

# FINAL BILL REPORT

## SSB 5569

---

### PARTIAL VETO

C 203 L 97

Synopsis as Enacted

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

**Sponsors:** Senate Committee on Commerce & Labor (originally sponsored by Senators Schow, Sellar and Wood).

**Senate Committee on Commerce & Labor**

**House Committee on Commerce & Labor**

**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:** 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.

**Votes on Final Passage:**

|        |    |    |
|--------|----|----|
| Senate | 33 | 16 |
| House  | 61 | 36 |

**Effective:** July 27, 1997

**Partial Veto Summary:** The emergency clause was vetoed, as was the section of the bill stating the purpose for which RCW 49.46.130 was originally adopted.