

SENATE BILL NO. 143

Introduced: 01/14/83

Referred to Committee on Labor & Employment Relations: 01/14/83

Hearing: 1/20/83

Report: 1/28/83, Do Pass, As Amended

On Motion, 1/31/83, Pass Consideration. Motion Passed  
Unanimously.

2nd Reading: 02/10/83

3rd Reading: 02/03/83

Transmitted to House: 2/3/83

Referred to Committee on Labor & Employment Relations: 02/04/83

Hearing: 3/1/83

Report: 03/07/83, Be Not Concurred In

Killed in Committee: 03/08/83

1 *Senate* BILL NO. *143*  
 2 INTRODUCED BY *Don DeLeon* *Greg E. Smith*  
 3 *Zaburki* *Devlin*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROMOTE THE GENERAL  
 5 WELFARE IN IMPLEMENTATION OF ARTICLE XII, SECTION 2, OF THE  
 6 MONTANA CONSTITUTION BY ALLOWING EMPLOYEES OF HOSPITALS AND  
 7 ESTABLISHMENTS CARING FOR THE SICK, DISABLED, AGED, OR  
 8 MENTALLY ILL OR DEFECTIVE TO AGREE TO WORK MORE THAN 8 HOURS  
 9 A DAY AND TO AGREE TO A 14-DAY, 80-HOUR WORK PERIOD;  
 10 AMENDING SECTIONS 39-3-406 AND 39-4-107, MCA."  
 11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 13 Section 1. Section 39-3-406, MCA, is amended to read:  
 14 "39-3-406. Exclusions. (1) The provisions of 39-3-404  
 15 and 39-3-405 shall not apply with respect to:  
 16 (a) students participating in a distributive education  
 17 program established under the auspices of an accredited  
 18 educational agency;  
 19 (b) persons employed in private homes whose duties  
 20 consist of menial chores such as babysitting, mowing lawns,  
 21 cleaning sidewalks;  
 22 (c) persons employed directly by the head of a  
 23 household to care for children dependent upon the head of  
 24 the household;  
 25 (d) immediate members of the family of an employer or

1 persons dependent upon an employer for half or more of their  
 2 support in the customary sense of being a dependent;  
 3 (e) any persons not regular employees thereof who  
 4 voluntarily offer their services to a nonprofit organization  
 5 on a fully or partially reimbursed basis;  
 6 (f) handicapped workers engaged in work which is  
 7 incidental to training or evaluation programs or whose  
 8 earning capacity is so severely impaired that they are  
 9 unable to engage in competitive employment;  
 10 (g) apprentices or learners, who may be exempted by  
 11 the commissioner for a period not to exceed 30 days of their  
 12 employment;  
 13 (h) learners under the age of 18 who are employed as  
 14 farm workers, provided that such exclusion shall not exceed  
 15 a period of 180 days from their initial date of employment  
 16 and further provided that during this exclusion period wages  
 17 paid such learners may not be less than 50% of the minimum  
 18 wage rate established in this part;  
 19 (i) retired or semiretired persons performing  
 20 part-time incidental work as a condition of their residence  
 21 on a farm or ranch;  
 22 (j) any individual employed in a bona fide executive,  
 23 administrative, or professional capacity as these terms are  
 24 defined and delimited by regulations of the commissioner;  
 25 (k) any individual employed by the United States of

1 America.

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

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

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

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

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

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

23 (f) an employee employed as a driver or driver's  
24 helper making local deliveries who is compensated for such  
25 employment on the basis of trip rates, or other delivery

1 payment plan, if the commissioner finds that such plan has  
2 the general purpose and effect of reducing hours worked by  
3 such employees to or below the maximum workweek applicable  
4 to them under 39-3-405;

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

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

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

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

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

1 establishment;

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

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

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

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

23 ~~(n) an employee of a hospital or other establishment~~  
24 ~~primarily engaged in the care of the sick, disabled, aged,~~  
25 ~~or mentally ill or defective if, prior to the performance of~~

1 ~~the work, the employer and employee agree to a 14-day,~~  
2 ~~80-hour work period. Employment in excess of 80 hours in~~  
3 ~~any such period must be compensated for at a rate of not~~  
4 ~~less than 1 1/2 times the hourly wage rate for the~~  
5 ~~employee."~~

