# 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.

INTRODUCED AND REFERRED TO COMMITTEE

ON LABOR & EMPLOYMENT RELATIONS.

# IN THE HOUSE

JANUARY 23, 1993

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.

<u>Senate</u> BILL NO. 116 1 INTRODUCED BY 2 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM MINIMUM 5 WAGE AND OVERTIME REQUIREMENTS CERTAIN OUTSIDE SALESPERSONS б OR MARKETING REPRESENTATIVES WHO ARE EMPLOYED IN SELLING OR MARKETING PRODUCTS OR SERVICES IN THE FOOD DISTRIBUTION 7 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 program established under the auspices of an accredited 16 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

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;

(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;

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

S& //6 INTRODUCED BILL America;

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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:

(a) an employee with respect to whom the United States
Secretary of Transportation has power to establish
qualifications and maximum hours of service pursuant to the
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;

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

(e) a salesman7-partsman salesperson, parts person, or
 mechanic paid on a commission or contract basis and

primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he <u>the salesperson</u>, <u>parts person</u>, <u>or mechanic</u> is employed by a nonmanufacturing establishment primarily engaged in the business of selling <u>such the</u> vehicles or implements to ultimate purchasers;

7 (f) a salesman <u>salesperson</u> primarily engaged in selling 8 trailers, boats, or aircraft if <u>he the salesperson</u> 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 satesman salesperson paid on a commission or
17 contract basis who is primarily engaged in selling
18 advertising for a radio or television station employer;

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

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1 (i) 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;

(1) an employee of an establishment commonly recognized 19 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;

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

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

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

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

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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 mutual agreement of the employer and employee where when no 11 12 bargaining unit is recognized. Employment in excess of 8 13 hours per day or 80 hours in a 14-day period must be compensated for at a rate of not less than  $1 \frac{1}{2}$  times the 14 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;

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

24 (u) an employee of a department of public safety25 working under a work period established pursuant to

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1 7-32-115."

2 <u>NEW SECTION.</u> Section 2. Effective date. [This act] is

3 effective on passage and approval.

-End-

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		Legislature LC 0962/01	3rd I
LC 0962/0		APPROVED BY COMMITTEE ON LABOR & EMPLOYMENT RELATIONS	
support in the customary sense of being a dependent;	1	Senate BILL NO. 116	1
(e) any persons not regular employees thereof of	2	INTRODUCED BY HARP	2
nonprofit organization who voluntarily offer their service	3	, ,	3
to a nonprofit organization on a fully or partiall	4	A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM MINIMUM	4
reimbursed basis;	5	WAGE AND OVERTIME REQUIREMENTS CERTAIN OUTSIDE SALESPERSONS	5
(f) handicapped workers engaged in work which that is	6	OR MARKETING REPRESENTATIVES WHO ARE EMPLOYED IN SELLING OR	6
incidental to training or evaluation programs or whose	7	MARKETING PRODUCTS OR SERVICES IN THE FOOD DISTRIBUTION	7
earning capacity is so severely impaired that they are	8	INDUSTRY; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN	8
unable to engage in competitive employment;	9	IMMEDIATE EFFECTIVE DATE."	9
(g) apprentices or learners, who may be exempted by the	10		10
commissioner for a period not to exceed 30 days of their	11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	11
<pre>employment;</pre>	12	Section 1. Section 39-3-406, MCA, is amended to read:	12
(h) learners under the age of 18 who are employed as	13	<b>*39-3-406. Exclusions.</b> (1) The provisions of 39-3-404	13
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exceed aperiodof 180 days from their initial date of	15	(a) students participating in a distributive education	15
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period wages paid such the learners may not be less than 50	17	educational agency;	17
of the minimum wage rate established in this part;	18	(b) persons employed in private homes whose duties	18
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incidental work as a condition of their residence on a farm	20	Cleaning Bidewalks;	20
or ranch;	21	(c) persons employed directly by the head of a	21
(j) any individual employed in a bona fide executive,	22	household to care for children dependent upon the head of	22
administrative, or professional capacity as these terms are	23	the household;	23
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-2- SB 116		persons dependent upon an emproyer for harr of more of their	23
-2- SD TTO SECOND READING		M	

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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.

