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SENATE BILL 6277

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State of Washington                      55th Legislature                      1998 Regular Session

By Senators Newhouse, Heavey, Franklin, Schow, B. Sheldon and Sellar

Read first time . Referred to Committee on .

1            AN ACT Relating to the minimum rate of compensation for certain bus  
2 drivers for employment in excess of a forty-hour work week; and  
3 reenacting and amending RCW 49.46.130.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

12            (2) This section does not apply to:

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

17            (b) Employees who request compensating time off in lieu of overtime  
18 pay;

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

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

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

11 (f) An individual employed as a truck or bus driver who is subject  
12 to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101  
13 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system  
14 under which the truck or bus driver is paid includes overtime pay,  
15 reasonably equivalent to that required by this subsection, for working  
16 longer than forty hours per week;

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

33 (h) Any industry in which federal law provides for an overtime  
34 payment based on a work week other than forty hours. However, the  
35 provisions of the federal law regarding overtime payment based on a  
36 work week other than forty hours shall nevertheless apply to employees  
37 covered by this section without regard to the existence of actual  
38 federal jurisdiction over the industrial activity of the particular  
39 employer within this state. For the purposes of this subsection,

1 "industry" means a trade, business, industry, or other activity, or  
2 branch, or group thereof, in which individuals are gainfully employed  
3 (section 3(h) of the Fair Labor Standards Act of 1938, as amended  
4 (Public Law 93-259).

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 (6) An employer has not violated subsection (1) of this section by  
9 employing any employee as a bus driver if:

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

12 (b) The provisions of section 7 of the Fair Labor Standards Act of  
13 1938, as amended (29 U.S.C. Sec. 201 et seq.), do not apply to the  
14 employee as a result of the exemption provided for in section 13(b)(1)  
15 of that act (29 U.S.C. Sec. 213(b)(1));

16 (c) The employee is paid in accordance with a bona fide collective  
17 bargaining agreement;

18 (d) The collective bargaining agreement provides the employee with  
19 a uniform hourly wage rate regardless of the number of hours worked  
20 during a work week; and

21 (e) The collective bargaining agreement specifies that the uniform  
22 hourly wage rate is intended to effect an overall wage payment that is  
23 equivalent to, or exceeds, the wage payment that would otherwise be  
24 received under subsection (1) of this section.

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