

2 **SB 6220** - H COMM AMD **NOT ADOPTED**

3 By Committee on Transportation Policy & Budget

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that employees in the
8 airline industry have a long-standing practice and tradition of trading
9 shifts voluntarily among themselves. The legislature also finds that
10 federal law exempts airline and other employees from the provisions of
11 federal overtime regulations. This act is intended to specify that
12 airline industry employers are not required to pay overtime
13 compensation to an employee agreeing to work additional hours for a
14 coemployee.

15 **Sec. 2.** RCW 49.46.130 and 1997 c 311 s 1 and 1997 c 203 s 2 are
16 each reenacted and amended to read as follows:

17 (1) Except as otherwise provided in this section, no employer shall
18 employ any of his employees for a work week longer than forty hours
19 unless such employee receives compensation for his employment in excess
20 of the hours above specified at a rate not less than one and one-half
21 times the regular rate at which he is employed.

22 (2) This section does not apply to:

23 (a) Any person exempted pursuant to RCW 49.46.010(5). The payment
24 of compensation or provision of compensatory time off in addition to a
25 salary shall not be a factor in determining whether a person is
26 exempted under RCW 49.46.010(5)(c);

27 (b) Employees who request compensating time off in lieu of overtime
28 pay;

29 (c) Any individual employed as a seaman whether or not the seaman
30 is employed on a vessel other than an American vessel;

31 (d) Seasonal employees who are employed at concessions and
32 recreational establishments at agricultural fairs, including those
33 seasonal employees employed by agricultural fairs, within the state
34 provided that the period of employment for any seasonal employee at any
35 or all agricultural fairs does not exceed fourteen working days a year;

1 (e) Any individual employed as a motion picture projectionist if
2 that employee is covered by a contract or collective bargaining
3 agreement which regulates hours of work and overtime pay;

4 (f) An individual employed as a truck or bus driver who is subject
5 to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101
6 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system
7 under which the truck or bus driver is paid, which may be an hourly
8 based wage system, includes overtime pay, reasonably equivalent to that
9 required by this subsection, for working longer than forty hours per
10 week;

11 (g) Any individual employed (i) on a farm, in the employ of any
12 person, in connection with the cultivation of the soil, or in
13 connection with raising or harvesting any agricultural or horticultural
14 commodity, including raising, shearing, feeding, caring for, training,
15 and management of livestock, bees, poultry, and furbearing animals and
16 wildlife, or in the employ of the owner or tenant or other operator of
17 a farm in connection with the operation, management, conservation,
18 improvement, or maintenance of such farm and its tools and equipment;
19 or (ii) in packing, packaging, grading, storing or delivering to
20 storage, or to market or to a carrier for transportation to market, any
21 agricultural or horticultural commodity; or (iii) commercial canning,
22 commercial freezing, or any other commercial processing, or with
23 respect to services performed in connection with the cultivation,
24 raising, harvesting, and processing of oysters or in connection with
25 any agricultural or horticultural commodity after its delivery to a
26 terminal market for distribution for consumption;

27 (h) Any industry in which federal law provides for an overtime
28 payment based on a work week other than forty hours. However, the
29 provisions of the federal law regarding overtime payment based on a
30 work week other than forty hours shall nevertheless apply to employees
31 covered by this section without regard to the existence of actual
32 federal jurisdiction over the industrial activity of the particular
33 employer within this state. For the purposes of this subsection,
34 "industry" means a trade, business, industry, or other activity, or
35 branch, or group thereof, in which individuals are gainfully employed
36 (section 3(h) of the Fair Labor Standards Act of 1938, as amended
37 (Public Law 93-259));

38 (i) Any hours worked by an employee of a carrier by air subject to
39 the provisions of subchapter II of the Railway Labor Act (45 U.S.C.

1 Sec. 181 et seq.), when such hours are voluntarily worked by the
2 employee pursuant to a shift-trading practice under which the employee
3 has the opportunity in the same or in other work weeks to reduce hours
4 worked by voluntarily offering a shift for trade or reassignment.

5 (3) No employer shall be deemed to have violated subsection (1) of
6 this section by employing any employee of a retail or service
7 establishment for a work week in excess of the applicable work week
8 specified in subsection (1) of this section if:

9 (a) The regular rate of pay of the employee is in excess of one and
10 one-half times the minimum hourly rate required under RCW 49.46.020;
11 and

12 (b) More than half of the employee's compensation for a
13 representative period, of not less than one month, represents
14 commissions on goods or services.

15 In determining the proportion of compensation representing
16 commissions, all earnings resulting from the application of a bona fide
17 commission rate is to be deemed commissions on goods or services
18 without regard to whether the computed commissions exceed the draw or
19 guarantee.

20 (4) No employer of commissioned salespeople primarily engaged in
21 the business of selling automobiles, trucks, recreational vessels,
22 recreational vessel trailers, recreational vehicle trailers,
23 recreational campers, manufactured housing, or farm implements to
24 ultimate purchasers shall violate subsection (1) of this section with
25 respect to such commissioned salespeople if the commissioned
26 salespeople are paid the greater of:

27 (a) Compensation at the hourly rate, which may not be less than the
28 rate required under RCW 49.46.020, for each hour worked up to forty
29 hours per week, and compensation of one and one-half times that hourly
30 rate for all hours worked over forty hours in one week; or

31 (b) A straight commission, a salary plus commission, or a salary
32 plus bonus applied to gross salary.

33 (5) No public agency shall be deemed to have violated subsection
34 (1) of this section with respect to the employment of any employee in
35 fire protection activities or any employee in law enforcement
36 activities (including security personnel in correctional institutions)
37 if: (a) In a work period of twenty-eight consecutive days the employee
38 receives for tours of duty which in the aggregate exceed two hundred
39 forty hours; or (b) in the case of such an employee to whom a work

1 period of at least seven but less than twenty-eight days applies, in
2 his or her work period the employee receives for tours of duty which in
3 the aggregate exceed a number of hours which bears the same ratio to
4 the number of consecutive days in his or her work period as two hundred
5 forty hours bears to twenty-eight days; compensation at a rate not less
6 than one and one-half times the regular rate at which he or she is
7 employed.

8 NEW SECTION. **Sec. 3.** This act does not alter the terms,
9 conditions, or practices contained in any collective bargaining
10 agreement.

11 NEW SECTION. **Sec. 4.** This act is remedial in nature and applies
12 retroactively.

13 NEW SECTION. **Sec. 5.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected."

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