

HOUSE BILL NO. 699

INTRODUCED BY WALLIN, BOYLAN, HAYNE,
SWITZER, HOFFMAN

IN THE HOUSE

FEBRUARY 11, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & LABOR.

FEBRUARY 17, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 18, 1987 PRINTING REPORT.

FEBRUARY 19, 1987 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 20, 1987 ENGROSSING REPORT.

FEBRUARY 21, 1987 THIRD READING, PASSED.
AYES, 82; NOES, 10.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 23, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

MARCH 13, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 18, 1987 SECOND READING, CONCURRED IN.

MARCH 20, 1987 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 25, 1987 RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 26, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 699
 2 INTRODUCED BY William Boylan
 3 Hayne Lucette Hoffmann
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE OUTSIDE
 5 SALESMEN FROM THE OVERTIME COMPENSATION REQUIREMENTS OF THE
 6 STATE WAGE LAWS; AND AMENDING SECTION 39-3-406, MCA,"

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

10 "39-3-406. Exclusions. (1) The provisions of 39-3-404
11 and 39-3-405 shall not apply with respect to:

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

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

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

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

24 (e) any persons not regular employees thereof who
25 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) an employee employed in the capacity of outside
9 salesman who is excluded under 29 U.S.C. 213(a)(1) from the
10 overtime compensation provisions of the Fair Labor Standards
11 Act;

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

24 (f)(g) 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)(h) 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)(i) 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 farmer; and

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

23 (i)(j) an employee of an establishment commonly
24 recognized as a country elevator, 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)(k) a driver employed by an employer engaged in the
4 business of operating taxicabs;

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

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

21 (m)(n) 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);

24 (n)(o) an employee of a municipal or county government
25 who is working under a work period not exceeding 40 hours in

1 a 7-day period established through a collective bargaining
2 agreement when a collective bargaining unit represents the
3 employee or by mutual agreement of the employer and employee
4 where no bargaining unit is recognized. Employment in
5 excess of 40 hours in a 7-day, 40-hour work period must be
6 compensated at a rate of not less than 1 1/2 times the
7 hourly wage rate for the employee.

8 (o)(p) an employee of a hospital or other
9 establishment primarily engaged in the care of the sick,
10 disabled, aged, or mentally ill or defective who is working
11 under a work period not exceeding 80 hours in a 14-day
12 period established through either a collective bargaining
13 agreement when a collective bargaining unit represents the
14 employee or by mutual agreement of the employer and employee
15 where no bargaining unit is recognized. Employment in
16 excess of 8 hours per day or 80 hours in a 14-day period
17 must be compensated for at a rate of not less than 1 1/2
18 times the hourly wage rate for the employee.

19 (p)(q) a firefighter who is working under a work
20 period established in a collective bargaining agreement
21 entered into between a public employer and a firefighters'
22 organization or its exclusive representative;

23 (q)(r) an officer or other employee of a police
24 department in a city of the first or second class who is
25 working under a work period established by the chief of

1 police under 7-32-4118;

2 (r)(s) an employee of a department of public safety
3 working under a work period established pursuant to
4 7-32-115."

5 NEW SECTION. Section 2. Extension of authority. Any
6 existing authority of the commissioner of labor and industry
7 to make rules on the subject of the provisions of this act
8 is extended to the provisions of this act.

-End-

APPROVED BY COMM. ON
BUSINESS AND LABOR

HOUSE BILL NO. 699

INTRODUCED BY WALLIN, BOYLAN, HAYNE,

SWITZER, HOFFMAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE OUTSIDE
SALESMEN FROM THE OVERTIME COMPENSATION REQUIREMENTS OF THE
STATE WAGE LAWS; AND 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;

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

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

(a) an employee with respect to whom the United States



1 Secretary of Transportation has power to establish
 2 qualifications and maximum hours of service pursuant to the
 3 provisions of 49 U.S.C. 304;

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

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

9 (d) an employee employed in the capacity of
 10 ADVERTISING MEDIUM outside salesman who-is-excluded-under-29
 11 U-S-C-213(a)(1) from the overtime compensation provisions
 12 of the Fair Labor Standards Act;

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

25 (f)(g) an employee employed as a driver or driver's

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

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

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

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

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

24 (i)(j) an employee of an establishment commonly
 25 recognized as a country elevator, including an establishment

1 which sells products and services used in the operation of a
2 farm, if no more than five employees are employed by the
3 establishment;

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

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

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

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

25 ~~(n)~~(o) an employee of a municipal or county government

1 who is working under a work period not exceeding 40 hours in
2 a 7-day period established through a collective bargaining
3 agreement when a collective bargaining unit represents the
4 employee or by mutual agreement of the employer and employee
5 where no bargaining unit is recognized. Employment in
6 excess of 40 hours in a 7-day, 40-hour work period must be
7 compensated at a rate of not less than 1 1/2 times the
8 hourly wage rate for the employee.

