


1 SENATE BILL NO. 80
 2 INTRODUCED BY *Kevin J. Allen* *Benefit*  *HARF*
 3 *For info* *Cecilia Storall*

4 A BILL FOR AN ACT ENTITLED: "AN ACT INCORPORATING INTO STATE LAW THE FEDERAL EXEMPTION
 5 FROM OVERTIME REQUIREMENTS FOR AN EMPLOYEE EMPLOYED AS AN ANNOUNCER, NEWS EDITOR,
 6 OR CHIEF ENGINEER; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 7 DATE."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
 11 **Section 1.** Section 39-3-406, MCA, is amended to read:

12 **"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect
 13 to:

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

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

18 (c) persons employed directly by the head of a household to care for children dependent upon the
 19 head of the household;

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

22 (e) any persons not regular employees of a nonprofit organization who voluntarily offer their
 23 services to a nonprofit organization on a fully or partially reimbursed basis;

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

26 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed
 27 30 days of their employment;

28 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion
 29 may not exceed 180 days from their initial date of employment and further provided that during this
 30 exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established

1 in this part;

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

4 (j) any individual employed in a bona fide executive, administrative, or professional capacity as
5 these terms are defined by regulations of the commissioner;

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

7 (l) resident managers employed in lodging establishments or personal care facilities who, under the
8 terms of their employment, live in the establishment or facility;

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

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

13 (a) an employee with respect to whom the United States ~~Secretary~~ secretary of ~~Transportation~~
14 transportation has power to establish 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 provisions of part I of the Interstate Commerce Act;

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

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

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

25 (f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is
26 employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats,
27 or aircraft to ultimate purchasers;

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

30 (h) a salesperson paid on a commission or contract basis who is primarily engaged in selling

1 advertising for a radio or television station employer;

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

6 (j) an employee employed in agriculture or in connection with the operation or maintenance of
7 ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop
8 basis and that are used exclusively for supply and storing of water for agricultural purposes;

9 (k) an employee employed in agriculture by a farmer, notwithstanding other employment of the
10 employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to
11 the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

12 (i) primarily employed during a workweek in agriculture by a farmer; and

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

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

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

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

25 (o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
26 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
27 terminal if the number of employees employed by the employer in the forestry or lumbering operations does
28 not exceed eight;

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

1 (q) an employee of a municipal or county government who is working under a work period not
2 exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a
3 collective bargaining unit represents the employee or by mutual agreement of the employer and employee
4 when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work
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6 (r) an employee of a hospital or other establishment primarily engaged in the care of the sick,
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13 entered into between a public employer and a firefighters' organization or its exclusive representative;

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

16 (u) an employee of a department of public safety working under a work period established pursuant
17 to 7-32-115;

18 (v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 ½ times
19 the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more
20 than half of the employee's compensation for a period of not less than 1 month is derived from
21 commissions on goods and services;

22 (w) an employee employed as an announcer, news editor, or chief engineer by an employer subject
23 to the provisions of section 213(b)(9) of the Fair Labor Standards Act of 1938."

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

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SENATE BILL NO. 80

INTRODUCED BY

Senator Jonathan Benedict
for *Senator George Stovall*



HARF

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23 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
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-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0080, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act incorporating into state law the federal exemption from overtime requirements for an employee employed as an announcer, news editor, or chief engineer.

ASSUMPTIONS:

1. The Department of Labor and Industry is not aware of any impact on the department or other state agencies.

FISCAL IMPACT:

None

David Lewis - 1-16-95

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Keating 1-17-95

TOM KEATING, PRIMARY SPONSOR DATE

Fiscal Note for SB0080, as introduced

SB 80

REREFERRED AND APPROVED BY COM ON LABOR
& EMPLOYMENT RELATIONS

SENATE BILL NO. 80

INTRODUCED BY KEATING, T. NELSON, BENEDICT, HARP, FORRESTER, GRINDE, STOVALL

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4 the plan has the general purpose and effect of reducing hours worked by the employees to or below the
5 maximum workweek applicable to them under 39-3-405;

6 (j) an employee employed in agriculture or in connection with the operation or maintenance of
7 ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop
8 basis and that are used exclusively for supply and storing of water for agricultural purposes;

9 (k) an employee employed in agriculture by a farmer, notwithstanding other employment of the
10 employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to
11 the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

12 (i) primarily employed during a workweek in agriculture by a farmer; and

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

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

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

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

25 (o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
26 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
27 terminal if the number of employees employed by the employer in the forestry or lumbering operations does
28 not exceed eight;

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

1 (q) an employee of a municipal or county government who is working under a work period not
 2 exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a
 3 collective bargaining unit represents the employee or by mutual agreement of the employer and employee
 4 when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work
 5 period must be compensated at a rate of not less than 1 ½ times the hourly wage rate for the employee.

