73.

Discussion:

Senator Devlin asked if a collective bargaining agreement did not address a meal break, would Senate Bill 73 now affect that collective bargaining unit. Senator Towe said that is the case.

Senator Aklestad asked how this bill would be presented on Second Reading. Senator Towe explained it would be a Gray Bill. Senator Aklestad said it was a new bill. Senator Towe explained that it was not. He told Senator Aklestad that it is still essentially the meal-period bill with the rest period section deleted.

Senator Aklestad told the Committee that it was a "significantly amended bill". He also pointed out that the bill covers so few people and businesses, that it is unreasonable.

Senator Pipinich called for the Question.

Amendments, Discussion, and Votes:

Roll Call Vote was 6, YES, and 3, NO. (Senator Lynch left a written YES vote)

Recommendation and Vote:

Senator Towe moved Senate Bill 73 as amended.

Senator Aklestad offered a substitute motion to Table Senate Bill 73 as amended.

Roll Call Vote was 4, YES, and 4, NO.

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Senator Aklestad asked how Senator Lynch's vote was recorded, and if that vote was left with the Secretary.

Senator Manning explained that Senator Lynch did not leave a vote Tabling Senate Bill 73, but left a DO PASS as amended vote.

Senator Aklestad asked to see a vote from Senator Lynch on the Table motion. Senator Towe voiced his objection to the point of order. He explained that Senator Lynch left a written DO PASS as amended vote. He told the Committee that it was clear Senator Lynch would have voted against a Tabling motion.

Senator Manning ruled that the vote would be left open on the Tabling motion for Senate Bill 73 until Senator Lynch could cast his vote.

EXECUTIVE ACTION ON SENATE BILL 237

Motion:

Senator Keating moved a DO PASS on Senate Bill 237.

Discussion:

NONE.

Amendments, Discussion, and Votes:

Roll Call Vote was 4, YES, 5 NO. Motion to DO PASS FAILED.

Senator Devlin moved a DO NOT PASS on Senate Bill 237.

Recommendation and Vote:

Roll Call Vote on DO PASS was reversed: 5, YES, 4, NO.
Motion CARRIED.

ADJOURNMENT

Adjournment At: 4:20 p.m.

RICHARD E. MANNING, Chairman

LINDA CASEY, Secretary

REM/llc

LA020591.SM1

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 2/5/91

LEGISLATIVE SESSION

| NAME | PRESENT | ABSENT | EXCUSED |
|------------------|---------|--------|--------------------------|
| SENATOR AKLESTAD | P | | |
| SENATOR BLAYLOCK | P | | |
| SENATOR DEVLIN | P | | |
| SENATOR KEATING | P | X | temp. |
| SENATOR LYNCH | P | | left written votes |
| SENATOR MANNING | P | | |
| SENATOR NATHE | P | | |
| SENATOR PIPINICH | P | | |
| SENATOR TOWE | P | | |
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| | | | |
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| | | | |
| | | | |
| | | | |

Each day attach to minutes.



DAVIS BUSINESS MACHINES,

INC.

1429 HELENA AVENUE
PHONE 406/442-9810
HELENA, MONTANA 59601

February 5, 1991

Labor & Employment Relations
Chairman, Senator Dick Manning

re: SENATE BILL NO. 237

Chairman, Senator Manning & Committee Members

I am Loren Davis, President of Davis Business Machines, Inc., incorporated in the State of Montana in 1968. At present, I have three stores and 25 employees. Six of these employees are full time, outside sales people that are paid by commissions.

I have been hiring and training people for thirty years. As in most industries, and especially the high tech area, the training is extensive and continuous. Many industry supported educational classes and seminars are after business hours and on week-ends so that the sales people are not taken out of their territory when businesses are open. As Montana law reads now, we would have to pay overtime or cut back on sales time.

Sales people are entrepreneurs who set their own destinies. A sales person's potential should not be limited by controlled work hours. Nothing happens until someone makes a sale. The more items sold, the more demand on production. The sale of an item affects our economy in every aspect: raw materials, manufacturing, transportation - all the way to banking and taxes.

I encourage this committee to send Senate Bill #237 to the Senate floor with "Do Pass" recommendation.

Sincerely,

Loren W. Davis
President

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. _____

DATE _____

BILL NO. _____

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 5 day of Feb., 1991.

Name: LOREN W. DAVIS

Address: 1429 HELENA AVE.

HELENA, MT. 59601

Telephone Number: (406) 442-9810

Representing whom?

Davis Business Machines, Inc.

Appearing on which proposal?

Senate Bill # 237

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

To Conform Montana Labor Law Concerning
Outside Sales people with the Fair Labor
Standards act of Federal Government.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

EXHIBIT NO. 1

DATE 2/5/91

BILL NO. SB237

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 5th day of February, 1991.

Name: Ellen Bell

Address: 1518 Prospect Avenue
Helena, MT 59601

Telephone Number: 442-9400

Representing whom?

Office Mart

Appearing on which proposal?

SB 237

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

- a) As an employer of a small business, I ask for simplicity in the laws I am required to abide by. One set of laws for federal & 1 set of laws for state leads to confusion and sets up problems.
- b) Every book I've ever read on sales management and every sales expert I've heard recommends that business provide an environment whereby a salesperson can earn as much as he/she desires by using his/her skills to the utmost. Good (financially successful) salespeople use regular business hours to be in face to face (over)

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

EXHIBIT NO. 2

DATE 2/5/91

BILL NO. SB237

contact with the customer, while doing sales reports + product research at other times.

