

Wm.E. Boharski

Murd

Biteel House BILL NO. 341

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1

2 INTRODUCED BY

MERCER M. JAMES

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3

ORR James Simpkins Garfield *[Handwritten signature]*

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A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING SALESPERSONS, PARTS PERSONS, AND MECHANICS EMPLOYED BY A BUSINESS PRIMARILY ENGAGED IN SELLING REPLACEMENT PARTS TO A WHOLESALER OR THE ULTIMATE PURCHASER FROM THE OVERTIME COMPENSATION LAW; AND AMENDING SECTION 39-3-406, MCA."

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 to:

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

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

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

20 (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;

22 (e) any persons not regular employees of a nonprofit organization who voluntarily offer their 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 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 30 days of their employment;

28 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this 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~~ an 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~~ an 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 (n) a direct seller as defined in 26 U.S.C. 3508.

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

14 (a) an employee with respect to whom the United States secretary of transportation has power to
15 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 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
23 implements, or replacement parts if the salesperson, parts person, or mechanic is employed by a
24 nonmanufacturing establishment primarily engaged in the business of selling the vehicles, ~~or~~ implements,
25 or replacement parts to wholesalers or ultimate purchasers;

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

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

- 1 (h) a salesperson paid on a commission or contract basis who is primarily engaged in selling
2 advertising for a radio or television station employer;
- 3 (i) an employee employed as a driver or driver's helper making local deliveries who is compensated
4 for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that
5 the plan has the general purpose and effect of reducing hours worked by the employees to or below the
6 maximum workweek applicable to them under 39-3-405;
- 7 (j) an employee employed in agriculture or in connection with the operation or maintenance of
8 ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop
9 basis and that are used exclusively for supply and storing of water for agricultural purposes;
- 10 (k) an employee employed in agriculture by a farmer, notwithstanding other employment of the
11 employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to
12 the raising of livestock, either alone or in conjunction with other farmers, if the employee is:
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- 14 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less
15 than that prescribed by 39-3-404;
- 16 (l) an employee of an establishment commonly recognized as a country elevator, including an
17 establishment that sells products and services used in the operation of a farm, if no more than five
18 employees are employed by the establishment;
- 19 (m) a driver employed by an employer engaged in the business of operating taxicabs;
- 20 (n) an employee who is employed with the employee's spouse by a nonprofit educational institution
21 to serve as the parents of children who are orphans or one of whose natural parents is deceased or who
22 are enrolled in the institution and reside in residential facilities of the institution so long as the children are
23 in residence at the institution and so long as the employee and the employee's spouse reside in the facilities
24 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
25 basis, at an annual rate of not less than \$10,000;
- 26 (o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
27 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
28 terminal if the number of employees employed by the employer in the forestry or lumbering operations does
29 not exceed eight;
- 30 (p) an employee of a sheriff's department who is working under an established work period in lieu

1 of a workweek pursuant to 7-4-2509(1);

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

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

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

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

19 (v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times
20 the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more
21 than half of the employee's compensation for a period of not less than 1 month is derived from
22 commissions on goods and services;

23 (w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter
24 as defined in 37-47-101;

25 (x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in
26 a second- or third-class city or a town."

27

-END-

Wm. E. Boharski

Murd

Biteel House

BILL NO. 341

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INTRODUCED BY

Mercer

M. J. [unclear]

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ORR

James

Simkins

Garfield

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17 establishment that sells products and services used in the operation of a farm, if no more than five
18 employees are employed by the establishment;

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

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24 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
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29 not exceed eight;

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Wm. E. Boharski

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3 *ORR* *James Simpkins* *Garfield* *PART* *Quady* *Buch*

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6 maximum workweek applicable to them under 39-3-405;

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

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

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

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

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

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

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

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

30 (p) an employee of a sheriff's department who is working under an established work period in lieu

1 of a workweek pursuant to 7-4-2509(1);

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

7 (r) an employee of a hospital or other establishment primarily engaged in the care of the sick,
8 disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in
9 a 14-day period established through either a collective bargaining agreement when a collective bargaining
10 unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit
11 is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be
12 compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

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

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

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

19 (v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times
20 the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more
21 than half of the employee's compensation for a period of not less than 1 month is derived from
22 commissions on goods and services;

23 (w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter
24 as defined in 37-47-101;

25 (x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in
26 a second- or third-class city or a town."

27

-END-

HOUSE BILL NO. 341

INTRODUCED BY MERCER, M. TAYLOR, GRADY, BECK, ORR, GRIMES; SIMPKINS, GROSFIELD,
KEENAN, HARP, BERGMAN, KEATING, MOOD, BITNEY, ESTRADA, BOHARSKI

A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING SALESPERSONS, PARTS PERSONS, AND
MECHANICS EMPLOYED BY A BUSINESS PRIMARILY ENGAGED IN SELLING REPLACEMENT PARTS TO
A WHOLESALER OR THE ULTIMATE PURCHASER FROM THE OVERTIME COMPENSATION LAW; AND
AMENDING SECTION 39-3-406, MCA."

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, and 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 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 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 the exclusion
may not exceed 180 days from their initial date of employment and further provided that during this

1 exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established
2 in this part;

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

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

7 (k) ~~any~~ an individual employed by the United States of America;

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

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

13 (n) a direct seller as defined in 26 U.S.C. 3508.

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

15 (a) an employee with respect to whom the United States secretary of transportation has power to
16 establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

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

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

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

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

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

30 (g) an outside salesperson paid on a commission or contract basis who is primarily employed in

1 selling office supplies, computers, or other office equipment for an office equipment dealer;

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

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

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

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

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18 establishment that sells products and services used in the operation of a farm, if no more than five
19 employees are employed by the establishment;

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

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

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28 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
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20 (v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times
21 the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more
22 than half of the employee's compensation for a period of not less than 1 month is derived from
23 commissions on goods and services;

24 (w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter
25 as defined in 37-47-101;

26 (x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in
27 a second- or third-class city or a town."

28

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