6 Section 2. Section 39-4-107, MCA, is amended to read:

7 "39-4-107. State and municipal governments, school  
8 districts, mines, mills, and smelters. (1) A period of 8  
9 hours constitutes a day's work in all works and undertakings  
10 carried on or aided by any municipal or county government,  
11 the state government, or a first-class school district, and  
12 on all contracts let by them, and for all janitors (except  
13 in courthouses of sixth- and seventh-class counties),  
14 engineers, firefighters, caretakers, custodians, and  
15 laborers employed in or about any buildings, works, or  
16 grounds used or occupied for any purpose by such municipal,  
17 county, or state government or first-class school district.  
18 A period of 8 hours constitutes a day's work in mills and  
19 smelters for the treatment of ores, in underground mines,  
20 and in the washing, reducing, and treatment of coal. In  
21 ~~cases of emergency when life or property is in imminent~~  
22 ~~danger this subsection does not apply. This subsection does~~  
23 ~~not apply in the event of an emergency when life or property~~  
24 ~~is in imminent danger or to the situations specified in~~  
25 ~~subsections (2) through (4).~~

1       (2) For firefighters in cities of the first and second  
2 class, a workweek consists of a maximum of 40 hours during a  
3 5-day week.

4       (3) In counties where regular road and bridge  
5 departments are maintained, the county commissioners may,  
6 with the approval of the employees or their duly constituted  
7 representative, establish a 40-hour workweek consisting of 4  
8 consecutive 10-hour days. No employee may be required to  
9 work in excess of 8 hours in any one workday if he prefers  
10 not to.

11       ~~(4) In hospitals and other establishments primarily~~  
12 ~~engaged in the care of the sick, disabled, aged, or mentally~~  
13 ~~ill or defective, the employer and employee may agree, prior~~  
14 ~~to the performance of the work, to a workday of more than 8~~  
15 ~~hours and to a 14-day, 80-hour work period.~~

16       ~~(4)~~(5) Every person, corporation, stock company, or  
17 association of persons who violates any of the provisions of  
18 this section is guilty of a misdemeanor and upon conviction  
19 thereof shall be punished by a fine of not less than \$100 or  
20 more than \$600 or by imprisonment in the county jail for not  
21 less than 30 days or more than 7 months or by both such fine  
22 and imprisonment.\*

-End-

Approved by Committee  
on Labor & Employment  
Relations

## SENATE BILL NO. 143

INTRODUCED BY OCHSNER, LEE, E. SMITH, ZABROCKI, DEVLIN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROMOTE THE GENERAL WELFARE IN IMPLEMENTATION OF ARTICLE XII, SECTION 2, OF THE MONTANA CONSTITUTION BY ALLOWING EMPLOYEES OF HOSPITALS AND ESTABLISHMENTS CARING FOR THE SICK, DISABLED, AGED, OR MENTALLY ILL OR DEFECTIVE TO AGREE TO WORK MORE THAN 8 HOURS A DAY AND TO AGREE TO A 14-DAY, 80-HOUR WORK PERIOD; ~~DELETING A PENALTY PROVISION;~~ AMENDING SECTIONS 39-3-406 AND 39-4-107, MCA."

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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:

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(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;

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

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 9 provisions of part I of the Interstate Commerce Act;

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12 receive, without cost, board and lodging from the  
13 institution and are together compensated, on a cash basis,  
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17 or other forestry products to a mill, processing plant,  
18 railroad, or other transportation terminal if the number of  
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4 5-day week.

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20 ~~thereof shall be punished by a fine of not less than \$100 or~~  
21 ~~more than \$600 or by imprisonment in the county jail for not~~  
22 ~~less than 30 days or more than 7 months or by both such fine~~  
23 ~~and imprisonment.~~

24 (5) EVERY PERSON, CORPORATION, STOCK COMPANY, OR  
25 ASSOCIATION OF PERSONS WHO VIOLATES ANY OF THE PROVISIONS OF

1 THIS SECTION IS GUILTY OF A MISDEMEANOR AND UPON CONVICTION  
2 HEREOF SHALL BE PUNISHED BY A FINE OF NOT LESS THAN \$100 OR  
3 MORE THAN \$600 OR BY IMPRISONMENT IN THE COUNTY JAIL FOR NOT  
4 LESS THAN 30 DAYS OR MORE THAN 7 MONTHS OR BY BOTH SUCH FINE  
5 AND IMPRISONMENT."

-End-