The employer does not control this + neither should the law. A commission system does not fit with recording hours + calculating overtime pay.

c) Several categories of outside salesmen are already exempt, so office supply + furniture salesmen should have equal rights.

d) If I have to pay based on hours worked, then I would need to monitor for accuracy. I can monitor employees on the premises - but how do I monitor when the employee is out all day.

e) my salespeople are often the highest paid employees in my business - so they are not being abused.

f) The Dept of labor can monitor suspect businesses to guard against abuse. Why have a law that is directed to a small number of potential abusers, when honest employers + employees are now being penalized.

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 5 day of February, 1991.

Name: Sierra Wolf

Address: 2916 Thomas Ct, Helena 59601

Telephone Number: 458-9259

Representing whom?

Davis Business Machines

Appearing on which proposal?

SB 237

Do you: Support? X Amend? Oppose?

Comments:

As an outside sales person, I resent being
limited to a 40 hour work week. I am limited
to how much income I am capable of earning
due to this restriction. As a commission sales person,
I need to concentrate on the businesses between 8+5,
and need time to complete the rest of the sales
process, later. Why must my productiveness be
limited by the state when Federal Law allows
such hours with no problem?

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

EXHIBIT NO. 3

DATE 2/5/91

BILL NO. SB 237



Executive Office
318 N. Last Chance Gulch
P.O. Box 440
Helena, MT 59624
Phone (406) 442-3388

FEBRUARY 5, 1991
TESTIMONY
SB 237

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

FOR THE RECORD. I AM CHARLES BROOKS, REPRESENTING THE MONTANA RETAIL ASSOCIATION AND THE MONTANA OFFICE EQUIPMENT DEALERS ASSOCIATION. I AM HERE TODAY TO SPEAK IN FAVOR OF SB 237.

WE SUPPORT SB 237 BECAUSE IT SEEKS TO CONFORM MONTANA LAW WITH THE FEDERAL FAIR LABOR STANDARDS ACT IN THE COMPENSATION OF OUTSIDE SALESPeOPLE. A COPY OF THE SECTION DEALING WITH OUTSIDE SALESPeOPLE OF THE FAIR LABOR STANDARDS ACT IS ATTACHED FOR YOUR INFORMATION. IT SEEMS TO US THAT ITS TIME THAT WE BROUGHT THE MONTANA LAW INTO AGREEMENT WITH THE FEDERAL LAW AND THAT'S ALL THIS BILL ACCOMPLISHES. SB 237 WOULD AVOID THE "PIECE MEAL" APPROACH BY CONFORMING TO FEDERAL STANDARDS. IF YOU WILL NOTE IN THE PRESENT CODE THAT MANY SALESPeOPLE ARE EXEMPT FROM OVERTIME PAY. THIS BILL WOULD ALLOW THE 80-20 RULE TO CONTINUE AS TEST TO DETERMINE IF A SALESPERSON WAS EXEMPT FROM OVERTIME WHICH YOU WILL FIND OUTLINE IN THE FEDERAL STANDARDS.

HIGHLY MOTIVATED OUTSIDE SALES PEOPLE DESIRE FREEDOM TO PERFORM UP TO THEIR POTENTIAL TO EARN THE MAXIMUM SALES COMMISSION RATHER THAN BEING HAMPERED BY A OVERTIME PROBLEM.

WE ASK THAT YOU GIVE THIS BILL CAREFUL CONSIDERATION AND A "DO PASS" FROM THIS COMMITTEE.

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 2/5/91
BILL NO. SB237

MIL-R PRODUCTIONS
CLIENT: LABOR DEPARTMENT

GALLEY NO.1
JOB NO. 3264

RECEIVED

FEB 01 1991

EMPLOYMENT RELATIONS DIV.

The Fair Labor Standards Act of 1938, as Amended



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1318
Revised April 1990

them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.⁸³

(b) The Secretary of Labor,⁸⁴ or any of his authorized representatives, shall make all investigations and inspections under section 11(a) with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 17 to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this Act relating to oppressive child labor.

(c) No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.⁸⁵

(d) *In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age.*

Exemptions

SEC. 13.⁸⁶ (a) The provisions of sections 6 (except section 6(d) in the case of paragraph (1) of this subsection)⁸⁷ and 7 shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (*including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools*), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of ex-

ecutive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2)*** (Repealed)

[Note: Section 13(a)(2) (relating to employees employed by certain retail or service establishments) was repealed, effective April 1, 1990, by section 3(c)(1) of the Fair Labor Standards Amendments of 1989.]

(3) *any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center,⁸⁸ if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year, except that the exemption from sections 6 and 7 provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 6, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture;⁸⁹*
or

(4)*** (Repealed)

[Note: Section 13(a)(4) (relating to employees employed by certain retail establishments) was repealed, effective April 1, 1990, by section 3(c)(1) of the Fair Labor Standards Amendments of 1989.]

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) *any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent,*

⁸³ As amended by section 10(a) of the Fair Labor Standards Amendments of 1949.

⁸⁴ See footnotes 8 and 25.

⁸⁵ Section 10(h) of the Fair Labor Standards Amendments of 1949 as amended by section 8 of the Fair Labor Standards Amendments of 1961.

⁸⁶ Section 13 as amended by section 11 of the Fair Labor Standards Amendments of 1949; by Reorganization Plan No. 6 of 1950; and as further amended by the Fair Labor Standards Amendments of 1961, 1966, 1974, 1977, and 1989.

⁸⁷ As amended by the Education Amendments of 1972, 86 Stat. 235 at 375, effective July 1, 1972.

⁸⁸ Added by section 11 of the Fair Labor Standards Amendments of 1977, effective November 1, 1977.

⁸⁹ The last clause of section 13(a)(3) of the Act was added by section 4(a) of the Fair Labor Standards Amendments of 1977, effective January 1, 1978. See also section 13(b)(29) of the Act, as added by the 1977 Amendments.