6 (r) an employee of a hospital or other establishment primarily engaged in the care of the sick,
 7 disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in
 8 a 14-day period established through either a collective bargaining agreement when a collective bargaining
 9 unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit
 10 is not recognized. Employment in excess of 8 hours per a day or 80 hours in a 14-day period must be
 11 compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee.

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

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

16 (u) an employee of a department of public safety working under a work period established pursuant
 17 to 7-32-115;

18 (v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 ½ times
 19 the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more
 20 than half of the employee's compensation for a period of not less than 1 month is derived from
 21 commissions on goods and services;

22 (w) an employee employed as an A RADIO announcer, news editor, or chief engineer by an
 23 employer subject to the provisions of section 213(b)(9) of the Fair Labor Standards Act of 1938 IN A
 24 SECOND- OR THIRD-CLASS CITY OR A TOWN."

25
 26 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

27 -END-

1 SENATE BILL NO. 80

2 INTRODUCED BY KEATING, T. NELSON, BENEDICT, HARP, FORRESTER, GRINDE, STOVALL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~INCORPORATING INTO STATE LAW THE FEDERAL EXEMPTION~~
5 EXEMPTING FROM OVERTIME REQUIREMENTS ~~FOR AN EMPLOYEE EMPLOYED AS AN A RADIO~~
6 ANNOUNCER, NEWS EDITOR, OR CHIEF ENGINEER IN A SECOND- OR THIRD-CLASS CITY OR A TOWN;
7 AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
8

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

10
11 **Section 1.** Section 39-3-406, MCA, is amended to read:12 **"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect
13 to:14 (a) students participating in a distributive education program established under the auspices of an
15 accredited educational agency;16 (b) persons employed in private homes whose duties consist of menial chores, such as babysitting,
17 mowing lawns, and cleaning sidewalks;18 (c) persons employed directly by the head of a household to care for children dependent upon the
19 head of the household;20 (d) immediate members of the family of an employer or persons dependent upon an employer for
21 half or more of their support in the customary sense of being a dependent;22 (e) any persons not regular employees of a nonprofit organization who voluntarily offer their
23 services to a nonprofit organization on a fully or partially reimbursed basis;24 (f) handicapped workers engaged in work that is incidental to training or evaluation programs or
25 whose earning capacity is so severely impaired that they are unable to engage in competitive employment;26 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed
27 30 days of their employment;28 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion
29 may not exceed 180 days from their initial date of employment and further provided that during this
30 exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established

1 in this part:

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

4 (j) any individual employed in a bona fide executive, administrative, or professional capacity as
5 these terms are defined by regulations of the commissioner;

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

7 (l) resident managers employed in lodging establishments or personal care facilities who, under the
8 terms of their employment, live in the establishment or facility;

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

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

13 (a) an employee with respect to whom the United States ~~Secretary~~ secretary of ~~Transportation~~
14 transportation has power to establish 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 provisions of part I of the Interstate Commerce Act;

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

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

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

25 (f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is
26 employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats,
27 or aircraft to ultimate purchasers;

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

30 (h) a salesperson paid on a commission or contract basis who is primarily engaged in selling

1 advertising for a radio or television station employer;

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

6 (j) an employee employed in agriculture or in connection with the operation or maintenance of
7 ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop
8 basis and that are used exclusively for supply and storing of water for agricultural purposes;

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17 employees are employed by the establishment;

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

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20 to serve as the parents of children who are orphans or one of whose natural parents is deceased or who
21 are enrolled in the institution and reside in residential facilities of the institution so long as the children are
22 in residence at the institution and so long as the employee and the employee's spouse reside in the facilities
23 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
24 basis, at an annual rate of not less than \$10,000;

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27 terminal if the number of employees employed by the employer in the forestry or lumbering operations does
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 8 a 14-day period established through either a collective bargaining agreement when a collective bargaining
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 20 than half of the employee's compensation for a period of not less than 1 month is derived from
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22 (w) an employee employed as ~~an~~ A RADIO announcer, news editor, or chief engineer by an
 23 employer subject to the provisions of section 213(b)(9) of the Fair Labor Standards Act of 1938 IN A
 24 SECOND- OR THIRD-CLASS CITY OR A TOWN."

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

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