

HOUSE BILL NO. 194

INTRODUCED BY S. BOOKOUT-REINICKE

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LANGUAGE RELATING TO OVERTIME AND MINIMUM WAGE EXEMPTIONS FOR OUTSIDE SALES TO CONFORM WITH THE FEDERAL FAIR LABOR STANDARDS ACT; 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, 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) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;
- (f) persons with disabilities 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) an individual employed in a bona fide executive, administrative, ~~or~~ OR professional CAPACITY, AS  
6 THESE TERMS ARE DEFINED BY REGULATIONS OF THE COMMISSIONER, or IN AN outside sales capacity as these terms  
7 are defined by regulations of the commissioner, AS DEFINED IN 29 CFR 541.5;

8 (k) an individual employed by the United States of America;

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

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

14 ~~(n)~~(m) a direct seller as defined in 26 U.S.C. 3508;

15 ~~(o)~~(n) a person placed as a participant in a public assistance program authorized by Title 53 into  
16 a work setting for the purpose of developing employment skills. The placement may be with either a public  
17 or private employer. The exclusion does not apply to an employment relationship formed in the work  
18 setting outside the scope of the employment skills activities authorized by Title 53.

19 ~~(p)~~(o) a person serving as a foster parent, licensed as a foster care provider in accordance with  
20 41-3-1141, and providing care without wage compensation to no more than six foster children in the  
21 provider's own residence. The person may receive reimbursement for providing room and board, obtaining  
22 training, respite care, leisure and recreational activities, and providing for other needs and activities arising  
23 in the provision of in-home foster care.

24 ~~(q)~~(p) an employee employed in domestic service employment to provide live-in companionship  
25 services, as defined in 29 CFR 552.6, for individuals who, because of age or infirmity, are unable to care  
26 for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act ~~{~~29 U.S.C. 213~~}~~.

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

28 (a) an employee with respect to whom the United States secretary of transportation has power  
29 to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

30 (b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions

1 of part I of the Interstate Commerce Act;

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

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

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

11 ~~(f)(e)~~ a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is  
12 employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats,  
13 or aircraft to ultimate purchasers;

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

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

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

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

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

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

30 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less

1 than that prescribed by 39-3-404;

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

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

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

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

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

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

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

29 ~~(s)~~(q) a firefighter who is working under a work period established in a collective bargaining  
30 agreement entered into between a public employer and a firefighters' organization or its exclusive

1 representative;

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

4 ~~(s)~~(s) an employee of a department of public safety working under a work period established  
5 pursuant to 7-32-115;

6 ~~(t)~~(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2  
7 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 ~~(29~~  
8 U.S.C. 206), and if more than half of the employee's compensation for a period of not less than 1 month  
9 is derived from commissions on goods and services;

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

12 ~~(x)~~(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer  
13 in a second- or third-class city or a town;

14 ~~(y)~~(w) an employee of the consolidated legislative branch as provided in 5-2-503."  
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16 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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