
SUBSTITUTE HOUSE BILL 1692

State of Washington

65th Legislature

2017 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Buys, Sawyer, Chapman, Condotta, Stanford, Lytton, Vick, Blake, and Fitzgibbon)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to agriculture and farming; and amending RCW
2 7.48.310, 7.48.305, 82.04.213, 50.04.150, 49.46.130, and 82.04.330.

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

4 **Sec. 1.** RCW 7.48.310 and 2009 c 200 s 3 are each amended to read
5 as follows:

6 For the purposes of RCW 7.48.305 only:

7 (1) "Agricultural activity" means a condition or activity which
8 occurs on a farm in connection with the commercial production of farm
9 products and includes, but is not limited to, marketed produce at
10 roadside stands or farm markets; noise; odors; dust; fumes; operation
11 of machinery and irrigation pumps; movement, including, but not
12 limited to, use of current county road ditches, streams, rivers,
13 canals, and drains, and use of water for agricultural activities;
14 ground and aerial application of seed, fertilizers, conditioners, and
15 plant protection products; keeping of bees for production of
16 agricultural or apicultural products; employment and use of labor;
17 roadway movement of equipment and livestock; protection from damage
18 by wildlife; prevention of trespass; construction and maintenance of
19 buildings, fences, roads, bridges, ponds, drains, waterways, and
20 similar features and maintenance of stream banks and watercourses;
21 and conversion from one agricultural activity to another, including a

1 change in the type of plant-related farm product being produced. The
2 term includes use of new practices and equipment consistent with
3 technological development within the agricultural industry.

4 (2) "Farm" means the land, buildings, freshwater ponds,
5 freshwater culturing and growing facilities, and machinery used in
6 the commercial production of farm products.

7 (3) "Farmland" means land or freshwater ponds devoted primarily
8 to the production, for commercial purposes, of livestock, freshwater
9 aquacultural, or other farm products.

10 (4) "Farm product" means those plants and animals useful to
11 humans and includes, but is not limited to, forages and sod crops,
12 dairy and dairy products, poultry and poultry products, livestock,
13 including breeding, grazing, and recreational equine use, fruits,
14 vegetables, flowers, seeds, grasses, trees, marijuana, useable
15 marijuana, and marijuana-infused products, freshwater fish and fish
16 products, apiaries and apiary products, equine and other similar
17 products, or any other product which incorporates the use of food,
18 feed, fiber, or fur.

19 (5) "Forest practice" means any activity conducted on or directly
20 pertaining to forestland, as that term is defined in RCW 76.09.020,
21 and relating to growing, harvesting, or processing timber. The term
22 "forest practices" includes, but is not limited to, road and trail
23 construction, final and intermediate harvesting, precommercial
24 thinning, reforestation, fertilization, prevention and suppression of
25 diseases and insects, salvage of trees, brush control, and owning
26 land where trees may passively grow until one of the preceding
27 activities is deemed timely by the owner.

28 **Sec. 2.** RCW 7.48.305 and 2009 c 200 s 2 are each amended to read
29 as follows:

30 (1) Notwithstanding any other provision of this chapter,
31 agricultural activities conducted on farmland and forest practices,
32 if consistent with good agricultural and forest practices and
33 established prior to surrounding nonagricultural and nonforestry
34 activities, are presumed to be reasonable and shall not be found to
35 constitute a nuisance unless the activity or practice has a
36 substantial adverse effect on public health and safety.

37 (2) Agricultural activities and forest practices undertaken in
38 conformity with all applicable laws and rules are presumed to be good
39 agricultural and forest practices not adversely affecting the public

1 health and safety for purposes of this section and RCW 7.48.300. An
2 agricultural activity that is in conformity with such laws and rules
3 shall not be restricted as to the hours of the day or day or days of
4 the week during which it may be conducted.

5 (3) The act of owning land upon which a growing crop of trees is
6 located, even if the tree growth is being managed passively and even
7 if the owner does not indicate the land's status as a working forest,
8 is considered to be a forest practice occurring on the land if the
9 crop of trees is located on land that is capable of supporting a
10 merchantable stand of timber that is not being actively used for a
11 use that is incompatible with timber growing. If the growing of trees
12 has been established prior to surrounding nonforestry activities,
13 then the act of tree growth is considered a necessary part of any
14 other subsequent stages of forest practices necessary to bring a crop
15 of trees from its planting to final harvest and is included in the
16 provisions of this section.

17 (4) Agricultural activities involving marijuana, useable
18 marijuana, and marijuana-infused products shall be considered to have
19 been established as of the date that the activity was licensed by the
20 Washington state liquor and cannabis board.

21 (5) Nothing in this section shall affect or impair any right to
22 sue for damages.

