

# HOUSE BILL REPORT

## SSB 5569

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**As Passed House**

April 16, 1997

**Title:** An act relating to overtime compensation for commissioned salespersons.

**Brief Description:** Revising provisions for overtime compensation for commissioned salespersons.

**Sponsors:** Senate Committee on Commerce & Labor (originally sponsored by Senators Schow, Sellar and Wood).

**Brief History:**

**Committee Activity:**

Commerce & Labor: 3/27/97, 4/3/97 [DP].

**Floor Activity:**

Passed House: 4/16/97, 61-36.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass. Signed by 5 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Boldt; Clements and Lisk.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Cole and Hatfield.

**Staff:** Selwyn Walters (786-7117).

**Background:** *Federal and state laws, with exemptions, establish minimum compensation for an employee who works longer than 40 hours per week. In Washington, the overtime provisions are contained in the state Minimum Wage Act, and are administered by the Department of Labor and Industries.*

***Federal law***

*Federal overtime law requires an employer to pay an employee who works longer than 40 hours in a week to be compensated at not less than one and one-half times the regular rate at which the employee is employed. An employee of a retail and service establishment who is paid on a commission basis in whole or in part is exempt from the federal overtime law - the Fair Labor Standards Act. Under federal*

*law, an employer of a retail or service establishment employee does not violate the federal overtime law if: (1) the employee's regular rate of pay is not less than one and one-half times the minimum hourly rate applicable to the employee, and (2) more than half of the employee's commission for a representative period represents commissions on goods or services. The representative period for determining if enough commissions have been paid maybe as short as one month, but not greater than one year.*

*A retail and service establishment is an establishment, where 75 percent of whose annual dollar volume of sales of goods or services, or both, are not for resale, and which is recognized as retail sales or services in the particular industry. In addition, more than 25 percent of an establishment's dollar volume of sales of goods or services must be within the state in which the establishment is located.*

### ***Washington law***

The overtime provision of the state Minimum Wage Act requires an employer to pay an employee one and one-half times the employee's regular rate of pay for any hours worked in excess of 40 hours in a single work week. The law exempts several categories of employment, but does not refer to employees of a retail or service establishments as exempt from the law's coverage. Section 130(2)(h) of the Minimum Wage Act provides that the overtime provision does not cover Any industry in which federal law provides for an overtime payment based on a work week other than 40 hours. However, the provisions of the federal law regarding overtime payment based on a workweek other than 40 hours shall ..... apply to employees covered [under RCW 49.46.130(2)(h)] without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state.–

The Department of Labor and Industries has determined Section 130(2)(h) of the Minimum Wage Act does not exempt a commission employee of retail and service establishment from the overtime provisions of the state Minimum Wage Act.

**Summary of Bill:** A new section is added that states the Legislature finds retail commissioned salespersons can maximize their incomes by maximizing their work hours during periods when their sales per hour ratio are high. Employment policies that penalize employers for working retail commissioned sales persons more than 40 hours per week are detrimental to the well-being of retail commissioned salespersons. The state's Minimum Wage Act was adopted for the purpose of creating conformity between state overtime pay standards and the federal Fair Labor Standards Act, and that alternative federal premium guarantee standards for retail commissioned salespersons were intended to be incorporated into the Minimum Wage Act.

*An employer does not violate the overtime provision of the state Minimum Wage Act for employing a retail or service establishment employee longer than 40 hours a*

*week if: (1) the employee's regular rate of pay is above one and one-half times the minimum hourly rate applicable to the employee, and (2) more than half of the employee's commission for a representative period, of not less than one month, represents commissions on goods or services.*

Current collective bargaining agreements are not affected until they expire.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** This legislation is intended to correct the Department of Labor and Industries interpretative guidelines which have misinterpreted the intent of the 1973 overtime law. The Department's interpretation is detrimental to retail employers and employees because it discourages employees from working additional hours above 40 hours per week during peak sales seasons such as Christmas. The effect of the Department's interpretation of the overtime provision for commission retail sales individuals is a reduction in the compensation of commissioned salespersons.

**Testimony Against:** This legislation is about fairness to workers and their quality of family life. Current law does not prohibit employees from working over 40 hours per week, thereby increasing their income. Current law does; however, require employers to pay employees an additional premium for hours worked in excess of 40 hours per week. The real problem in not having premium pay for overtime work is that the freedom of an employee to work in excess of 40 hours per week in high sales times, without additional overtime compensation, becomes a license for an employer to demand work over 40 hours per week as a matter of course. The real effect of this bill would be at direct odds with the very purpose of the wage and hour law.

**Testified:** (In support) Senator Ray Schow, prime sponsor; Jan Gee, Washington Retail Association; Parker Christie; Patrick Fullmer; and Keith Cook. (Opposed) Robby Stern, Washington State Labor Council; James Boldman; Josh Rice; and Richard Crawford.