

SENATE BILL REPORT

HB 1708

As Reported By Senate Committee On:
Commerce & Labor, April 4, 1997

Title: An act relating to the minimum rate of compensation for employment in excess of a forty-hour work week.

Brief Description: Eliminating farm implement commissioned salespeople from the minimum rate of compensation for employment in excess of a forty-hour work week requirement.

Sponsors: Representative McMorris.

Brief History:

Committee Activity: Commerce & Labor: 3/31/97, 4/4/97 [DPA, DNPA].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended.

Signed by Senators Schow, Chair; Horn, Vice Chair; Anderson and Newhouse.

Minority Report: Do not pass as amended.

Signed by Senators Franklin, Fraser and Heavey.

Staff: Jonathan Seib (786-7427)

Background: Federal and state laws require an employer to pay overtime compensation to a covered employee who works more than 40 hours per week. The overtime rate is one and one half times an employee's regular rate of pay.

Under federal law, a salesperson is exempt from overtime requirements if he or she works for a nonmanufacturing business primarily selling automobiles, trucks, farm implements, trailers, boats, or aircraft to ultimate purchasers.

Under Washington law, an employer of a commissioned salesperson primarily selling automobiles, trucks, recreational vessels, recreational vessel trailers, recreational vehicle trailers, recreational campers, or manufactured housing to an ultimate purchaser does not violate state overtime rate requirements if the commissioned salesperson is paid the greater of:

- (1) compensation at an hourly rate, not less than the minimum wage, for hours up to 40 hours per week, and overtime at one and one-half times the hourly rate, or
- (2) commissions, salaries, or salaries and commissions.

Under the federal Fair Labor Standards Act (FLSA), "employee" for minimum wage and overtime requirements does not include certain computer systems analysts or programmers who are compensated on an hourly basis of at least \$27.63 per hour.

Summary of Amended Bill: An employer of a commissioned salesperson selling farm implements to an ultimate purchaser does not violate state overtime pay requirements if the commissioned salesperson is paid the greater of: (1) compensation at an hourly rate, not less than the minimum wage, for hours up to 40 hours per week, plus overtime at one and one half times the hourly rate, or (2) commissions, salaries, or salaries and commissions.

The overtime pay requirements under state law do not apply to any individual employed as a skilled worker in the computer software field who is compensated at a rate of at least \$27.63 per hour whose primary duties are as enumerated in the bill.

Amended Bill Compared to Original Bill: The amended bill adds the provisions regarding overtime pay in the computer software field.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The original bill would bring consistency between the state and federal law regarding farm implement dealers, and treats these dealers the same as other vehicle dealers. It also brings consistency between the treatment of outside sales people and inside sales people in the farm implement industry. The amendment is intended to bring Washington law with regard to overtime pay and the computer industry in line with federal law. The Department of Labor and Industries has indicated an intention to adopt administrative rules similar to this amendatory language. The amendment would make this unnecessary and would save the time and expense of rulemaking. The amendment is good for both employees and employers in the computer industry and is appropriate given the high skills and relatively high wages of the employees effected.

Testimony Against: The amendment raises concerns about the inappropriate treatment of part-time, temporary and other contingent employees, which includes a large number of those employed in the computer industry.

Testified: PRO (original bill): Greg Hamilton, Hamilton Farm Equipment; Ron Moore, Pacific Northwest Association; PRO (amendment): Bill Adamucci, Best Consulting; Carolyn Tierney, Peter Fooks, FDSI Consulting; Charles Osenbaugh, Washington Software Association; Marjie Peterson, Macrostaff; Tom Beers, Western Data Corp; John White, Solutions IQ; Joe Daniels, International Federation of Professional and Technical Engineers; CON (amendment): Robby Stern, Washington State Labor Council.