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quirement of payment at a rate of \$170 per week and the employee must be considered nonexempt. It follows that if in the performance of this assignment the illustrator worked in excess of 40 hours in any week, overtime rates must be paid. Whether or not the employee worked in excess of 40 hours in any week, records for such an employee would have to be kept in accordance with the regulations covering records for nonexempt employees (Part 516 of this chapter).

§ 541.314 Exception for physicians, lawyers, and teachers.

(a) A holder of a valid license or certificate permitting the practice of law or medicine or any of their branches, who is actually engaged in practicing the profession, or a holder of the requisite academic degree for the general practice of medicine who is engaged in an internship or resident program pursuant to the practice of his profession, or an employee employed and engaged as a teacher in the activity of imparting knowledge, is excepted from the salary or fee requirement. This exception applies only to the traditional professions of law, medicine, and teaching and not to employees in related professions which merely serve these professions.

(b) In the case of medicine:

(1) The exception applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term physicians means medical doctors including general practitioners and specialists, and osteopathic physicians (doctors of osteopathy). Other practitioners in the field of medical science and healing may include podiatrists (sometimes called chiropodists), dentists (doctors of dental medicine), optometrists (doctors of optometry or bachelors of science in optometry).

(2) Physicians and other practitioners included in paragraph (b) (1) of this section, whether or not licensed to practice prior to commencement of an internship or resident program, are excepted from the salary or fee requirement during their internship or resident program, where such a training program is entered upon after the earning of the appropriate degree required for the general practice of their profession.

(c) In the case of medical occupations, the exception from the salary or fee requirement does not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

§ 541.315 Special proviso for high salaried professional employees.

(a) Except as otherwise noted in paragraph (b) of this section, the definition of "professional" contains a special proviso for employees who are compensated on a salary or fee basis at a rate of at least \$250 per week exclusive of board,

lodging, or other facilities. Under this proviso, the requirements for exemption in § 541.3 (a) through (e) will be deemed to be met by an employee who receives the higher salary or fees and whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning, or work as a teacher in the activity of imparting knowledge, which includes work requiring the consistent exercise of discretion and judgement, or consists of the performance of work requiring invention, imagination, or talent in a recognized field of artistic endeavor. Thus, the exemption will apply to highly paid employees employed either in one of the "learned" professions or in an "artistic" profession and doing primarily professional work. If an employee qualifies for exemption under this proviso, it is not necessary to test the employee's qualifications in detail under § 541.3 (a) through (e).

(b) In Puerto Rico, the Virgin Islands, and American Samoa the second proviso of § 541.3(e) applies to those "professional" employees (other than employees of the Federal government) who are compensated on a salary or fee basis of not less than \$200 per week.

§ 541.500 Definition of "outside salesman."

Section 541.5 defines the term "outside salesman" as follows: The term "employee employed . . . in the capacity of outside salesman" in section 13(a) (1) of the act shall mean any employee:

(a) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:

(1) Making sales within the meaning of section 3(k) of the act; or

(2) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(b) Whose hours of work of a nature other than that described in paragraph (a) (1) or (2) of this section do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employers: *Provided*, That work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

§ 541.501 Making sales or obtaining orders.

(a) Section 541.5 requires that the employee be engaged in: (1) Making sales within the meaning of section 3(k) of the act, or (2) obtaining orders or contracts for services or for the use of facilities.

(b) Generally speaking, the divisions have interpreted section 3(k) of the act to include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Thus sales of automobiles, coffee, shoes, cigars, stocks, bonds, and insurance are construed as sales within the meaning of section 3(k). (Sec. 3(k)

of the act states that "sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.)

(c) It will be noted that the exempt work includes not only the sales of commodities, but also "obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer." "Obtaining orders or contracts . . . for the use of facilities" includes the selling of time on the radio, the solicitation of advertising for newspapers and other periodicals and the solicitation of freight for railroads and other transportation agencies.

(d) The word "services" extends the exemption as outside salesmen to employees who sell or take orders for a service, which is performed for the customer by someone other than the person taking the order. For example, it includes the salesman of a typewriter repair service who does not himself do the repairing. It also includes otherwise exempt outside salesmen who obtain orders for the laundering of the customer's own linens as well as those who obtain orders for the rental of the laundry's linens.

(e) The inclusion of the word "services" is not intended to exempt persons who, in a very loose sense, are sometimes described as selling "services". For example, it does not include persons such as servicemen even though they may sell the service which they themselves perform. Selling the service in such cases would be incidental to the servicing rather than the reverse. Nor does it include outside buyers, who in a very loose sense are sometimes described as selling their employer's "service" to the person from whom they obtain their goods. It is obvious that the relationship here is the reverse of that of salesman-customer.

§ 541.502 Away from his employer's place of business.

(a) Section 541.5 requires that an outside salesman be customarily and regularly engaged "away from his employer's place or places of business". This requirement is based on the obvious connotation of the word "outside" in the term "outside salesman". It would obviously lie beyond the scope of the Administrator's authority that "outside salesman" should be construed to include inside salesmen. Inside sales and other inside work (except such as is directly in conjunction with and incidental to outside sales and solicitations, as explained in paragraph (b) of this section) is non-exempt.

(b) Characteristically the outside salesman is one who makes his sales at his customer's place of business. This is the reverse of sales made by mail or telephone (except where the telephone is used merely as an adjunct to personal calls). Thus any fixed site, whether home or office, used by a salesman as a headquarters or for telephonic solicitation of sales must be construed as one of his employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. It should not be inferred from the

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foregoing that an outside salesman loses his exemption by displaying his samples in hotel sample rooms as he travels from city to city; these sample rooms should not be considered as his employer's places of business.

§ 541.503 Incidental to and in conjunction with sales work.