23 **Sec. 3.** RCW 82.04.213 and 2015 3rd sp.s. c 6 s 1102 are each
24 amended to read as follows:

25 (1) "Agricultural product" means any product of plant cultivation
26 or animal husbandry including, but not limited to: A product of
27 horticulture, grain cultivation, vermiculture, viticulture, or
28 aquaculture as defined in RCW 15.85.020; plantation Christmas trees;
29 short-rotation hardwoods as defined in RCW 84.33.035; turf; or any
30 animal including but not limited to an animal that is a private
31 sector cultured aquatic product as defined in RCW 15.85.020, or a
32 bird, or insect, or the substances obtained from such an animal
33 including honey bee products. "Agricultural product" does not include
34 (~~marijuana, useable marijuana, or marijuana-infused products, or~~)
35 animals defined as pet animals under RCW 16.70.020.

36 (2)(a) "Farmer" means any person engaged in the business of
37 growing, raising, or producing, upon the person's own lands or upon
38 the lands in which the person has a present right of possession, any
39 agricultural product to be sold, and the growing, raising, or

1 producing honey bee products for sale, or providing bee pollination
2 services, by an eligible apiarist. "Farmer" does not include a person
3 growing, raising, or producing such products for the person's own
4 consumption; a person selling any animal or substance obtained
5 therefrom in connection with the person's business of operating a
6 stockyard or a slaughter or packing house; or a person in respect to
7 the business of taking, cultivating, or raising timber.

8 (b) "Eligible apiarist" means a person who owns or keeps one or
9 more bee colonies and who grows, raises, or produces honey bee
10 products for sale at wholesale and is registered under RCW 15.60.021.

11 (c) "Honey bee products" means queen honey bees, packaged honey
12 bees, honey, pollen, bees wax, propolis, or other substances obtained
13 from honey bees. "Honey bee products" does not include manufactured
14 substances or articles.

15 ~~((3) The terms "agriculture," "farming," "horticulture,"~~
16 ~~"horticultural," and "horticultural product" may not be construed to~~
17 ~~include or relate to marijuana, useable marijuana, or marijuana-~~
18 ~~infused products unless the applicable term is explicitly defined to~~
19 ~~include marijuana, useable marijuana, or marijuana-infused products.~~

20 ~~(4) "Marijuana," "useable marijuana," and "marijuana-infused~~
21 ~~products" have the same meaning as in RCW 69.50.101.)~~

22 **Sec. 4.** RCW 50.04.150 and 1989 c 380 s 78 are each amended to
23 read as follows:

24 (1) Except as otherwise provided in RCW 50.04.155, the term
25 "employment" shall not include service performed in agricultural
26 labor by individuals who are enrolled as students and regularly
27 attending classes, or are between two successive academic years or
28 terms, at an elementary school, a secondary school, or an institution
29 of higher education as defined in RCW 50.44.037 and in the case of
30 corporate farms not covered under RCW 50.04.155, the provisions
31 regarding family employment in RCW 50.04.180 shall apply.

32 (2) Agricultural labor is defined as services performed:

33 ~~((1))~~ (a) On a farm, in the employ of any person, in connection
34 with the cultivation of the soil, or in connection with raising or
35 harvesting any agricultural or horticultural commodity, including
36 raising, shearing, feeding, caring for, training, and management of
37 livestock, bees, poultry, and furbearing animals and wild life, or in
38 the employ of the owner or tenant or other operator of a farm in

1 connection with the operation, management, conservation, improvement,
2 or maintenance of such farm and its tools and equipment; or

3 ~~((2))~~ (b) In packing, packaging, grading, storing, or
4 delivering to storage, or to market or to a carrier for
5 transportation to market, any agricultural or horticultural
6 commodity; but only if such service is performed as an incident to
7 ordinary farming operations. The exclusions from the term
8 "employment" provided in ~~((this paragraph))~~ subsection (1) of this
9 section shall not be deemed to be applicable with respect to
10 commercial packing houses, commercial storage establishments,
11 commercial canning, commercial freezing, or any other commercial
12 processing or with respect to services performed in connection with
13 the cultivation, raising, harvesting and processing of oysters or
14 raising and harvesting of mushrooms or in connection with any
15 agricultural or horticultural commodity after its delivery to a
16 terminal market for distribution for consumption.

17 (3) The terms "agricultural," "agriculture," "farming,"
18 "horticultural," "horticultural commodity," "horticultural product,"
19 and "horticulture" may not be construed to include or relate to
20 marijuana, useable marijuana, or marijuana-infused products unless
21 the applicable term is explicitly defined to include marijuana,
22 useable marijuana, or marijuana-infused products.