9 ~~(o)~~(p) an employee of a hospital or other
10 establishment primarily engaged in the care of the sick,
11 disabled, aged, or mentally ill or defective who is working
12 under a work period not exceeding 80 hours in a 14-day
13 period established through either a collective bargaining
14 agreement when a collective bargaining unit represents the
15 employee or by mutual agreement of the employer and employee
16 where no bargaining unit is recognized. Employment in
17 excess of 8 hours per day or 80 hours in a 14-day period
18 must be compensated for at a rate of not less than 1 1/2
19 times the hourly wage rate for the employee.

20 ~~(p)~~(q) a firefighter who is working under a work
21 period established in a collective bargaining agreement
22 entered into between a public employer and a firefighters'
23 organization or its exclusive representative;

24 ~~(q)~~(r) an officer or other employee of a police
25 department in a city of the first or second class who is

1 working under a work period established by the chief of
2 police under 7-32-4118;

3 (r)(s) an employee of a department of public safety
4 working under a work period established pursuant to
5 7-32-115."

6 NEW SECTION. Section 2. Extension of authority. Any
7 existing authority of the commissioner of labor and industry
8 to make rules on the subject of the provisions of this act
9 is extended to the provisions of this act.

-End-

HOUSE BILL NO. 699

INTRODUCED BY WALLIN, BOYLAN, HAYNE,
SWITZER, HOFFMAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE ADVERTISING MEDIA OUTSIDE SALESMEN FROM THE OVERTIME COMPENSATION REQUIREMENTS OF THE STATE WAGE LAWS; AND 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;

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

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



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

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

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

10 (d) an employee employed in the capacity of
 11 ADVERTISING MEDIA outside salesman who is excluded
 12 under 29-U.S.C.-213(a)(1) from the overtime compensation
 13 provisions of the Fair Labor Standards Act;

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

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

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

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

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

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

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

25 (i)(j) an employee of an establishment commonly

1 recognized as a country elevator, including an establishment
2 which sells products and services used in the operation of a
3 farm, if no more than five employees are employed by the
4 establishment;

5 {j}{k} a driver employed by an employer engaged in the
6 business of operating taxicabs;

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

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18 trees; cruising, surveying, or felling timber; or
19 transporting logs or other forestry products to a mill,
20 processing plant, railroad, or other transportation terminal
21 if the number of employees employed by his employer in such
22 forestry or lumbering operations does not exceed eight;

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

1 {n}{o} an employee of a municipal or county government
2 who is working under a work period not exceeding 40 hours in
3 a 7-day period established through a collective bargaining
4 agreement when a collective bargaining unit represents the
5 employee or by mutual agreement of the employer and employee
6 where no bargaining unit is recognized. Employment in
7 excess of 40 hours in a 7-day, 40-hour work period must be
8 compensated at a rate of not less than 1 1/2 times the
9 hourly wage rate for the employee.

10 {o}{p} an employee of a hospital or other
11 establishment primarily engaged in the care of the sick,
12 disabled, aged, or mentally ill or defective who is working
13 under a work period not exceeding 80 hours in a 14-day
14 period established through either a collective bargaining
15 agreement when a collective bargaining unit represents the
16 employee or by mutual agreement of the employer and employee
17 where no bargaining unit is recognized. Employment in
18 excess of 8 hours per day or 80 hours in a 14-day period
19 must be compensated for at a rate of not less than 1 1/2
20 times the hourly wage rate for the employee.

21 {p}{q} a firefighter who is working under a work
22 period established in a collective bargaining agreement
23 entered into between a public employer and a firefighters'
24 organization or its exclusive representative;

25 {q}{r} an officer or other employee of a police

1 department in a city of the first or second class who is
2 working under a work period established by the chief of
3 police under 7-32-4118;

4 (†)(s) an employee of a department of public safety
5 working under a work period established pursuant to
6 7-32-115."

7 NEW SECTION. Section 2. Extension of authority. Any
8 existing authority of the commissioner of labor and industry
9 to make rules on the subject of the provisions of this act
10 is extended to the provisions of this act.

