

HOUSE BILL 628

Introduced by Simon

2/09	Introduced
2/10	Referred to Labor & Employment Relations
2/14	Hearing
2/14	Tabled in Committee

1 *HOUSE* BILL NO. *628*
2 INTRODUCED BY *Simon*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE OUTSIDE
5 SALESMEN FROM COVERAGE UNDER THE STATE OVERTIME COMPENSATION
6 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 the
7 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 part-time
16 incidental work as a condition of their residence on a farm
17 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 (l) resident managers employed in lodging
24 establishments or personal care facilities who, under the
25 terms of their employment, live in the establishment or

1 facility.

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) ~~an--outside--salesman--paid--on--a--commission---or~~
13 ~~contract---basis---who--is--primarily--employed--in--selling~~
14 ~~advertising-for-a-newspaper; an employee employed in the~~
15 ~~capacity of outside salesman who is excluded under 29 U.S.C.~~
16 ~~213(a)(1) from the overtime compensation provisions of the~~
17 ~~Fair Labor Standards Act;~~

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

25 (f) a salesman primarily engaged in selling trailers,

1 boats, or aircraft if he is employed by a nonmanufacturing
2 establishment primarily engaged in the business of selling
3 trailers, boats, or aircraft to ultimate purchasers;

4 (g) a salesman paid on a commission or contract basis
5 who is primarily engaged in selling advertising for a radio
6 or television station employer;

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

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

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

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

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

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

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

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

23 (n) an employee employed in planting or tending trees;
24 cruising, surveying, or felling timber; or transporting logs
25 or other forestry products to a mill, processing plant,

1 railroad, or other transportation terminal if the number of
2 employees employed by his employer in such forestry or
3 lumbering operations does not exceed eight;

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

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

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

1 hourly wage rate for the employee.

2 (r) a firefighter who is working under a work period
3 established in a collective bargaining agreement entered
4 into between a public employer and a firefighters'
5 organization or its exclusive representative;

6 (s) an officer or other employee of a police department
7 in a city of the first or second class who is working under
8 a work period established by the chief of police under
9 7-32-4118;

10 (t) an employee of a department of public safety
11 working under a work period established pursuant to
12 7-32-115."

13 NEW SECTION. **Section 2. Extension of authority.** Any
14 existing authority to make rules on the subject of the
15 provisions of [this act] is extended to the provisions of
16 [this act].

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