Senate Bill 392

Sponsored by Senator BENTZ (at the request of Doug Lamm) (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Removes substantive language from definition of “workweek” for purposes of provisions governing overtime.
Exempts employees who work in certain establishments where packing, sorting and processing of onions occurs from provisions that limit number of overtime hours that employee may work in single workweek.

A BILL FOR AN ACT

Relating to work time limits in certain places of employment; amending ORS 652.020, 653.261 and 653.265.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 652.020 is amended to read:

652.020. (1) As used in this section:

(a) “Machinery” means material-handling equipment and power-driven machines powered by electricity, nuclear or fossil fuels, hydroelectric power, geothermal power or another power source other than by human hand, foot or breath.

(b) “Manufacturing” means the process of using machinery to transform materials, substances or components into new products.

(c) “Manufacturing establishment” means an establishment engaged in manufacturing.

(d) “Perishable product” [means] [is] any product that may spoil, deteriorate or undergo other material changes that render it unsuitable for the use for which it was produced. “Perishable product” includes, including agricultural crops, meat and fish.

(e) “Undue hardship period” means the period of time during which perishable product must be processed after harvesting, slaughter or catch.

(f) “Workweek” means a fixed period of time established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods. [A workweek may begin on any day of the week and any hour of the day and need not coincide with a calendar week. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade overtime requirements.]

(2)(a) Except as provided in paragraphs (b) and (c) of this subsection and subsection (3) of this section, an employer may not require or permit an employee employed in any mill, factory or other manufacturing establishment in this state to work more than:

(A) 10 hours in any one day; or

(B) 55 hours in any one workweek.

(b) An employer may permit an employee described in paragraph (a) of this subsection to work up to 60 hours in one workweek if the employee requests or consents in writing to work more than 55 hours in the workweek.

NOTE: Matter in boldfaced type in an amended section is new; matter [italic and bracketed] is existing law to be omitted. New sections are in boldfaced type.
(c) Notwithstanding paragraph (b) of this subsection, during the period of time that an employer is eligible for an undue hardship period exemption under subsection (4) of this section, an employer may permit an employee described in paragraph (a) of this subsection to work:

(A) Up to 84 hours per workweek for four workweeks; and
(B) Up to 80 hours per workweek for the remainder of the undue hardship period.

(d) Except as provided in subsection (3) of this section, an employer may not require or permit an employee employed in a sawmill, planing mill, shingle mill or logging camp to work more than:

(A) Eight hours, exclusive of one hour, more or less, in one day; or
(B) 48 hours in one workweek.

(3)(a) An employee may work overtime up to three hours more than the applicable limit for the maximum allowable hours of employment in one day as described in subsection (2) of this section.

(b) An employer shall compensate an employee who works overtime hours described in paragraph (a) of this subsection at one and one-half times the employee's regular rate of pay for each overtime hour or portion of an hour the employee works.

(c) An employer shall calculate an employee's overtime compensation on a daily basis under paragraph (b) of this subsection and on a weekly basis under ORS 653.261 (1) and pay the greater of the two amounts if, during the same workweek, the employee works more than:

(A) The applicable limit for the maximum allowable hours of employment in one day as described in subsection (2) of this section; and
(B) Forty hours in one workweek as described in ORS 653.261 (1).

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

(4)(a) An employer is eligible for an undue hardship period exemption from the restrictions on maximum workweek hours under subsection (2)(a) of this section if the employer, in the ordinary course of the employer's business, processes perishable products. The undue hardship period exemption shall be effective only during an undue hardship period. An employer may be eligible for more than one undue hardship period exemption in a calendar year. However, the combined total duration of the employer's undue hardship period exemptions may not exceed 21 workweeks in a calendar year.

(b) To claim an undue hardship period exemption, an employer must provide notice of the undue hardship period to the Commissioner of the Bureau of Labor and Industries and obtain written consent from each employee whom the employer will request to work more than 55 hours in any workweek during the undue hardship period.

(c)(A) The notice the employer sends to the commissioner under paragraph (b) of this subsection must be in a form prescribed by the commissioner by rule and include a description of the reasons for the undue hardship period, the start and expected end dates of the undue hardship period and any other information required by the commissioner.

