

HOUSE BILL NO. 826
INTRODUCED BY ELLISON

IN THE HOUSE

February 15, 1983	Introduced and referred to Committee on Labor and Employment Relations.
February 19, 1983	Committee recommend bill do pass as amended. Report adopted.
February 21, 1983	Bill printed and placed on members' desks.
February 22, 1983	Second reading, do pass.
February 23, 1983	Considered correctly engrossed.
	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Labor and Employment Relations.
March 24, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1983	Second reading, concurred in.
March 28, 1983	Third reading, concurred in. Ayes, 45; Noes, 2.

IN THE HOUSE

March 28, 1983

Returned to House with
amendments.

April 4, 1983

Second reading, pass
consideration.

April 5, 1983

Second reading, amendments
concurred in.

April 6, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 ~~House~~ BILL NO. 826
 2 INTRODUCED BY Tolson
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
 5 ESTABLISHMENT BY THE CHIEF OF POLICE OF THE WORK PERIOD FOR
 6 POLICE OFFICERS AND OTHER POLICE DEPARTMENT PERSONNEL;
 7 AMENDING SECTIONS 7-32-4118, 7-32-4119, AND 39-3-406, MCA."
 8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 10 Section 1. Section 7-32-4118, MCA, is amended to read:
 11 "7-32-4118. Every ~~work period~~ days off duty
 12 without loss of compensation. ~~(1) The chief of police shall~~
 13 ~~establish the work period for officers and other personnel~~
 14 ~~in the department and may establish a work period other than~~
 15 ~~that provided in 39-3-405 for determining when an employee~~
 16 ~~must be paid overtime compensation. The total hours in all~~
 17 ~~work periods in a calendar year may not exceed 2,080.~~
 18 (2) Each member ~~officer or other employee~~ of the
 19 police force in every city of the first and second class
 20 shall, ~~in each calendar year~~ be given 2 ~~104~~ days off duty
 21 ~~in each 7-day period~~ without loss of compensation, ~~not~~
 22 ~~including holidays, sick leave, vacation leave, or other~~
 23 ~~types of compensated time off duty."~~
 24 Section 2. Section 7-32-4119, MCA, is amended to read:
 25 "7-32-4119. Overtime compensation. Members of police

1 departments of cities of the first and second class, except
 2 those officers holding the rank of captain or above, are
 3 entitled to ~~overtime~~ compensation for overtime--as--provided
 4 ~~under 39-3-405 hours worked in excess of the work period~~
 5 ~~established by the chief of police under 7-32-4118."~~
 6 Section 3. Section 39-3-406, MCA, is amended to read:
 7 "39-3-406. Exclusions. (1) The provisions of 39-3-404
 8 and 39-3-405 shall not apply with respect to:
 9 (a) students participating in a distributive education
 10 program established under the auspices of an accredited
 11 educational agency;
 12 (b) persons employed in private homes whose duties
 13 consist of menial chores such as babysitting, mowing lawns,
 14 cleaning sidewalks;
 15 (c) persons employed directly by the head of a
 16 household to care for children dependent upon the head of
 17 the household;
 18 (d) immediate members of the family of an employer or
 19 persons dependent upon an employer for half or more of their
 20 support in the customary sense of being a dependent;
 21 (e) any persons not regular employees thereof who
 22 voluntarily offer their services to a nonprofit organization
 23 on a fully or partially reimbursed basis;
 24 (f) handicapped workers engaged in work which is
 25 incidental to training or evaluation programs or whose

1 earning capacity is so severely impaired that they are
2 unable to engage in competitive employment;

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

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

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

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

18 (k) any individual employed by the United States of
19 America.

