

SENATE BILL NO. 116

INTRODUCED BY HARP

IN THE SENATE

JANUARY 9, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

JANUARY 20, 1993

COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

PRINTING REPORT.

JANUARY 21, 1993

SECOND READING, DO PASS.

JANUARY 22, 1993

ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 41; NOES, 8.

TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 23, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

FIRST READING.

FEBRUARY 10, 1993

COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 2, 1993

SECOND READING, CONCURRED IN.

MARCH 5, 1993

THIRD READING, CONCURRED IN.
AYES, 66; NOES, 34.

RETURNED TO SENATE.

IN THE SENATE

MARCH 8, 1993

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 116
2 INTRODUCED BY Harp
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM MINIMUM
5 WAGE AND OVERTIME REQUIREMENTS CERTAIN OUTSIDE SALESPERSONS
6 OR MARKETING REPRESENTATIVES WHO ARE EMPLOYED IN SELLING OR
7 MARKETING PRODUCTS OR SERVICES IN THE FOOD DISTRIBUTION
8 INDUSTRY; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE."

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

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

13 "39-3-406. Exclusions. (1) The provisions of 39-3-404
14 and 39-3-405 do not apply with respect to:

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

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

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

24 (d) immediate members of the family of an employer or
25 persons dependent upon an employer for half or more of their

1 support in the customary sense of being a dependent;

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

6 (f) handicapped workers engaged in work which that 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 the
11 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 the exclusion shall may not
15 exceed ~~a--period--of~~ 180 days from their initial date of
16 employment and further provided that during this exclusion
17 period wages paid such the learners may not be less than 50%
18 of the minimum wage rate established in this part;

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

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

25 (k) any individual employed by the United States of

1 America;

2 (1) resident managers employed in lodging
3 establishments or personal care facilities who, under the
4 terms of their employment, live in the establishment or
5 facility;

6 (m) an outside salesperson or marketing representative
7 paid on a commission, contract, or salary basis who is
8 primarily employed in selling or marketing products or
9 services in the food distribution industry for a food
10 broker, wholesaler, or association.

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

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

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

18 (c) an individual employed as an outside buyer of
19 poultry, eggs, cream, or milk, in their raw or natural
20 state;

21 (d) an outside ~~salesman~~ salesperson paid on a
22 commission or contract basis who is primarily employed in
23 selling advertising for a newspaper;

24 (e) a ~~salesman~~-~~partsman~~ salesperson, parts person, or
25 mechanic paid on a commission or contract basis and

1 primarily engaged in selling or servicing automobiles,
2 trucks, mobile homes, recreational vehicles, or farm
3 implements if he the salesperson, parts person, or mechanic
4 is employed by a nonmanufacturing establishment primarily
5 engaged in the business of selling such the vehicles or
6 implements to ultimate purchasers;

7 (f) a ~~salesman~~ salesperson primarily engaged in selling
8 trailers, boats, or aircraft if he the salesperson is
9 employed by a nonmanufacturing establishment primarily
10 engaged in the business of selling trailers, boats, or
11 aircraft to ultimate purchasers;

12 (g) an outside ~~salesman~~ salesperson paid on a
13 commission or contract basis who is primarily employed in
14 selling office supplies, computers, or other office
15 equipment for an office equipment dealer;

16 (h) a ~~salesman~~ salesperson paid on a commission or
17 contract basis who is primarily engaged in selling
18 advertising for a radio or television station employer;

19 (i) an employee employed as a driver or driver's helper
20 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 the plan
23 has the general purpose and effect of reducing hours worked
24 by such the employees to or below the maximum workweek
25 applicable to them under 39-3-405;

1 (j) 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 that
5 are used exclusively for supply and storing of water for
6 agricultural purposes;

7 (k) an employee with respect to his employment in
8 agriculture by a farmer, notwithstanding other employment of
9 such the employee in connection with livestock auction
10 operations in which such the farmer is engaged as an adjunct
11 to the raising of livestock, either on-his-own-account alone
12 or in conjunction with other farmers, if such the employee
13 is:

14 (i) primarily employed during his a workweek in
15 agriculture by such a farmer; and

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

19 (l) an employee of an establishment commonly recognized
20 as a country elevator, including an establishment which that
21 sells products and services used in the operation of a farm,
22 if no more than five employees are employed by the
23 establishment;

24 (m) a driver employed by an employer engaged in the
25 business of operating taxicabs;

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

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

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

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

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

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

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

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

24 (u) an employee of a department of public safety
25 working under a work period established pursuant to

1 7-32-115."

2 NEW SECTION. **Section 2.** **Effective date.** [This act] is
3 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

Senate BILL NO. 116

INTRODUCED BY THRP

A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM MINIMUM WAGE AND OVERTIME REQUIREMENTS CERTAIN OUTSIDE SALESPERSONS OR MARKETING REPRESENTATIVES WHO ARE EMPLOYED IN SELLING OR MARKETING PRODUCTS OR SERVICES IN THE FOOD DISTRIBUTION INDUSTRY; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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 do 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 of a nonprofit organization who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which that 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 the exclusion shall may not exceed a--period--of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such the 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

1 America;

2 (1) resident managers employed in lodging
3 establishments or personal care facilities who, under the
4 terms of their employment, live in the establishment or
5 facility;

6 (m) an outside salesperson or marketing representative
7 paid on a commission, contract, or salary basis who is
8 primarily employed in selling or marketing products or
9 services in the food distribution industry for a food
10 broker, wholesaler, or association.