-End-

HOUSE BILL NO. 699

INTRODUCED BY WALLIN, BOYLAN, HAYNE,
SWITZER, HOFFMAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE CERTAIN
NEWSPAPER ADVERTISING MEDIA--OUTSIDE SALESMEN FROM THE
OVERTIME COMPENSATION REQUIREMENTS OF THE STATE WAGE LAWS;
AND 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;

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

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



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

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

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

10 ~~(d) an employee employed in the capacity of~~
 11 ~~ADVERTISING-MEDIUM-MEDIA outside salesman who is excluded~~
 12 ~~under 29-U.S.C. 213(a)(1) from the overtime compensation~~
 13 ~~provisions of the Fair Labor Standards Act;~~

14 (D) AN OUTSIDE SALESMAN PAID ON A COMMISSION OR
 15 CONTRACT BASIS WHO IS PRIMARILY EMPLOYED IN SELLING
 16 ADVERTISING FOR A NEWSPAPER;

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

24 (e)(f) a salesman primarily engaged in selling
 25 trailers, boats, or aircraft if he is employed by a

1 nonmanufacturing establishment primarily engaged in the
 2 business of selling trailers, boats, or aircraft to ultimate
 3 purchasers;

4 (f)(g) an employee employed as a driver or driver's
 5 helper making local deliveries who is compensated for such
 6 employment on the basis of trip rates, or other delivery
 7 payment plan, if the commissioner finds that such plan has
 8 the general purpose and effect of reducing hours worked by
 9 such employees to or below the maximum workweek applicable
 10 to them under 39-3-405;

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

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

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

25 (ii) paid for his employment in connection with such

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

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

8 ~~(k)~~(k) a driver employed by an employer engaged in the
9 business of operating taxicabs;

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

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

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

4 ~~(o)~~(o) an employee of a municipal or county government
5 who is working under a work period not exceeding 40 hours in
6 a 7-day period established through a collective bargaining
7 agreement when a collective bargaining unit represents the
8 employee or by mutual agreement of the employer and employee
9 where no bargaining unit is recognized. Employment in
10 excess of 40 hours in a 7-day, 40-hour work period must be
11 compensated at a rate of not less than 1 1/2 times the
12 hourly wage rate for the employee.

13 ~~(p)~~(p) an employee of a hospital or other
14 establishment primarily engaged in the care of the sick,
15 disabled, aged, or mentally ill or defective who is working
16 under a work period not exceeding 80 hours in a 14-day
17 period established through either a collective bargaining
18 agreement when a collective bargaining unit represents the
19 employee or by mutual agreement of the employer and employee
20 where no bargaining unit is recognized. Employment in
21 excess of 8 hours per day or 80 hours in a 14-day period
22 must be compensated for at a rate of not less than 1 1/2
23 times the hourly wage rate for the employee.

24 ~~(q)~~(q) a firefighter who is working under a work
25 period established in a collective bargaining agreement

1 entered into between a public employer and a firefighters'
2 organization or its exclusive representative;

3 ~~(q)~~(r) an officer or other employee of a police
4 department in a city of the first or second class who is
5 working under a work period established by the chief of
6 police under 7-32-4118;

7 ~~(r)~~(s) an employee of a department of public safety
8 working under a work period established pursuant to
9 7-32-115."

10 NEW SECTION. Section 2. Extension of authority. Any
11 existing authority of the commissioner of labor and industry
12 to make rules on the subject of the provisions of this act
13 is extended to the provisions of this act.

-End-

STANDING COMMITTEE REPORT

SENATE

March 12,

87
19.....

MR. PRESIDENT

We, your committee on LABOR AND EMPLOYMENT RELATIONS

having had under consideration HOUSE BILL No. 699

third reading copy (blue)
color

EXCLUDE OUTSIDE SALEMEN FROM OVERTIME COMPENSATION REQUIREMENTS

WALLIN (BOYLAN)

Respectfully report as follows: That HOUSE BILL No. 699
be amended as follows:

1. Title, line 5.
Following: "EXCLUDE"
Insert: "CERTAIN NEWSPAPER"

2. Title, line 6.
Following: line 5
Strike: "MEDIA OUTSIDE"

3. Page 3, lines 10 through 13.
Strike: subsection (d) in its entirety
Insert: "(d) an outside salesman paid on a commission
or contract basis who is primarily employed in selling
advertising for a newspaper;"

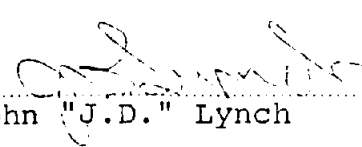
KAK

AND AS AMENDED,
BE CONCURRED IN
~~XXXXXXXX~~

~~XXXXXXXXXX~~

.....
Sen. John "J.D." Lynch

Chairman.



*3-12-87
5:40*