Work performed "Incidental to and in conjunction with the employee's own outside sales or solicitation" includes not only incidental deliveries and collections which are specifically mentioned in § 541.5(b), but also any other work performed by the employee in furthering his own sales efforts. Work performed incidental to and in conjunction with the employee's own outside sales or solicitations would include, among other things, the writing of his sales reports, the revision of his own catalog, the planning of his itinerary and attendance at sales conferences.

§ 541.504 Promotion work.

(a) Promotion work is one type of activity often performed by persons who make sales, which may or may not be exempt work, depending upon the circumstances under which it is performed. Promotion men are not exempt as "outside salesmen." (This discussion relates solely to the exemption under § 541.5, dealing with outside salesmen. Promotion men who receive the required salary and otherwise qualify may be exempt as administrative employees.) However, any promotional work which is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is clearly exempt work. On the other hand, promotional work which is incidental to sales made, or to be made, by someone else cannot be considered as exempt work. Many persons are engaged in certain combinations of sales and promotional work or in certain types of promotional work having some of the characteristics of sales work while lacking others. The types of work involved include activities in borderline areas in which it is difficult to determine whether the work is sales or promotional. Where the work is promotional in nature it is sometimes difficult to determine whether it is incidental to the employee's own sales work.

(b) (1) Typically, the problems presented involve distribution through jobbers (who employ their own salesmen) or through central warehouses of chain-store organizations or cooperative retail buying associations. A manufacturer's representative in such cases visits the retailer, either alone or accompanied by the jobber's salesman. In some instances the manufacturer's representative may sell directly to the retailer; in others, he may urge the retailer to buy from the jobber.

(2) This manufacturer's representative may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise. Such persons can be considered salesmen only

if they are actually employed for the purpose of and are engaged in making sales or contracts. To the extent that they are engaged in promotional activities designed to stimulate sales which will be made by someone else the work must be considered nonexempt. With such variations in the methods of selling and promoting sales each case must be decided upon its facts. In borderline cases the test is whether the person is actually engaged in activities directed toward the consummation of his own sales, at least to the extent of obtaining a commitment to buy from the person to whom he is selling. If his efforts are directed toward stimulating the sales of his company generally rather than the consummation of his own specific sales his activities are not exempt. Incidental promotional activities may be tested by whether they are "performed incidental to and in conjunction with the employee's own outside sales or solicitations" or whether they are incidental to sales which will be made by someone else.

(c) (1) A few illustrations of typical situations will be of assistance in determining whether a particular type of work is exempt or nonexempt under § 541.5. One situation involves a manufacturer's representative who visits the retailer for the purpose of obtaining orders for his employer's product, but transmits any orders he obtains to the local jobber to be filled. In such a case the employee is performing sales work regardless of the fact that the order is filled by the jobber rather than directly by his own employer. The sale in this instance has been "consummated" in the sense that the salesman has obtained a commitment from the customer.

(2) Another typical situation involves facts similar to those described in the preceding illustration with the difference that the jobber's salesman accompanies the representative of the company whose product is being sold. The order in this instance is taken by the jobber's salesman after the manufacturer's representative has done the preliminary work which may include arranging the stock, putting up a display or poster, and talking to the retailer for the purpose of getting him to place the order for the product with the jobber's salesman. In this instance the sale is consummated by the jobber's salesman. The work performed by the manufacturer's representative is not incidental to sales made by himself and is not exempt work. Moreover, even if in a particular instance the sale is consummated by the manufacturer's representative it is necessary to examine the nature of the work performed by the representative to determine whether his promotional activities are directed toward paving the way for his own present and future sales, or whether they are intended to stimulate the present and future sales of the jobber's salesman. If his work is related to his own sales it would be considered exempt work, while if it is directed toward stimulating sales by the jobber's representative it must be considered nonexempt work.

(3) Another type of situation involves representatives employed by utility companies engaged in furnishing gas or electricity to consumers. In a sense these representatives are employed for the purpose of "selling" the consumer an increased volume of the product of the utility. This "selling" is accomplished indirectly by persuading the consumer to purchase appliances which will result in a greater use of gas or electricity. Different methods are used by various companies. In some instances the utility representative after persuading the consumer to install a particular appliance may actually take the order for the appliance which is delivered from stock by his employer, or he may forward the order to an appliance dealer who then delivers it. In such cases the sales activity would be exempt, since it is directed at the consummation of a specific sale by the utility representative, the employer actually making the delivery in the one case, while in the other the sale is consummated in the sense that the representative obtains an order or commitment from the customer. In another type of situation the utility representative persuades the consumer to buy the appliance and he may even accompany the consumer to an appliance store where the retailer shows the appliance and takes the order. In such instances the utility representative is not an outside salesman since he does not consummate the sale or direct his efforts toward making the sale himself. Similarly, the utility representative is not exempt as an outside salesman if he merely persuades the consumer to purchase an appliance and the consumer then goes to an appliance dealer and places his order.

(4) Still another type of situation involves the company representative who visits chainstores, arranges the merchandise on shelves, replenishes stock by replacing old with new merchandise, consults with the manager as to the requirements of the store, fills out a requisition for the quantity wanted and leaves it with the store manager to be transmitted to the central warehouse of the chain-store company which later ships the quantity requested. The arrangement of merchandise on the shelves or the replenishing of stock is not exempt work unless it is incidental to and in conjunction with the employee's own outside sales. Since the manufacturer's representative in this instance does not consummate the sale nor direct his efforts toward the consummation of a sale (the store manager often has no authority to buy) this work must be counted as nonexempt.

§ 541.505 Driver salesmen.

