

HOUSE MINORITY REPORT AMENDMENTS TO HOUSE BILL 3458

By Nonconcurring Members of COMMITTEE ON RULES

June 27

1 On page 1 of the printed bill, line 2, after “limits;” delete the rest of the line and delete line 3
2 and insert “amending ORS 652.020, 653.261 and 653.265.”.

3 Delete lines 5 through 27 and delete pages 2 through 7 and insert:

4 “**SECTION 1.** ORS 652.020 is amended to read:

5 “652.020. (1)(a) No person shall be employed in any mill, factory or manufacturing establishment
6 in this state more than 10 hours in any one day, or in sawmills, planing mills, shingle mills and
7 logging camps more than eight hours, exclusive of one hour, more or less, in one day or more than
8 48 hours in one [*calendar*] week, except logging train crews, guards, boiler operators and persons
9 engaged in the transportation to and from work, and employees when engaged in making necessary
10 repairs, or in the case of emergency where life and property are in imminent danger. However,
11 employees may work overtime not to exceed three hours in one day, conditioned that payment be
12 made for said overtime at the rate of time and one-half the regular wage.

13 “(b) As used in this section, ‘week’ means any consecutive 168-hour period.

14 “(c) An employer shall calculate an employee’s overtime on a daily basis and on a weekly
15 basis and pay the greater of the two amounts if, during the same week, the employee exceeds
16 the applicable limit for the maximum allowable hours of employment:

17 “(A) In one day as described in paragraph (a) of this subsection; and

18 “(B) In one week as described in paragraph (a) of this subsection or ORS 653.261 (1).

19 “(d) An employer that makes an overtime payment to an employee pursuant to paragraph
20 (c) of this subsection satisfies the requirements under paragraph (a) of this subsection and
21 ORS 653.261 (1).

22 “(2) No employer shall require or permit any person to work in any place mentioned in this
23 section more than the hours provided for in this section during any day of 24 hours. No employer
24 shall permit or suffer an overseer, superintendent or other agent of the employer to violate this
25 section.

26 “(3) This section does not apply to persons employed in the care of quarters or livestock, con-
27 ducting mess halls, superintendence and direction of work, or to the loading and removal of the
28 finished forest product.

29 “(4) Subsections (1) and (2) of this section do not apply to employees who are represented by a
30 labor organization for purposes of collective bargaining with their employer, provided limits on the
31 required hours of work and overtime payment have been agreed to between the employer and labor
32 organization, or if no agreement is reached, then, for the purposes of this subsection, such limits and
33 payments shall not be deemed to be changed from the previous collective bargaining agreement be-
34 tween the employer and labor organization unless the employees have been locked out, are engaged

1 in a strike or the employer has unilaterally implemented new terms and conditions of employment.

2 “(5)(a) In addition to any other remedy provided by law, there is hereby created a private
3 cause of action for a violation of subsection (1) of this section for:

4 “(A) Actual damages or \$3,000, whichever is greater; and

5 “(B) Equitable relief.

6 “(b) In an action brought under this section the court may award to the prevailing party
7 costs, disbursements and reasonable attorney fees.

8 “**SECTION 2.** ORS 653.261 is amended to read:

9 “653.261. (1)(a) The Commissioner of the Bureau of Labor and Industries may adopt rules pre-
10 scribing such minimum conditions of employment, excluding minimum wages, in any occupation as
11 may be necessary for the preservation of the health of employees. The rules may include, but are
12 not limited to, minimum meal periods and rest periods, and maximum hours of work, but not less
13 than eight hours per day or 40 hours per week; however, after 40 hours of work in one week over-
14 time may be paid, but in no case at a rate higher than one and one-half times the regular rate of
15 pay of the employees when computed without benefit of commissions, overrides, spiffs and similar
16 benefits.

17 “(b) As used in this section, ‘week’ means any consecutive 168-hour period.

18 “(2) Nothing contained in ORS 653.010 to 653.261 shall be construed to confer authority upon
19 the commissioner to regulate the hours of employment of employees engaged in production, har-
20 vesting, packing, curing, canning, freezing or drying any variety of agricultural crops, livestock,
21 poultry or fish.

22 “(3) Rules adopted by the commissioner pursuant to subsection (1) of this section do not apply
23 to individuals employed by this state or a political subdivision or quasi-municipal corporation
24 thereof if other provisions of law or collective bargaining agreements prescribe rules pertaining to
25 conditions of employment referred to in subsection (1) of this section, including meal periods, rest
26 periods, maximum hours of work and overtime.

27 “(4) Rules adopted by the commissioner pursuant to subsection (1) of this section regarding meal
28 periods and rest periods do not apply to nurses who provide acute care in hospital settings if pro-
29 visions of collective bargaining agreements entered into by the nurses prescribe rules concerning
30 meal periods and rest periods.

31 “(5)(a) The commissioner shall adopt rules regarding meal periods for employees who serve food
32 or beverages, receive tips and report the tips to the employer.

33 “(b) In rules adopted by the commissioner under paragraph (a) of this subsection, the commis-
34 sioner shall permit an employee to waive a meal period. However, an employer may not coerce an
35 employee into waiving a meal period.

36 “(c) Notwithstanding ORS 653.256 (1), in addition to any other penalty provided by law, the
37 commissioner may assess a civil penalty not to exceed \$2,000 against an employer that the commis-
38 sioner finds has coerced an employee into waiving a meal period in violation of this subsection. Each
39 violation is a separate and distinct offense. In the case of a continuing violation, each day’s con-
40 tinuance is a separate and distinct violation.

41 “(d) Civil penalties authorized by this subsection shall be imposed in the manner provided in
42 ORS 183.745. All sums collected as penalties under this subsection shall be applied and paid over
43 as provided in ORS 653.256 (4).

44 “**SECTION 3.** ORS 653.265 is amended to read:

45 “653.265. (1) When employed in canneries or driers or packing plants, excluding canneries or

1 driers or packing plants located on farms and primarily processing products produced on such farms,
2 employees shall be paid time and a half for time over 10 hours per day and piece workers shall be
3 paid one and a half the regular prices for all work done during the time they are employed over 10
4 hours per day.

5 **“(2)(a) An employer shall calculate an employee’s overtime on a daily basis and on a
6 weekly basis and pay the greater of the two amounts if, during the same week, the employee:**

7 **“(A) Works more than 10 hours in one day as described in subsection (1) of this section;
8 and**

9 **“(B) Exceeds the applicable limit for the maximum allowable hours of employment in one
10 week under ORS 653.261 (1).**

11 **“(b) As used in this section, ‘week’ means any consecutive 168-hour period.**

12 **“(c) An employer that makes an overtime payment to an employee pursuant to paragraph
13 (a) of this subsection satisfies the requirements under subsection (1) of this section and ORS
14 653.261 (1).”.**

15 /s/ Greg Barreto
16 Representative

17 /s/ Jodi Hack
18 Representative

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