

SB 314 INTRODUCED BY HAMMOND
EXCLUDE FAIR WORKERS FROM PAYMENT OF OVERTIME
COMPENSATION

2/10	INTRODUCED		
2/10	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/17	HEARING		
2/18	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	49	0
2/23	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/24	REFERRED TO BUSINESS & LABOR		
3/13	HEARING		
3/13	TABLED IN COMMITTEE		

1 *Senate* BILL NO. *314*
2 INTRODUCED BY *E. Hammond*

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE FAIR WORKERS
5 FROM PAYMENT OF UNEMPLOYMENT COMPENSATION; AND AMENDING
6 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



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SB 314

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;

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

15 (ii) paid for his employment in connection with such
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) an individual who is employed on a casual or
24 seasonal basis in any state fair, county agricultural fair,
25 or district fair;

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

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

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

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

22 (o) an employee of a municipal or county government
23 who is working under a work period not exceeding 40 hours in
24 a 7-day period established through a collective bargaining
25 agreement when a collective bargaining unit represents the

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

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

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

21 (r) an officer or other employee of a police
22 department in a city of the first or second class who is
23 working under a work period established by the chief of
24 police under 7-32-4118;

25 (s) an employee of a department of public safety

1 working under a work period established pursuant to
2 7-32-115."

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

-End-

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

1 SENATE BILL NO. 314

2 INTRODUCED BY HAMMOND

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16 consist of menial chores such as babysitting, mowing lawns,
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18 (c) persons employed directly by the head of a
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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
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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
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24 such employees to or below the maximum workweek applicable
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3 canals, reservoirs, or waterways not owned or operated for
4 profit and not operated on a sharecrop basis and which are
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