

# SENATE BILL REPORT

## SB 5569

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As Reported By Senate Committee On:  
Commerce & Labor, February 10, 1997

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

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

**Sponsors:** Senators Schow, Sellar and Wood.

**Brief History:**

**Committee Activity:** Commerce & Labor: 2/10/97 [DPS].

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** That Substitute Senate Bill No. 5569 be substituted therefor, and the substitute bill do pass.

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

**Staff:** Jonathan Seib (786-7427)

**Background:** The overtime provision of the state Minimum Wage Act, RCW 49.46.130(1), 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 in a single work week. As applied to retail commissioned salespeople, the Department of Labor and Industries has interpreted the regular rate of pay— for purposes of calculating required overtime pay to include both wages and commissions. There is concern that such application detrimentally affects both retail employers and employees.

Disagreement exists, however, as to whether the state overtime provision even applies to retail commissioned salespeople. RCW 49.46.130(2)(h) provides that the state provision does not cover Any industry in which federal law provides for an overtime payment based on a work week other than 40 hours.— There is a federal law addressing overtime pay for retail commissioned salespeople. In dispute is whether or not it is the type of law to which RCW 49.46.130(2)(h) refers such that retail commissioned salespeople are removed from the coverage of the state provision. If removed from such coverage, retail commissioned salespeople would be covered by the federal law. It provides that they need not be paid a premium for overtime as long as their regular rate of pay is in excess of one and one-half times the minimum wage and more than half of their compensation comes from commissions.

**Summary of Substitute Bill:** Language is codified which explicitly states that RCW 49.46.130 was adopted for the purpose of creating conformity between state overtime pay standards and the federal Fair Labor Standards Act, and that RCW 49.46.130(2)(h) was

intended to incorporate alternative federal premium guarantee standards for retail commissioned salespeople into the state wage and hour law.

No retail or service establishment violates the overtime provision of the state Minimum Wage Act for any employee if the regular rate of pay for that employee is in excess of one and one-half times the state minimum wage and more than half of the employee's compensation comes from commissions.

Nothing in the act is to be construed to alter the terms, conditions, or practices contained in any collective bargaining agreement in effect at the time of the effective date of the act until the expiration date of such agreement.

**Substitute Bill Compared to Original Bill:** The substitute bill clarifies the language in the original bill regarding the effect of the act on existing collective bargaining agreements.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** The current Department of Labor and Industries' interpretation of the exemption to the state overtime provision is detrimental to retail employers and employees. It discourages employers from allowing their employees to work more hours during those times of the year that they are likely to make the most money. The department's interpretation of the law has had the effect of reducing the compensation of commissioned salespeople. It has cost employers a lot to implement, and has led to high employee turnover in retail establishments. The bill addresses these concerns.

**Testimony Against:** None

**Testified:** PRO: Jeff Cox, Washington Retail Association; Dan Brether, Car Toys; Leon Sturk, Future Shop; Sunny Kobe Cook, Sleep Country USA; Joe Daniels, UFCW; Clif Finch, AWB; Parker Christie; Pat Fullmer; Dru Cordner.