

IN THE HOUSE

APRIL 23, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 House BILL NO. 727
2 INTRODUCED BY Winn

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT FROM MINIMUM
5 WAGE AND OVERTIME LAWS EMPLOYEES OF LODGING ESTABLISHMENTS
6 OR PERSONAL CARE FACILITIES WHO, UNDER THE TERMS OF THEIR
7 EMPLOYMENT, LIVE IN THE ESTABLISHMENT OR FACILITY; AND
8 AMENDING SECTION 39-3-406, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 39-3-406, MCA, is amended to read:
12 "39-3-406. Exclusions. (1) The provisions of 39-3-404
13 and 39-3-405 shall not apply with respect to:

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

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

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

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

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

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

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

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

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

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

23 (k) any individual employed by the United States of
24 America;

25 (l) persons employed in lodging establishments or



1 personal care facilities who, under the terms of their
2 employment, live in the establishment or facility.

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 state;

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 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) 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) 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 \$10,000;

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, 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;

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);

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

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

23 (q) 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) 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. 727
INTRODUCED BY WINSLOW

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT FROM MINIMUM WAGE AND OVERTIME LAWS EMPLOYEES RESIDENT MANAGERS OF LODGING ESTABLISHMENTS OR PERSONAL CARE FACILITIES WHO, UNDER THE TERMS OF THEIR EMPLOYMENT, LIVE IN THE ESTABLISHMENT OR FACILITY; AND AMENDING SECTION 39-3-406, MCA."

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

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"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;



1 (1) persons RESIDENT MANAGERS employed in lodging
 2 establishments or personal care facilities who, under the
 3 terms of their employment, live in the establishment or
 4 facility.

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

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

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

12 (c) an individual employed as an outside buyer of
 13 poultry, eggs, cream, or milk, in their raw or natural
 14 state;

15 (d) a salesman, partsman, or mechanic paid on a
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 17 selling or servicing automobiles, trucks, mobile homes,
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 6 such employees to or below the maximum workweek applicable
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 10 canals, reservoirs, or waterways not owned or operated for
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 13 agricultural purposes;

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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;

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6 business of operating taxicabs;

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1 department in a city of the first or second class who is
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3 police under 7-32-4118;

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16 mutual agreement of the employer and employee where no
17 bargaining unit is recognized. Employment in excess of 8
18 hours per day or 80 hours in a 14-day period must be
19 compensated for at a rate of not less than 1 1/2 times the
20 hourly wage rate for the employee.

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

25 (q) 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 (r) 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-