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

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

25 (b) an employee of an employer subject to the

1 provisions of part I of the Interstate Commerce Act;

2 (c) an individual employed as an outside buyer of
3 poultry, eggs, cream, or milk, in their raw or natural
4 state;

5 (d) a salesman, partsman, or mechanic paid on a
6 commission or contract basis and primarily engaged in
7 selling or servicing automobiles, trucks, mobile homes,
8 recreational vehicles, or farm implements if he is employed
9 by a nonmanufacturing establishment primarily engaged in the
10 business of selling such vehicles or implements to ultimate
11 purchasers;

12 (e) a salesman primarily engaged in selling trailers,
13 boats, or aircraft if he is employed by a nonmanufacturing
14 establishment primarily engaged in the business of selling
15 trailers, boats, or aircraft to ultimate purchasers;

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

23 (g) an employee employed in agriculture or in
24 connection with the operation or maintenance of ditches,
25 canals, reservoirs, or waterways not owned or operated for

1 profit and not operated on a sharecrop basis and which are
2 used exclusively for supply and storing of water for
3 agricultural purposes;

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

10 (i) primarily employed during his workweek in
11 agriculture by such farmer; and

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

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

20 (j) a driver employed by an employer engaged in the
21 business of operating taxicabs;

22 (k) an employee who is employed with his spouse by a
23 nonprofit educational institution to serve as the parents of
24 children who are orphans or one of whose natural parents is
25 deceased or who are enrolled in such institution and reside

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

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

13 (m) an employee of a sheriff's department who is
14 working under an established work period in lieu of a
15 workweek pursuant to 7-4-2509(1); or

16 (n) an officer or other employee of a police
17 department in a city of the first or second class who is
18 working under a work period established by the chief of
19 police under 7-32-4118."

-End-

Approved by Committee
on Labor & Employment
Relations

HOUSE BILL NO. 826

INTRODUCED BY ELLISON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
ESTABLISHMENT BY THE CHIEF OF POLICE OF THE WORK PERIOD FOR
POLICE OFFICERS AND OTHER POLICE DEPARTMENT PERSONNEL;
AMENDING SECTIONS 7-32-4118, 7-32-4119, AND 39-3-406, MCA."

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

Section 1. Section 7-32-4118, MCA, is amended to read:

"7-32-4118. Days ~~work period~~ ~~-----~~ days off duty
without loss of compensation. ~~(1) The chief of police shall~~
~~MAY establish the work period for officers and other~~
~~personnel in the department and may establish a work period~~
~~other than that provided in 39-3-405 for determining when an~~
~~employee must be paid overtime compensation; IF THE MEMBERS~~
~~OF THE DEPARTMENT ARE REPRESENTED BY A COLLECTIVE BARGAINING~~
~~UNIT, THE WORK PERIOD MUST BE ESTABLISHED IN THE COLLECTIVE~~
~~BARGAINING AGREEMENT. The total hours in all work periods in~~
~~a calendar year may not exceed 2,080.~~

(2) Each member officer ~~or other employee~~ of the
police force in every city of the first and second class
shall ~~in each calendar year~~ be given ~~A MINIMUM OF 2 104~~
days off duty ~~in each 7-day period~~ without loss of
compensation ~~not including holidays, sick leave, vacation~~

~~leave, or other types of compensated time off duty."~~

Section 2. Section 7-32-4119, MCA, is amended to read:

"7-32-4119. Overtime compensation. Members of police
departments of cities of the first and second class, except
those officers holding the rank of captain or above, are
entitled to ~~overtime~~ compensation for ~~overtime as provided~~
~~under 39-3-405 hours worked in excess of the work period~~
~~established by the chief of police under 7-32-4118."~~

Section 3. 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

1 on a fully or partially reimbursed basis;

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

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

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

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

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

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

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

24 (a) an employee with respect to whom the United States
25 Secretary of Transportation has power to establish

1 qualifications and maximum hours of service pursuant to the
2 provisions of 49 U.S.C. 304;

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

5 (c) an individual employed as an outside buyer of
6 poultry, eggs, cream, or milk, in their raw or natural
7 state;

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

15 (e) a salesman primarily engaged in selling trailers,
16 boats, or aircraft if he is employed by a nonmanufacturing
17 establishment primarily engaged in the business of selling
18 trailers, boats, or aircraft to ultimate purchasers;

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

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

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

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

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

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

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

(k) an employee who is employed with his spouse by a

nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000;

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

(m) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1); or

(n) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118."

