2301-S2 AMH DYEM TANG 164

**2SHB 2301** - H AMD TO H AMD (H-3250.2/24) **1011**

By Representative Dye

**SCOPE AND OBJECT 02/13/2024**

 On page 2, line 34 of the striking amendment, after "food" insert ", including continuing to discuss how to support agricultural food producers to ensure seasonal, perishable, picked food is not wasted"

 On page 8, line 34 of the striking amendment, after "(3)" insert "(a)"

 On page 9, after line 3 of the striking amendment, insert the following:

 "(b) To help reduce pick and pack costs, agricultural food producers that have donated agricultural products to food bank distributors, food bank distribution centers, or both, are eligible to participate in the pilot program established in section 703 of this act."

 On page 30, after line 37 of the striking amendment, insert the following:

 "NEW SECTION. **Sec. 703.** A new section is added to chapter 43.23 RCW to read as follows:

HARVEST SUPPORT PILOT PROGRAM FOR AGRICULTURAL PRODUCERS. (1)(a) The five-year harvest support pilot program, administered by the department, is created for agricultural producers that meet the criteria under subsection (2) of this section.

 (b) The purpose of the pilot program is to better understand the nexus between unharvested agricultural products that result in food waste and the cost barriers to harvesting faced by agricultural producers due to overtime pay requirements. The ultimate goal of the pilot program is to reduce the amount of waste caused by unharvested agricultural products.

 (2)(a) To be eligible under the pilot program, an agricultural producer must have donated agricultural products to food bank distributors, food bank distribution centers, or both, within the period between January 1, 2017, through the effective date of this section.

 (b) The agricultural producer must be able to show proof of its donations upon request.

 (3)(a) Until the expiration of the pilot program, an agricultural producer participating in the pilot program may select any 12 weeks in a calendar year as special circumstance weeks for labor demand. During each of the selected 12 weeks, the agricultural producer may employ agricultural employees for up to 50 hours before the requirement to pay overtime under RCW 49.46.130 applies.

 (b) In addition to the records required to be kept under RCW 49.30.020, an agricultural producer must maintain records of which special circumstance weeks were utilized.

 (c) An agricultural producer must provide an annual initial disclosure of a good-faith estimate of the selected 12 weeks to the agricultural producer's agricultural employees at least 30 days in advance of the first expected special circumstance week, or upon hiring for those who start work fewer than 30 days in advance. For agricultural employees employed under, and in compliance with federal requirements for, temporary work visas, the disclosure of a good-faith estimate must be made no later than the date of the worker's visa application, contemporaneous with required federal preemployment written disclosures to visa workers ordinarily due by the date of the worker's visa application.

 (4) The department shall submit reports, beginning December 1, 2025, and each year thereafter, to the appropriate committees of the legislature. The reports shall include, at a minimum, the following information:

 (a) The number of agricultural producers participating in the pilot program;

 (b) A list of the special circumstances weeks selected for each commodity donated; and

 (c) The type and volume of food donations from participating agricultural producers.

 (5) This section expires on December 31, 2029.

 **Sec. 704.** RCW 49.46.130 and 2021 c 249 s 2 are each amended to read as follows:

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

 (2) This section does not apply to:

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

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

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

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

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

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

 (g) Any individual employed as an agricultural employee. This exemption from subsection (1) of this section applies only until December 31, 2021;

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

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

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

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

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

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

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

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

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

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

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

 (6)((~~(a) Beginning January 1, 2022, any agricultural employee shall not be employed for more than 55 hours in any one workweek unless the agricultural employee receives one and one-half times that agricultural employee's regular rate of pay for all hours worked over 55 in any one workweek.~~

~~(b) Beginning January 1, 2023, any agricultural employee shall not be employed for more than 48 hours in any one workweek unless the agricultural employee receives one and one-half times that agricultural employee's regular rate of pay for all hours worked over 48 in any one workweek.~~

 ~~(c)~~)) Beginning January 1, 2024, any agricultural employee shall not be employed for more than 40 hours in any one workweek unless the agricultural employee receives one and one-half times that agricultural employee's regular rate of pay for all hours worked over 40 in any one workweek, except as provided under section 703 of this act.

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

 (b) This subsection applies to all claims, causes of actions, and proceedings commenced on or after November 5, 2020, regardless of when the claim or cause of action arose. To this extent, this subsection applies retroactively, but in all other respects it applies prospectively.

 (c) This subsection does not apply to dairy employees entitled to back pay or other relief as a result of being a member in the class of plaintiffs in *Martinez-Cuevas v. DeRuyter Bros. Dairy*, 196 Wn.2d 506 (2020).

 (8) For the purposes of this section, "agricultural employee" means any individual employed: (a) On a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; (b) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (c) [in] commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption. An agricultural employee does not include a dairy employee.

 (9) For the purposes of this section, "dairy employee" includes any employee engaged in dairy cattle and milk production activities described in code 112120 of the North American industry classification system."

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

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|  |  EFFECT:   * Creates a five-year harvest support pilot program for the purpose of better understanding the nexus between unharvested agricultural products that result in food waste and the cost barriers to harvesting due to overtime pay requirements.
* Provides that agricultural producers that have donated agricultural products to food bank distributors or food bank distribution centers within the period of January 1, 2017, to the effective date of the act are eligible to participate in the pilot program.
* Provides that participating agricultural producers may select any 12 weeks in a calendar year as special circumstance weeks for labor demand, and during each of the selected 12 weeks, the agricultural producer may employ agricultural employees up to 50 hours before the requirement to pay overtime applies.
* Requires agricultural producers to provide an annual initial disclosure to employees of good-faith estimates of the selected special circumstance weeks.
* Requires the Department of Agriculture to administer the pilot program and submit reports to the Legislature.
* Adds language to the section establishing the Commodities Donation Grant Program to reflect the creation of the pilot program.
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