23 **Sec. 5.** RCW 49.46.130 and 2013 c 207 s 1 are each amended to
24 read as follows:

25 (1) Except as otherwise provided in this section, no employer
26 shall employ any of his or her employees for a workweek longer than
27 forty hours unless such employee receives compensation for his or her
28 employment in excess of the hours above specified at a rate not less
29 than one and one-half times the regular rate at which he or she is
30 employed.

31 (2) This section does not apply to:

32 (a) Any person exempted pursuant to RCW 49.46.010(3). The payment
33 of compensation or provision of compensatory time off in addition to
34 a salary shall not be a factor in determining whether a person is
35 exempted under RCW 49.46.010(3)(c);

36 (b) Employees who request compensating time off in lieu of
37 overtime pay;

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

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

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

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

16 (g) Any individual employed (i) on a farm, in the employ of any
17 person, in connection with the cultivation of the soil, or in
18 connection with raising or harvesting any agricultural or
19 horticultural commodity other than marijuana, useable marijuana, or
20 marijuana-infused products, including raising, shearing, feeding,
21 caring 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; or (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 commodity
28 other than marijuana, useable marijuana, or marijuana-infused
29 products; or (iii) in commercial canning, commercial freezing, or any
30 other commercial processing of any agricultural or horticultural
31 commodity other than marijuana, useable marijuana, or marijuana-
32 infused products, or with respect to services performed in connection
33 with the cultivation, raising, harvesting, and processing of oysters
34 or in connection with any agricultural or horticultural commodity
35 after its delivery to a terminal market for distribution for
36 consumption;

37 (h) Any industry in which federal law provides for an overtime
38 payment based on a workweek other than forty hours. However, the
39 provisions of the federal law regarding overtime payment based on a
40 workweek other than forty hours shall nevertheless apply to employees

1 covered by this section without regard to the existence of actual
2 federal jurisdiction over the industrial activity of the particular
3 employer within this state. For the purposes of this subsection,
4 "industry" means a trade, business, industry, or other activity, or
5 branch, or group thereof, in which individuals are gainfully employed
6 (section 3(h) of the Fair Labor Standards Act of 1938, as amended
7 (Public Law 93-259));

8 (i) Any hours worked by an employee of a carrier by air subject
9 to the provisions of subchapter II of the Railway Labor Act (45
10 U.S.C. Sec. 181 et seq.), when such hours are voluntarily worked by
11 the employee pursuant to a shift-trading practice under which the
12 employee has the opportunity in the same or in other workweeks to
13 reduce hours worked by voluntarily offering a shift for trade or
14 reassignment; and

15 (j) Any individual licensed under chapter 18.85 RCW unless the
16 individual is providing real estate brokerage services under a
17 written contract with a real estate firm which provides that the
18 individual is an employee. For purposes of this subsection (2)(j),
19 "real estate brokerage services" and "real estate firm" mean the same
20 as defined in RCW 18.85.011.

21 (3) No employer shall be deemed to have violated subsection (1)
22 of this section by employing any employee of a retail or service
23 establishment for a workweek in excess of the applicable workweek
24 specified in subsection (1) of this section if:

25 (a) The regular rate of pay of the employee is in excess of one
26 and one-half times the minimum hourly rate required under RCW
27 49.46.020; and

28 (b) More than half of the employee's compensation for a
29 representative period, of not less than one month, represents
30 commissions on goods or services.

31 In determining the proportion of compensation representing
32 commissions, all earnings resulting from the application of a bona
33 fide commission rate is to be deemed commissions on goods or services
34 without regard to whether the computed commissions exceed the draw or
35 guarantee.

36 (4) No employer of commissioned salespeople primarily engaged in
37 the business of selling automobiles, trucks, recreational vessels,
38 recreational vessel trailers, recreational vehicle trailers,
39 recreational campers, manufactured housing, or farm implements to
40 ultimate purchasers shall violate subsection (1) of this section with

1 respect to such commissioned salespeople if the commissioned
2 salespeople are paid the greater of:

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

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

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

23 **Sec. 6.** RCW 82.04.330 and 2015 3rd sp.s. c 6 s 1103 are each
24 amended to read as follows:

25 (1) This chapter does not apply to any farmer in respect to the
26 sale of any agricultural product at wholesale or to any farmer who
27 grows, raises, or produces agricultural products owned by others,
28 such as custom feed operations. This exemption does not apply to any
29 person selling such products at retail or to any person selling
30 manufactured substances or articles. This chapter does not apply to
31 bee pollination services provided to a farmer by an eligible
32 apiarist.

33 (2) This chapter also does not apply to any persons who
34 participate in the federal conservation reserve program or its
35 successor administered by the United States department of agriculture
36 with respect to land enrolled in that program.

1 (3) The exemption to the application of chapter 82.04 RCW
2 provided in this section does not apply to sales of marijuana,
3 useable marijuana, or marijuana-infused products.

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