(a) Where drivers who deliver to an employer's customers the products distributed by the employer also perform functions concerned with the selling of such products, and questions arise as to whether such an employee is employed in the capacity of outside salesman, all the facts bearing on the content of the job as a whole must be scrutinized to determine whether such an employee is

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really employed for the purpose of making sales rather than for the service and delivery duties which he performs and, if so, whether he is customarily and regularly engaged in making sales and his performance of nonexempt work is sufficiently limited to come within the tolerance permitted by § 541.5. The employee may qualify as an employee employed in the capacity of outside salesman if, and only if, the facts clearly indicate that he is employed for the purpose of making sales and that he is customarily and regularly engaged in such activity within the meaning of the act and this part. As in the case of outside salesmen whose jobs do not involve delivery of products to customers, the employee's chief duty or primary function must be the making of sales or the taking of orders if he is to qualify under the definition in § 541.5. He must be a salesman by occupation. If he is, all work that he performs which is actually incidental to and in conjunction with his own sales effort is exempt work. All other work of such an employee is nonexempt work. A determination of an employee's chief duty or primary function must be made in terms of the basic character of the job as a whole. All of the duties performed by an employee must be considered. The time devoted to the various duties is an important, but not necessarily controlling, element.

(b) Employees who may perform a combination of selling or sales promotion activities with product deliveries are employed in a number of industries. Distributors of carbonated beverages, beer, bottled water, food and dairy products of various kinds, cigars and other non-food products commonly utilize such employees, variously known as routemen, route drivers, route salesmen, dealer salesmen, distributor salesmen, or driver salesmen. Some such employees deliver at retail to customers' homes; others deliver on wholesale routes to such customers as retail stores, restaurants, hospitals, hotels, taverns, and other business establishments. Whether such an employee qualifies as an outside salesman under the regulations depends, as stated in paragraph (a) of this section, on the content of the job as a whole and not on its title or designation or the kind of business in which the employer is engaged. Hearings in 1964 concerning the application of § 541.5 to such employees demonstrated that there is great variation in the nature and extent of sales activity and its significance as an element of the job, as among drivers whose duties are performed with respect to different products or different industries and also among drivers engaged in the same industry in delivering products to different types of customers. In some cases the facts may make it plain that such an employee is employed for the purpose of making sales; in other cases the facts are equally clear that he is employed for another purpose. Thus, there is little question that a routeman who provides the only sales contact between the employer and the customers, who calls on customers and takes orders for

products which he delivers from stock in his vehicle or procures and delivers to the customer on a later trip, and who receives compensation commensurate with the volume of products sold, is employed for the purpose of making sales. It is equally clear, on the other hand, that a routeman whose chief duty is to transport products sold by the employer through vending machines and to keep such machines stocked, in good operating condition, and in good locations, is not selling his employer's product or employed for the purpose of making sales but is employed for purposes which, although important to the promotion of sales to customers using the machines, plainly cannot characterize the employee as a salesman by occupation. In other cases there may be more difficulty in determining whether the employee is employed for the purpose of making sales within the meaning of this part. The facts in such cases must be weighed in the light of the principles stated in paragraph (a) of this section, giving due consideration to the factors discussed in subsequent paragraphs of this section.

(c) One source of difficulty in determining the extent to which a route driver may actually be engaged in making sales arises from the fact that such a driver often calls on established customers day after day or week after week, delivering a quantity of his employer's products at each call. Plainly, such a driver is not making sales when he delivers orders to customers to whom he did not make the initial sale in amounts which are exactly or approximately prearranged by customer or contractual arrangement or in amounts specified by the customer and not significantly affected by solicitations of the customer by the delivering driver. Making such deliveries, as well as recurring deliveries the amounts of which are determined by the volume of sales by the customer since the previous delivery rather than by any sales effort of the driver, do not qualify the driver as an outside salesman nor are such deliveries and the work incident thereto directly to the making or soliciting of sales by the driver so as to be considered exempt work. On the other hand, route drivers are making sales when they actually obtain or solicit, at the stops on their routes, orders for their employer's products from persons who have authority to commit the customer for purchases. A driver who calls on new prospects for customers along his route and attempts to convince them of the desirability of accepting regular delivery of goods is likewise engaged in sales activity and is making sales to those from whom he obtains a commitment. Also, a driver salesman calling on established customers on his route, carrying an assortment of the articles which his employer sells, may be making sales by persuading regular customers to accept delivery of increased amounts of goods or of new products, even though the initial sale or agreement for delivery of the employer's products may have been made by someone else. Work which is performed incidental to and in conjunction with such sales

activities will also be considered exempt work, provided such solicitation of the customer is frequent and regular. Incidental activities include loading the truck with the goods to be sold by the driver salesman, driving the truck, delivering the products sold, removing empty containers for return to the employer, and collecting payment for the goods delivered.

(d) Neither delivery of goods sold by others nor sales promotion work as such constitutes making sales within the meaning of § 541.5; delivery men and promotion men are not employed in the capacity of outside salesmen for purposes of section 13(a)(1) of the act although both delivery work and promotion work are exempt salesman as an incident to his own sales or efforts to sell. The distinction between the making of sales and the promotion of sales is explained in more detail in the discussion and illustrations contained in § 541.504. Under the principles there stated a route driver, just as any other employee, must have as his chief duty and primary function the making of sales in the sense of obtaining and soliciting commitments to buy from the persons upon whom he calls if he is to qualify under the regulations as an employee employed in the capacity of outside salesman. For this reason, a route driver primarily engaged in making deliveries to his employer's customers and performing activities intended to promote sales by customers, including placing point-of-sale and other advertising materials, price stamping commodities, arranging merchandise on shelves or in coolers or cabinets, rotating stock according to date, and cleaning and otherwise servicing display cases, is not employed in the capacity of an outside salesman by reason of such work. Such work is nonexempt work for purposes of this part unless it is performed as an incident to or in conjunction with sales actually made by the driver to such customers. If the driver who performs such functions actually takes orders or obtains commitments from such customers for the products which he delivers, and the performance of the promotion work is in furtherance of his own sales efforts, his activities for that purpose in the customer's establishment would be exempt work.

