

HOUSE BILL NO. 226

INTRODUCED BY D. JONES, KARY, C. SMITH

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A BILL FOR AN ACT ENTITLED: "AN ACT EXCLUDING COMPUTER INFORMATIONAL TECHNOLOGY PROFESSIONALS FROM OVERTIME LAWS; 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) 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 exclusion period, wages paid 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) an individual employed in a bona fide executive, administrative, or professional capacity, as these

1 terms are defined by regulations of the commissioner, a computer systems analyst, computer programmer,
2 software engineer, network administrator, or other similarly skilled computer employee who earns not less than
3 \$27.63 an hour pursuant to 29 CFR 541.400 or 541.402, or an individual employed in an outside sales capacity
4 pursuant to 29 CFR 541.500;

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

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

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

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

13 (o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621,
14 and providing care without wage compensation to no more than six foster children in the provider's own
15 residence. The person may receive reimbursement for providing room and board, obtaining training, respite care,
16 leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home
17 foster care.

18 (p) an employee employed in domestic service employment to provide companionship services, as
19 defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for
20 themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the
21 person providing the service is employed directly by a family member or an individual who is a legal guardian.

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

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

25 (b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part
26 I of the Interstate Commerce Act;

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

29 (d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily
30 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if

1 the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged
2 in the business of selling the vehicles or implements to ultimate purchasers;

3 (e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed
4 by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to
5 ultimate purchasers;

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

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

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

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

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

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

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

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

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

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

5 (n) an employee of a sheriff's office who is working under an established work period in lieu of a
6 workweek pursuant to 7-4-2509(1);

7 (o) an employee of a municipal or county government who is working under a work period not exceeding
8 40 hours in a 7-day period established through 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 is
10 not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a
11 rate of not less than 1 1/2 times the hourly wage rate for the employee.

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

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

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

22 (s) an employee of a department of public safety working under a work period established pursuant to
23 7-32-115;

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

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

30 (v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a

1 second- or third-class city or a town;
2 (w) an employee of the consolidated legislative branch as provided in 5-2-503;
3 (x) an employee of the state or its political subdivisions employed, at the employee's option, on an
4 occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the
5 employee was employed in a capacity other than the employee's regular occupation may be excluded from the
6 calculation of hours to determine overtime compensation."

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