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

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

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

18 (c) an individual employed as an outside buyer of
19 poultry, eggs, cream, or milk, in their raw or natural
20 state;

21 (d) an outside salesman salesperson paid on a
22 commission or contract basis who is primarily employed in
23 selling advertising for a newspaper;

24 (e) a salesman, partsman salesperson, parts person, or
25 mechanic paid on a commission or contract basis and

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3 implements if he the salesperson, parts person, or mechanic
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21 employment on the basis of trip rates, or other delivery
22 payment plan, if the commissioner finds that such the plan
23 has the general purpose and effect of reducing hours worked
24 by such the employees to or below the maximum workweek
25 applicable to them under 39-3-405;

1 (j) 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 that
5 are used exclusively for supply and storing of water for
6 agricultural purposes;

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8 agriculture by a farmer, notwithstanding other employment of
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10 operations in which such the farmer is engaged as an adjunct
11 to the raising of livestock, either on-his-own-account alone
12 or in conjunction with other farmers, if such the employee
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20 as a country elevator, including an establishment which that
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23 establishment;

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4 natural parents is deceased or who are enrolled in such the
5 institution and reside in residential facilities of the
6 institution so long as the children are in residence at the
7 institution and so long as such the employee and his the
8 employee's spouse reside in such the facilities and receive,
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10 together compensated, on a cash basis, at an annual rate of
11 not less than \$10,000;

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

18 (p) an employee of a sheriff's department who is
19 working under an established work period in lieu of a
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21 (q) an employee of a municipal or county government who
22 is working under a work period not exceeding 40 hours in a
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 18 into between a public employer and a firefighters'
 19 organization or its exclusive representative;

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

24 (u) an employee of a department of public safety
 25 working under a work period established pursuant to

1 7-32-115."

2 NEW SECTION. **Section 2.** Effective date. [This act] is
 3 effective on passage and approval.

-End-

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2 INTRODUCED BY HARP
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11 (2) The provisions of 39-3-405 do not apply to:

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14 qualifications and maximum hours of service pursuant to the
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16 (b) an employee of an employer subject to the
17 provisions of part I of the Interstate Commerce Act;

18 (c) an individual employed as an outside buyer of
19 poultry, eggs, cream, or milk, in their raw or natural
20 state;

21 (d) an outside salesman salesperson paid on a
22 commission or contract basis who is primarily employed in
23 selling advertising for a newspaper;

24 (e) a salesman, partsman salesperson, parts person, or
25 mechanic paid on a commission or contract basis and

1 primarily engaged in selling or servicing automobiles,
2 trucks, mobile homes, recreational vehicles, or farm
3 implements if he the salesperson, parts person, or mechanic
4 is employed by a nonmanufacturing establishment primarily
5 engaged in the business of selling such the vehicles or
6 implements to ultimate purchasers;

7 (f) a salesman salesperson primarily engaged in selling
8 trailers, boats, or aircraft if he the salesperson is
9 employed by a nonmanufacturing establishment primarily
10 engaged in the business of selling trailers, boats, or
11 aircraft to ultimate purchasers;

12 (g) an outside salesman salesperson paid on a
13 commission or contract basis who is primarily employed in
14 selling office supplies, computers, or other office
15 equipment for an office equipment dealer;

16 (h) a salesman salesperson paid on a commission or
17 contract basis who is primarily engaged in selling
18 advertising for a radio or television station employer;

19 (i) an employee employed as a driver or driver's helper
20 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 the plan
23 has the general purpose and effect of reducing hours worked
24 by such the employees to or below the maximum workweek
25 applicable to them under 39-3-405;

1 (j) 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 that
5 are used exclusively for supply and storing of water for
6 agricultural purposes;

7 (k) an employee with respect to his employment in
8 agriculture by a farmer, notwithstanding other employment of
9 such the employee in connection with livestock auction
10 operations in which such the farmer is engaged as an adjunct
11 to the raising of livestock, either on-his-own-account alone
12 or in conjunction with other farmers, if such the employee
13 is:

14 (i) primarily employed during his a workweek in
15 agriculture by such a farmer; and

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

19 (l) an employee of an establishment commonly recognized
20 as a country elevator, including an establishment which that
21 sells products and services used in the operation of a farm,
22 if no more than five employees are employed by the
23 establishment;

24 (m) a driver employed by an employer engaged in the
25 business of operating taxicabs;

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

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

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

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

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

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

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

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

24 (u) an employee of a department of public safety
 25 working under a work period established pursuant to

1 7-32-115."

2 NEW SECTION. **Section 2.** Effective date. [This act] is
 3 effective on passage and approval.

-End-