(e) As indicated in paragraph (a) of this section, whether a route driver can qualify as an outside salesman depends on the facts which establish the content of his job as a whole. Accordingly, in borderline cases a determination of whether the driver is actually employed for the purpose of, is customarily and regularly engaged in, and has as his chief duty and primary function the making of sales, may involve consideration of such factors as a comparison of his duties with those of other employees engaged as (1) truckdrivers and (2) salesmen; possession of a salesman's or solicitor's license when such license is required by law or ordinances; presence or absence of customary or contractual prearrangements concerning amounts of products

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to be delivered; description of the employee's occupation in union contracts; the employer's specifications as to qualifications for hiring; sales training; attendance at sales conferences; method of payment; proportion of earnings directly attributable to sales effort; and other factors that may have a bearing on the relationship to sales of the employee's work. However, where it is clear that an employee performs nonexempt work in excess of the amount permitted by § 541.5, he would be nonexempt in any event and consideration of such factors as the foregoing would not be pertinent.

(f) The following examples will further illustrate the factual situations in which, under the principles discussed previously in this section, routemen engaged in recurrent deliveries of goods may qualify or may fail to qualify for exemption as outside salesmen.

(1) A retail routeman who regularly calls on established retail customers to deliver goods of generally prearranged amounts and kinds may also exert considerable effort not only to keep such customers satisfied to continue their orders for such goods but also to make such customers aware of other products which he would like to sell to them and to offer to take orders for such products or for increased amounts of the products which he is already delivering to the customer. In addition, he may call at prospective retail customers' homes for the purpose of persuading such persons to order the goods which he sells. A routeman who customarily and regularly calls on customers for these purposes and takes orders from them for products which he delivers to them, in addition to those products for which delivery has been prearranged, who is in practical effect his employer's exclusive sales contact with such customers, and whose earnings are in large part directly attributable to sales made to such customers, will be considered to be employed in the capacity of outside salesman and within the exemption provided by section 13(a) (1) of the Act if he does not perform nonexempt work in excess of the tolerance permitted by § 541.5.

(2) A routeman who calls on retail stores which are among his employer's established customers may also qualify for exemption as an outside salesman notwithstanding the goods he delivers to them are of kinds and in amounts which are generally prearranged. Other facts may show that making sales is his chief duty and primary function and that he is customarily and regularly engaged in performing this function. Thus, such a routeman whose regular calls on established customers involve not only delivery of prearranged items but also active efforts to persuade such customers to continue or increase their orders for such goods and to solicit their orders for other kinds of products which he offers for sale, who also calls on retail stores which are prospective customers, talks to persons who are authorized to order goods for such stores, and solicits orders from them for the goods which he sells, and whose compensation is based primarily

on the volume of sales attributable to his efforts, will be considered exempt as an outside salesman if he does not perform nonexempt work in excess of the tolerance permitted by § 541.5.

(3) If a routeman delivers goods to branch business establishments whose personnel have no authority to place orders or make commitments with respect to the kinds and amounts of such goods, and if the kinds and amounts of goods delivered are not determined pursuant to orders placed by the authorized personnel of the customer's enterprise as a result of sales solicitation by the routeman, it is clear that the routeman's calls on such branch establishments are not a part of the making of sales by him or incidental to sales made by him. If such work is his chief duty or primary function or if he spends a greater proportion of the workweek in such work than is allowed for nonexempt work under § 541.5, such a routeman cannot qualify for exemption as an "outside salesman".

(4) A routeman who delivers to supermarkets after the enterprise has been persuaded, by a salesman of the routeman's employer, to accept delivery of goods, and whose functions other than such deliveries are primarily to arrange merchandise, rotate stocks, place point-of-sale and other advertising materials, and engage in other activities which are intended to promote sales by the supermarkets of the goods he has delivered, is not employed primarily for the purpose of selling and is not customarily and regularly engaged in making sales. Rather, he is employed primarily to deliver goods and to perform activities in the supermarkets of a nature usually performed by store employees not employed as salesmen. Such a routeman is not employed in the capacity of outside salesman within the exemption provided by section 13(a) (1).

(5) Some employees are engaged in a combination of activities involving delivery, the selling of services, and the performance of the services. For example, some drivers call on customers for the purpose of selling pesticides and, if a sale is consummated, applying the pesticides on the customer's property. Such employees, like those referred to in § 541.501(e), are not exempt as outside salesmen. They are primarily engaged in delivery or service functions, not in outside selling.

§ 541.506 Nonexempt work generally.

Nonexempt work is that work which is not sales work and is not performed incidental to and in conjunction with the outside sales activities of the employee. It includes outside activities like meter-reading, which are not part of the sales process. Inside sales and all work incidental thereto are also nonexempt work. So is clerical warehouse work which is not related to the employee's own sales. Similarly, the training of other salesmen is not exempt as outside sales work, with one exception. In some concerns it is the custom for the salesman to be accompanied by the trainee while actually making sales. Under such circumstances it appears that normally the

trainer-salesman and the trainee make the various sales jointly, and both normally receive a commission thereon. In such instances, since both are engaged in making sales, the work of both is considered exempt work. However, the work of a helper who merely assists the salesman in transporting goods or samples and who is not directly concerned with effectuating the sale is nonexempt work.

§ 541.507 20-percent limitation on non-exempt work.

Nonexempt work in the definition of "outside salesman" is limited to "20 percent of the hours worked in the workweek by nonexempt employees of the employer." The 20 percent is computed on the basis of the hours worked by nonexempt employees of the employer who perform the kind of nonexempt work performed by the outside salesman. If there are no employees of the employer performing such nonexempt work, the base to be taken is 40 hours a week, and the amount of nonexempt work allowed will be 8 hours a week.

§ 541.508 Trainees, outside salesmen.