-End-

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

Section 1. Section 7-32-4118, MCA, is amended to read:

"7-32-4118. Days Work period --- days off duty without loss of compensation. ~~All The chief of police shall MAY establish the work period for officers and other personnel in the department and may establish a work period other than that provided in 39-3-405 for determining when an employee must be paid overtime compensation; IF THE MEMBERS OF THE DEPARTMENT ARE REPRESENTED BY A COLLECTIVE BARGAINING UNIT, THE WORK PERIOD MUST BE ESTABLISHED IN THE COLLECTIVE BARGAINING AGREEMENT. The total hours in all work periods in a calendar year may not exceed 2,080.~~

(2) Each member officer or other employee of the police force in every city of the first and second class shall, in each calendar year, be given a MINIMUM OF 2 104 days off duty in each 7-day period without loss of compensation, not including holidays, sick leave, vacation

~~leaves or other types of compensated time off duty."~~

Section 2. Section 7-32-4119, MCA, is amended to read:

"7-32-4119. Overtime compensation. Members of police departments of cities of the first and second class, except those officers holding the rank of captain or above, are entitled to overtime compensation for overtime-as-provided under-39-3-405 hours worked in excess of the work period established by the chief of police under 7-32-4118."

Section 3. 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

1 on a fully or partially reimbursed basis;

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

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

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

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

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

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

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

24 (a) an employee with respect to whom the United States
25 Secretary of Transportation has power to establish

1 qualifications and maximum hours of service pursuant to the
2 provisions of 49 U.S.C. 304;

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

5 (c) an individual employed as an outside buyer of
6 poultry, eggs, cream, or milk, in their raw or natural
7 state;

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9 commission or contract basis and primarily engaged in
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20 helper making local deliveries who is compensated for such
21 employment on the basis of trip rates, or other delivery
22 payment plan, if the commissioner finds that such plan has
23 the general purpose and effect of reducing hours worked by
24 such employees to or below the maximum workweek applicable
25 to them under 39-3-405;

1 (g) an employee employed in agriculture or in
2 connection with the operation or maintenance of ditches,
3 canals, reservoirs, or waterways not owned or operated for
4 profit and not operated on a sharecrop basis and which are
5 used exclusively for supply and storing of water for
6 agricultural purposes;

7 (h) an employee with respect to his employment in
8 agriculture by a farmer, notwithstanding other employment of
9 such employee in connection with livestock auction
10 operations in which such farmer is engaged as an adjunct to
11 the raising of livestock, either on his own account or in
12 conjunction with other farmers, if such employee is:

13 (i) primarily employed during his workweek in
14 agriculture by such farmer; and

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

18 (i) an employee of an establishment commonly
19 recognized as a country elevator, including an establishment
20 which sells products and services used in the operation of a
21 farm, if no more than five employees are employed by the
22 establishment;

23 (j) a driver employed by an employer engaged in the
24 business of operating taxicabs;

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1 nonprofit educational institution to serve as the parents of
2 children who are orphans or one of whose natural parents is
3 deceased or who are enrolled in such institution and reside
4 in residential facilities of the institution so long as the
5 children are in residence at the institution and so long as
6 such employee and his spouse reside in such facilities and
7 receive, without cost, board and lodging from the
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9 at an annual rate of not less than \$10,000;

10 (l) an employee employed in planting or tending trees;
11 cruising, surveying, or felling timber; or transporting logs
12 or other forestry products to a mill, processing plant,
13 railroad, or other transportation terminal if the number of
14 employees employed by his employer in such forestry or
15 lumbering operations does not exceed eight; or

16 (m) an employee of a sheriff's department who is
17 working under an established work period in lieu of a
18 workweek pursuant to 7-4-2509(1); or

19 (n) an officer or other employee of a police
20 department in a city of the first or second class who is
21 working under a work period established by the chief of
22 police under 7-32-4118."

-End-

March 24, 1983

SENATE STANDING COMMITTEE REPORT
(Labor & Employment Relations)

That House Bill No. 826 be amended as follows:

Page 1, line 16.

Following: "compensation"

Strike: remainder of line 16 through "BARGAINING AGREEMENT" on line 19

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Section 1. Section 7-32-4118, MCA, is amended to read:

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(2) Each member officer or other employee of the police force in every city of the first and second class shall, in each calendar year, be given a MINIMUM OF 2 104 days off duty in each 7-day period without loss of compensation, not including holidays, sick leave, vacation

leave, or other types of compensated time off duty."

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5 children are in residence at the institution and so long as
6 such employee and his spouse reside in such facilities and
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8 institution and are together compensated, on a cash basis,
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