

2 **HB 1708** - S COMM AMD

3 By Committee on Commerce & Labor

4 ADOPTED 4/18/97

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 49.46.130 and 1995 c 5 s 1 are each amended to read
8 as follows:

9 (1) Except as otherwise provided in this section and section 2 of
10 this act, no employer shall employ any of his employees for a work week
11 longer than forty hours unless such employee receives compensation for
12 his employment in excess of the hours above specified at a rate not
13 less than one and one-half times the regular rate at which he is
14 employed.

15 (2) This section does not apply to:

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

20 (b) Employees who request compensating time off in lieu of overtime
21 pay;

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

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

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

32 (f) An individual employed as a truck or bus driver who is subject
33 to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101
34 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system
35 under which the truck or bus driver is paid includes overtime pay,

1 reasonably equivalent to that required by this subsection, for working
2 longer than forty hours per week;

3 (g) Any individual employed (i) on a farm, in the employ of any
4 person, in connection with the cultivation of the soil, or in
5 connection with raising or harvesting any agricultural or horticultural
6 commodity, including raising, shearing, feeding, caring for, training,
7 and management of livestock, bees, poultry, and furbearing animals and
8 wildlife, or in the employ of the owner or tenant or other operator of
9 a farm in connection with the operation, management, conservation,
10 improvement, or maintenance of such farm and its tools and equipment;
11 or (ii) in packing, packaging, grading, storing or delivering to
12 storage, or to market or to a carrier for transportation to market, any
13 agricultural or horticultural commodity; or (iii) commercial canning,
14 commercial freezing, or any other commercial processing, or with
15 respect to services performed in connection with the cultivation,
16 raising, harvesting, and processing of oysters or in connection with
17 any agricultural or horticultural commodity after its delivery to a
18 terminal market for distribution for consumption;

19 (h) Any industry in which federal law provides for an overtime
20 payment based on a work week other than forty hours. However, the
21 provisions of the federal law regarding overtime payment based on a
22 work week other than forty hours shall nevertheless apply to employees
23 covered by this section without regard to the existence of actual
24 federal jurisdiction over the industrial activity of the particular
25 employer within this state. For the purposes of this subsection,
26 "industry" means a trade, business, industry, or other activity, or
27 branch, or group thereof, in which individuals are gainfully employed
28 (section 3(h) of the Fair Labor Standards Act of 1938, as amended
29 (Public Law 93-259).

30 (3) No employer of commissioned salespeople primarily engaged in
31 the business of selling automobiles, trucks, recreational vessels,
32 recreational vessel trailers, recreational vehicle trailers,
33 recreational campers, ~~((or))~~ manufactured housing, or farm implements
34 to ultimate purchasers shall violate subsection (1) of this section
35 with respect to such commissioned salespeople if the commissioned
36 salespeople are paid the greater of:

37 (a) Compensation at the hourly rate, which may not be less than the
38 rate required under RCW 49.46.020, for each hour worked up to forty

1 hours per week, and compensation of one and one-half times that hourly
2 rate for all hours worked over forty hours in one week; or

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

5 (4) No public agency shall be deemed to have violated subsection
6 (1) of this section with respect to the employment of any employee in
7 fire protection activities or any employee in law enforcement
8 activities (including security personnel in correctional institutions)
9 if: (a) In a work period of twenty-eight consecutive days the employee
10 receives for tours of duty which in the aggregate exceed two hundred
11 forty hours; or (b) in the case of such an employee to whom a work
12 period of at least seven but less than twenty-eight days applies, in
13 his or her work period the employee receives for tours of duty which in
14 the aggregate exceed a number of hours which bears the same ratio to
15 the number of consecutive days in his or her work period as two hundred
16 forty hours bears to twenty-eight days; compensation at a rate not less
17 than one and one-half times the regular rate at which he or she is
18 employed.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.46 RCW
20 to read as follows:

21 RCW 49.46.130(1) does not apply to any individual employed as a
22 computer systems analyst, computer programmer, software engineer, or
23 other similarly skilled worker in the computer software field who, if
24 compensated on an hourly basis, is compensated at a rate of not less
25 than twenty-seven dollars and sixty-three cents an hour, and whose
26 primary duty is:

27 (1) The application of systems analysis techniques and procedures,
28 including consulting with users, to determine hardware, software, or
29 system functional specifications;

30 (2) The design, development, documentation, analysis, creation,
31 testing, or modification of computer systems or programs, including
32 prototypes, based on and related to user or system design
33 specifications;

34 (3) The design, documentation, testing, creation, or modification
35 of computer programs related to machine operating systems; or

36 (4) A combination of duties described in subsections (1), (2), and
37 (3) of this section, the performance of which requires the same level
38 of skills."

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4 On page 1, line 2 of the title, after "week;" strike the remainder
5 of the title and insert "amending RCW 49.46.130; and adding a new
6 section to chapter 49.46 RCW."

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