The exemption is applicable to an employee employed in the capacity of outside salesman and does not include employees training to become outside salesmen who are not actually performing the duties of an outside salesman (see also § 541.506).

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§ 541.600 Combination exemptions.

(a) The divisions' position under the regulations in subpart A of this part permits the "tacking" of exempt work under one section of the regulations in subpart A to exempt work under another section of those regulations, so that a person who, for example, performs a combination of executive and professional work may qualify for exemption. In combination exemptions, however, the employee must meet the stricter of the requirements on salary and nonexempt work. For instance, if the employee performs a combination of an executive's and an outside salesman's function (regardless of which occupies most of his time) he must meet the salary requirement for executives. Also, the total hours of nonexempt work under the definition of "executive" together with the hours of work which would not be exempt if he were clearly an outside salesman, must not exceed either 20 percent of his own time or 20 percent of the hours worked in the workweek by the nonexempt employees of the employer, whichever is the smaller amount.

(b) Under the principles in paragraph (a) of this section combinations of exemptions under the other sections of the regulations in subpart A of this part are also permissible. In short, under the regulations in subpart A, work which is "exempt" under one section of the regulations in subpart A will not defeat the exemption under any other section.

§ 541.601 Special provision for motion picture producing industry.

Under § 541.5a, the requirement that the employee be paid "on a salary basis"

does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least \$250 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under §§ 541.1, 541.2, or 541.3 and who is employed at a base rate of at least \$250 a week is exempt if he is paid at least pro rata (based on a week of not more than 6 days) for any week when he does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if he is employed at a daily rate under the following circumstances: (a) The employee is in a job category for which a weekly base rate is not provided and his daily base rate would yield at least \$250 if 6 days were worked; or (b) the employee is in a job category having a weekly base rate of at least \$250 and his daily base rate is at least one-sixth of such weekly base rate.

§ 541.602 Special proviso concerning executive and administrative employees in multi-store retailing operations.

(a) The tolerance of up to 40 percent of the employee's time which is allowed for nonexempt work performed by an executive or administrative employee of a retail or service establishment does not apply to employees of a multiunit retailing operation, such as a chainstore system or a retail establishment having one or more branch stores, who perform central functions for the organization in physically separated establishments such as warehouses, central office buildings, or other central service units or by traveling from store to store. Nor does this special tolerance apply to employees who perform central office, warehousing, or service functions in a multiunit retailing operation by reason of the fact that the space provided for such work is located in a portion or portions of the building in which the main retail or service establishment or another retail outlet of the organization is also situated. Such employees are subject to the 20-percent limitation on nonexempt work.

(b) With respect to executive or administrative employees stationed in the main store of a multistore retailing operation who engage in activities (other than central office functions) which relate to the operations of the main store, and also to the operations of one or more physically separated units, such as branch stores, of the same retailing operation, the Divisions will, as an enforcement policy, assert no disqualification of such an employee for the section 13(a) (1) exemption by reason of nonexempt activities if the employee devotes less than 40 percent of his time to such nonexempt activities. This enforcement policy would apply, for example, in the case of a buyer who works in the main store of a multistore retailing operation and who not only manages the millinery department in the main store, but is also responsible for buying some or all of the merchandise sold in the millinery departments of the branch stores.

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NOTE.—This index lists, for ease of reference, the sections of this part which refer to job titles. The user should note, however, that where job titles do appear in the illustrations in the text, they should not be construed to mean that employees holding such titles are either exempt or nonexempt or that they meet any one of the specific requirements for exemption.

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Testimony of Don Judge before the Senate Labor Committee, February 5, 1991

Mr. Chairman and members of the committee, for the record my name is Don Judge and I am here today to testify on behalf of the Montana State AFL-CIO in opposition to Senate Bill 237.

Mr. Chairman, said briefly, this bill is simply another attempt to exclude more workers from the protection of Montana's overtime compensation law. You will note on page 3 of the bill that an exemption currently exists for outside salesmen paid on commission or contract basis, if they are primarily involved in selling advertising for a newspaper.

We were opposed granting this exemption when it was adopted by the legislature. At that time, we argued that any worker deserves protection from exploitation by their employer, regardless of occupation. We continue to believe that is true.

Now we find an attempt to exclude a whole multitude of other outside salesmen from Montana's overtime protections. If adopted, the provisions of Senate Bill 237 would exclude outside salespeople involved in magazine and other periodicals, pharmaceutical sales representatives, beer and soft drink salespeople, route salespeople (like Schwan, Frito-Lay, Eddy's Bakery) and other persons engaged in similar occupations, which involves sales as well as delivery.

Often these workers are not highly paid anyway, and to exclude them from overtime protection simply reduces their possibility of earning decent wages for an extraordinary long work day. We urge your committee to reject this bad idea and to give Senate Bill 237 a do not pass recommendation.

Thank you.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE 2/5/91
BILL NO. SB 237

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 5 day of February, 1991.

Name: CHRISTIAN MACKAY

Address: BIG ST^have #3

HELENA

Telephone Number: 443-7400

Representing whom?

MONTANA STATE AFL-CIO

Appearing on which proposal?

SB 237

Do you: Support? ☐

Amend? ☐

Oppose? ☒

Comments:

TESTIFYING ON BEHALF OF Don Judge

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

DATE 2/5/91
BILL NO. SB 237

PENNINGTON'S

The House of Service

P.O. Box 2546

GREAT FALLS, MONTANA 59403

(406) 453-7628

February 5, 1991

Sen. Jerry Noble
State Capital
Helena, Montana

Dear Jerry,

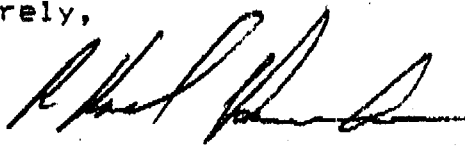
Re: SB237

It is high time that the State of Montana adopt regulations similar to Federal Regulations which exclude outside salesmen from overtime compensation.

