

HOUSE BILL NO. 810

Introduced: 02/15/83

Referred to Committee on Labor & Employment Relations: 02/15/83

Hearing: 2/19/83

Died in Committee

*House* BILL NO. *810*

INTRODUCED BY *J. Hammond*

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING VARIOUS EXCLUSIONS FROM THE OVERTIME COMPENSATION LAW; AFFECTING EMPLOYEES UNDER 49 U.S.C. 304, CERTAIN EMPLOYEES AFFECTED BY THE FEDERAL INTERSTATE COMMERCE ACT, CERTAIN SALESMEN, CERTAIN TRIP-RATE PAID EMPLOYEES, CERTAIN AGRICULTURAL EMPLOYEES, TAXICAB DRIVERS, CERTAIN EMPLOYEES OF NONPROFIT EDUCATIONAL INSTITUTIONS, AND CERTAIN TIMBER INDUSTRY EMPLOYEES; AMENDING SECTION 39-3-406, MCA."

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 (k) any individual employed by the United States of  
2 America.

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

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

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

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

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

20 (e)--a--salesman--primarily--engaged--in--selling--trailers,  
21 boats, or aircraft--if--he--is--employed--by--a--nonmanufacturing  
22 establishment--primarily--engaged--in--the--business--of--selling  
23 trailers, boats, or aircraft--to--ultimate--purchasers;

24 (f)--an employee--employed--as--a--driver--or--driver's  
25 helper--making--local--deliveries--who--is--compensated--for--such

1 employment--on--the--basis--of--trip--rates--or--other--delivery  
2 payment--plan--if--the--commissioner--finds--that--such--plan--has  
3 the--general--purpose--and--effect--of--reducing--hours--worked--by  
4 such--employees--to--or--below--the--maximum--workweek--applicable  
5 to--them--under--39-3-405;

6 (g)--an employee--employed--in--agriculture--or--in  
7 connection--with--the--operation--or--maintenance--of--ditches,  
8 canals, reservoirs, or waterways--not--owned--or--operated--for  
9 profit--and--not--operated--on--a--sharecrop--basis--and--which--are  
10 used--exclusively--for--supply--and--storing--of--water--for  
11 agricultural purposes;

12 (h)--an employee--with--respect--to--his--employment--in  
13 agriculture--by--a--farmer--notwithstanding--other--employment--of  
14 such--employee--in--connection--with--livestock--auction  
15 operations--in--which--such--farmer--is--engaged--as--an--adjunct--to  
16 the--raising--of--livestock--either--on--his--own--account--or--in  
17 conjunction--with--other--farmers--if--such--employee--is

18 (i)--primarily--employed--during--his--workweek--in  
19 agriculture--by--such--farmers--and

20 (j)--paid--for--his--employment--in--connection--with--such  
21 livestock--auction--operations--at--a--wage--rate--not--less--than  
22 that--prescribed--by--39-3-405;

23 (k)--an employee--of--an--establishment--commonly  
24 recognized--as--a--country--store--including--an--establishment  
25 which--sells--products--and--services--used--in--the--operation--of--a

1 farm, if no more than five employees are employed by the  
2 establishment.

3 {j} a driver employed by an employer engaged in the  
4 business of operating taxicabs.

5 {k} an employee who is employed with his spouse by a  
6 nonprofit educational institution to serve as the parents of  
7 children who are orphans or one of whose natural parents is  
8 deceased or who are enrolled in such institution and reside  
9 in residential facilities of the institution so long as the  
10 children are in residence at the institution and so long as  
11 such employee and his spouse reside in such facilities and  
12 receive without cost board and lodging from the  
13 institution and are together compensated on a cash basis  
14 at an annual rate of not less than \$18,000.

15 {l} an employee employed in planting or tending trees  
16 cruising, surveying or felling timber or transporting logs  
17 or other forestry products to a mill or processing plant  
18 railroad or other transportation terminal if the number of  
19 employees employed by his employer in such forestry or  
20 lumbering operations does not exceed eight or

21 {m} an employee of a sheriff's department who is  
22 working under an established work period in lieu of a  
23 workweek pursuant to 7-4-2509(1)."

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