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**SUBSTITUTE HOUSE BILL 2042**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Lisk, Horn, Sheldon, Mielke and L. Thomas)

Read first time 03/01/95.

1       AN ACT Relating to exemptions from overtime compensation  
2 requirements; amending RCW 49.46.130; creating a new section; and  
3 declaring an emergency.

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

5       **Sec. 1.** RCW 49.46.130 and 1993 c 191 s 1 are each amended to read  
6 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 additional compensation to a person because of overtime worked shall  
15 not be considered as a factor in determining whether the person is paid  
16 on a salary basis for the purposes of applying the exemption in RCW  
17 49.46.010(5)(c);

18       (b) Employees who request compensating time off in lieu of overtime  
19 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 of commissioned salespeople primarily engaged in  
6 the business of selling automobiles, trucks, recreational vessels,  
7 recreational vessel trailers, recreational vehicle trailers,  
8 recreational campers, or manufactured housing to ultimate purchasers  
9 shall violate subsection (1) of this section with respect to such  
10 commissioned salespeople if the commissioned salespeople are paid the  
11 greater of:

12 (a) Compensation at the hourly rate, which may not be less than the  
13 rate required under RCW 49.46.020, for each hour worked up to forty  
14 hours per week, and compensation of one and one-half times that hourly  
15 rate for all hours worked over forty hours in one week; or

16 (b) A straight commission, a salary plus commission, or a salary  
17 plus bonus applied to gross salary.

18 (4) No public agency shall be deemed to have violated subsection  
19 (1) of this section with respect to the employment of any employee in  
20 fire protection activities or any employee in law enforcement  
21 activities (including security personnel in correctional institutions)  
22 if: (a) In a work period of twenty-eight consecutive days the employee  
23 receives for tours of duty which in the aggregate exceed two hundred  
24 forty hours; or (b) in the case of such an employee to whom a work  
25 period of at least seven but less than twenty-eight days applies, in  
26 his or her work period the employee receives for tours of duty which in  
27 the aggregate exceed a number of hours which bears the same ratio to  
28 the number of consecutive days in his or her work period as two hundred  
29 forty hours bears to twenty-eight days; compensation at a rate not less  
30 than one and one-half times the regular rate at which he or she is  
31 employed.

32 NEW SECTION. **Sec. 2.** This act applies to all administrative and  
33 judicial proceedings pending on or commenced after the effective date  
34 of this act.

35 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
36 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and shall take  
2 effect immediately.

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