

SSB 5172 - S AMD TO S AMD (S-1988.1/21) **466**
By Senator Van De Wege

PULLED 03/09/2021

1 Beginning on page 9, line 12, strike all of sections 5 through 8
2 and insert the following:

3 "NEW SECTION. **Sec. 5.** A new section is added to chapter 49.48
4 RCW to read as follows:

5 (1) No damages, statutory or civil penalties, attorneys' fees and
6 costs, or other type of relief may be granted against an employer to
7 an agricultural employee seeking unpaid overtime due to the
8 agricultural employee's historical exclusion from overtime under RCW
9 49.46.130(2)(g), as it existed on November 4, 2020.

10 (2) This section applies retroactively to claims filed after
11 November 5, 2020, and before the effective date of this section.

12 (3) This section does not apply to agricultural employees
13 entitled to backpay or other relief as a result of being a member in
14 the class of plaintiffs in *Martinez-Cuevas v. DeRuyter Bros. Dairy*,
15 196 Wn.2d 506 (2020).

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

1 (b) For the purposes of this section, "agricultural employee"
2 does not include any employee exempt under RCW 49.46.010(3)(c)."

3 Renumber the remaining sections consecutively and correct any
4 internal references accordingly.

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5 On page 12, beginning on line 25, after "49.46 RCW;" strike
6 "adding new sections to chapter 49.48 RCW;" and insert "adding a new
7 section to chapter 49.48 RCW;"

EFFECT: Provides that the safe harbor provision applies to all dairy employers, members in the class of plaintiffs *Martinez-Cuevas v. DeRuyter Bros. Dairy*, 196 Wn.2d 506 (2020). Removes provisions creating an agricultural overtime transition account and related provisions on eligibility and payments.

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