We currently employ seventeen sales persons who are customarily and regularly engaged away from our place of business. As soon as a salesperson leaves the premises he or she is on her own and hopefully and in good faith is performing their duties under the "a fair days work for a fair days pay" guideline. To be honest with you, there are always overtime hours paid that do not fall under that saying. As an employer, I have found out the hard way that it is impossible to control out-side salesmen's hours. In 1987 this company was unexpectedly presented with claims for \$35,000.00 for outside salesmen's unpaid overtime, plus a 100% penalty. The overtime hours had been recorded in little black books that the outside salesmen kept. Those hours included time spent on personal things such as golf, girlfriends and poker. In a court of law, their recorded hours are the gospel. Because of the antiquated Montana codes, the small businessman is at the mercy of their outside sales force. Lets get with it and bring the Montana codes up to what most every other state does. Please, lets get SB237 passed.

Please present this as one small business person's testimony.

Sincerely,



R. Karl Rembe

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 6

DATE 2/6/91

BILL NO. SB237

Amendments to Senate Bill No. 73
First Reading Copy

Requested by Senator Tom Towe
For the Senate Committee on Labor and Employment Relations

Prepared by Tom Gomez
February 5, 1991

1. Title, line 5.

Following: "MEAL"

Strike: "AND REST"

Following: "PERIODS"

Insert: "; AND PROVIDING CERTAIN EXEMPTIONS"

2. Page 1, lines 8 through 24.

Strike: everything following the enacting clause

Insert: "NEW SECTION. Section 1. Meal periods for employees. (1)

Each employer shall provide at least a half hour meal period not later than 5 hours after the beginning of the employee's workday.

(2) An employer who fails, neglects, or refuses to provide meal periods, as provided in this section, after being requested to provide a meal period by an employee, or who permits an overseer, superintendent, or agent to violate the provisions of this section is guilty of a misdemeanor and, upon conviction, is subject to a fine not to exceed \$500 for each offense. A true emergency is a complete defense under this subsection.

NEW SECTION. Section 2. Exemptions. (1) [Section 1] does not apply to persons employed in:

(a) agricultural labor as defined in 39-51-205; or

(b) the television or radio broadcast media.

(2) [Section 1] does not apply to an employee who works in a shift in which the employer has fewer than 5 employees.

(3) [Section 1] does not apply to employees covered by a collective bargaining agreement if the collective bargaining agreement provides meal periods for employees covered by the agreement.

NEW SECTION. Section 3. Codification instruction.

[Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 2, part 2, and the provisions of Title 39, chapter 2, part 2, apply to [sections 1 and 2]."

Sen Lynch
votes No on 237

votes Yes on Towe Amendment to SB
73

Yes on 73, as amended —

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 2/5/91 Senate Bill No. 73 Time 4:12pm

| NAME | YES | NO |
|------------------|-----|----|
| SENATOR AKLESTAD | | X |
| SENATOR BLAYLOCK | X | |
| SENATOR DEVLIN | | X |
| SENATOR KEATING | | X |
| SENATOR LYNCH | X | |
| SENATOR MANNING | X | |
| SENATOR NATHE | X | |
| SENATOR PIPINICH | X | |
| SENATOR TOWE | X | |
| | | |
| | | |
| | | |

Linda Caser
Secretary

Jim Richard Manning
Chairman

Motion: To Adopt Amendment to SB 73
as a Gray Bill

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 2/5/91 Senate Bill No. 73 Time 4:15pm

| NAME | YES | NO |
|------------------|-----|-----------------|
| SENATOR AKLESTAD | X | |
| SENATOR BLAYLOCK | | X |
| SENATOR DEVLIN | X | |
| SENATOR KEATING | X | |
| SENATOR LYNCH | | X wait for vote |
| SENATOR MANNING | | X |
| SENATOR NATHE | X | |
| SENATOR PIPINICH | | X |
| SENATOR TOWE | | X |
| | | |
| | | |
| | | |

Linda Casey
Secretary

Sen Richard E. Manning
Chairman

Motion: To Table SB73 as amended

Left Open for Senator Lynch's vote. Senator Lynch had left a vote on SB73 as amended but not on this 'Table' motion. Senator Manning (Chair) has a standing open vote policy to allow all members to vote.

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 2/5/91 Senate Bill No. 237 Time 4:18 pm

| NAME | YES | NO |
|------------------|-----|----|
| SENATOR AKLESTAD | X | |
| SENATOR BLAYLOCK | | X |
| SENATOR DEVLIN | X | |
| SENATOR KEATING | X | |
| SENATOR LYNCH | | X |
| SENATOR MANNING | | X |
| SENATOR NATHE | X | |
| SENATOR PIPINICH | | X |
| SENATOR TOWE | | X |
| | | |
| | | |
| | | |

Linda Caser
Secretary

Jim Richard Egan
Chairman

Motion: DO PASS SB 237

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 2/5/91 Senate Bill No. 237 Time 4:19pm

| NAME | YES | NO |
|------------------|-----|----|
| SENATOR AKLESTAD | | X |
| SENATOR BLAYLOCK | X | |
| SENATOR DEVLIN | | X |
| SENATOR KEATING | | X |
| SENATOR LYNCH | X | |
| SENATOR MANNING | X | |
| SENATOR NATHE | | X |
| SENATOR PIPINICH | X | |
| SENATOR TOWE | X | |
| | | |
| | | |
| | | |
| | | |

Iman Casery
Secretary

Jim Richard E. Manning
Chairman

Motion: DO NOT PASS SB237

As Reverse vote of
4:18pm vote

2/5/91

Senate Labor

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)