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

(a) an employee with respect to whom the United States
 Secretary of Transportation has power to establish
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(c) an individual employed as an outside buyer of
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has the general purpose and effect of reducing hours worked
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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);

(q) an employee of a municipal or county government who
is working under a work period not exceeding 40 hours in a
7-day period established through a collective bargaining
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-6-

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(r) an employee of a hospital or other establishment 5 primarily engaged in the care of the sick, disabled, aged, 6 7 or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established 8 through either a collective bargaining agreement when a 9 collective bargaining unit represents the employee or by 10 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 compensated for at a rate of not less than  $1 \frac{1}{2}$  times the 14 15 hourly wage rate for the employee.

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in a city of the first or second class who is working under
a work period established by the chief of police under
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24 (u) an employee of a department of public safety25 working under a work period established pursuant to

1 7-32-115."

2 <u>NEW SECTION.</u> Section 2. Effective date. [This act] is

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LC 0962/01

INTRODUCED BY HARP 1 2 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM MINIMUM 5 WAGE AND OVERTIME REQUIREMENTS CERTAIN OUTSIDE SALESPERSONS OR MARKETING REPRESENTATIVES WHO ARE EMPLOYED IN SELLING OR 6 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

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THIRD READING

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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
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2 <u>NEW SECTION.</u> Section 2. Effective date. [This act] is

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SENATE BILL NO. 116 1 1 2 INTRODUCED BY HARP 2 3 3 A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING FROM MINIMUM 4 to 4 WAGE AND OVERTIME REQUIREMENTS CERTAIN OUTSIDE SALESPERSONS 5 5 OR MARKETING REPRESENTATIVES WHO ARE EMPLOYED IN SELLING OR 6 6 MARKETING PRODUCTS OR SERVICES IN THE FOOD DISTRIBUTION 7 7 INDUSTRY; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN 8 8 IMMEDIATE EFFECTIVE DATE." 9 9 10 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 11 11 Section 1. Section 39-3-406, MCA, is amended to read: 12 12 =39-3-406. Exclusions. (1) The provisions of 39-3-404 13 13 14 and 39-3-405 do not apply with respect to: 14 (a) students participating in a distributive education 15 15 16 program established under the auspices of an accredited 16 17 educational agency; 17 (b) persons employed in private homes whose duties 18 18 19 consist of menial chores such as babysitting, mowing lawns, 19 20 20 cleaning sidewalks; 21 (c) persons employed directly by the head of a 21 household to care for children dependent upon the head of 22 22 23 the household; 23 (d) immediate members of the family of an employer or 24 24 persons dependent upon an employer for half or more of their 25 25 Montana Legislative Council

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REFERENCE BILL

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8	primarily employed in selling or marketing products or	8	trailers, boat
9	services in the food distribution industry for a food	9	employed by
10	broker, wholesaler, or association.	10	engaged in the
11	(2) The provisions of 39-3-405 do not apply to:	11	aircraft to ul
12	(a) an employee with respect to whom the United States	12	(g) an
13	Secretary of Transportation has power to establish	13	commission or
14	qualifications and maximum hours of service pursuant to the	14	selling offi
15	- provisions of 49 U.S.C. 304;	15	equipment for
16	(b) an employee of an employer subject to the	16	(h) a <b>sa</b> ł
17	provisions of part I of the Interstate Commerce Act;	17	contract bas
18	- (c) an individual employed as an outside buyer of	18	advertising fo
19	poultry, eggs, cream, or milk, in their raw or natural	19	(i) an em
20	state;	20	making local
21	(d) an outside salesman salesperson paid on a	21	employment on
22	commission or contract basis who is primarily employed in	22	payment plan7
23	selling advertising for a newspaper;	23	has the gener
24	(e) a salesman, partsman salesperson, parts person, or	24	by <del>such</del> the em
25	mechanic paid on a commission or contract basis and	25	applicable to
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primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he <u>the salesperson</u>, <u>parts person</u>, <u>or mechanic</u> semployed by a nonmanufacturing establishment primarily engaged in the business of selling such <u>the</u> vehicles or implements to ultimate purchasers;

7 (f) a satesman <u>satesperson</u> primarily engaged in selling 8 trailers, boats, or aircraft if he <u>the salesperson</u> is 9 employed by a nonmanufacturing establishment primarily 0 engaged in the business of selling trailers, boats, or 1 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;

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

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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  $h \pm s$  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;

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

(m) a driver employed by an employer engaged in the
 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 the parents of children who are orphans or one of whose 3 natural parents is deceased or who are enrolled in such the 4 5 institution and reside in residential facilities of the institution so long as the children are in residence at the 6 7 institution and so long as such the employee and his the employee's spouse reside in such the facilities and receive, 8 without cost, board and lodging from the institution and are 9 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);

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

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

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

16 (5) 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 safety25 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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