(B) The employee's written consent shall be in a form prescribed by the commissioner by rule and include:

(i) A description of the employer's reasons for the undue hardship period;
(ii) The start and expected end dates of the undue hardship period;
(iii) A statement that the employer may require the employee to work up to 84 hours per workweek for up to four workweeks during the undue hardship period;
(iv) A statement that the employer may require the employee to work up to 80 hours per
workweek for the remainder of the undue hardship period;

(v) A statement that the employee consents to working up to 84 hours per workweek for up to four workweeks during the undue hardship period and up to 80 hours per workweek for the remainder of the undue hardship period;

(vi) Contact information for the Bureau of Labor and Industries; and

(vii) Any other information required by the commissioner.

(5) An employer may not:

(a) Require any employee employed in a mill, factory or other manufacturing establishment in this state to begin a work shift less than 10 hours after the end of the employee's previous work shift if the employee's previous work shift totaled eight or more hours, unless the employer requires the employee to work additional hours due to disruptions in business operations caused by a power outage, major equipment breakdown, severe weather or similar emergency outside the employer's control;

(b) Require or permit any employee to work in any place described in this section for more hours than the hours provided for in this section during any day of 24 hours;

(c) Permit an overseer, superintendent or other agent of the employer to violate this section;

or

(d) Coerce an employee into consenting to work more than 55 hours in a given workweek.

(6) This section does not apply to:

(a) An employee performing work as a member of a logging train crew, as a guard or as a boiler operator;

(b) An employee engaged in the transportation of workers to and from work;

(c) An employee engaged in the care of quarters or livestock, the conducting of mess halls, the superintendence and direction of work or the loading and removal of finished forest product;

(d) An employee when engaged in making necessary repairs or in the case of emergency where life or property is in imminent danger;

(e) An employee employed in a mill, factory or other manufacturing establishment whose principal duties are administrative in nature or who is not otherwise engaged in the direct processing of goods in the usual course of the employee's duties;

(f) An employee employed in a manufacturing establishment where the sorting and packing of onions occurs.

(7) Subsections (2) to (5) of this section do not apply to employees who are represented by a labor organization for purposes of collective bargaining with their employer, provided limits on the required hours of work and overtime payment have been agreed to between the employer and labor organization, or if no agreement is reached, then, for the purposes of this subsection, such limits and payments shall not be deemed to be changed from the previous collective bargaining agreement between the employer and labor organization unless the employees have been locked out or are engaged in a strike or the employer has unilaterally implemented new terms and conditions of employment.

(b) The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade overtime requirements.

[(8)/(a)] (9)(a) In addition to any other remedy provided by law, an employee has a private cause of action against an employer if the employer violates subsection (2) or (3) of this section by re-
quiring the employee to work more than:

(A) Three hours more than the applicable limit for the maximum allowable hours of employment in one day; or

(B) The applicable limit for the maximum allowable hours of employment in one workweek.

(b) If the employee prevails in an action under this section, the court may enter judgment against the employer for:

(A) Actual damages or $3,000 per claim, whichever is greater;

(B) Equitable relief; and

(C) Liquidated damages in an amount equal to twice the employee’s overtime wages earned during the period not allowed under subsection (2) or (3) of this section.

(c) In an action brought under this section, the court may award to the prevailing plaintiff costs, disbursements and reasonable attorney fees. Any attorney fee agreement is subject to approval by the court.

[(9)(a)]

Notwithstanding ORS 652.900, in addition to any other penalty provided by law, the commissioner may assess the following civil penalties against an employer that the commissioner determines has coerced an employee into consenting to work more than 55 hours in one workweek:

(A) $2,000 per violation if the employer coerced an employee into consenting under subsection (2)(b) of this section to work more than 55 hours in any given workweek; or

(B) $3,000 per violation if the employer coerced an employee into consenting under subsection (4) of this section to work more than 55 hours per workweek in any given workweek during an undue hardship period.

(b) Each violation described in paragraph (a) of this subsection is a separate and distinct offense. In the case of a continuing violation, each workweek's continuance is a separate and distinct violation.

(c) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS 183.745. All sums collected as penalties under this subsection shall be applied and paid over as provided in ORS 652.900.

SECTION 2. ORS 653.261 is amended to read:

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

(b) As used in this subsection, “workweek” means a fixed period of time established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods. [A workweek may begin on any day of the week and any hour of the day and need not coincide with a calendar week. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade overtime requirements.]

(c) For the purpose of calculating a workweek under this subsection, a workweek may begin on any day of the week and at any hour of the day and need not coincide with a calendar week.

(d) The beginning of the workweek may be changed if the change is intended to be per-
ment and is not designed to evade overtime requirements.

(2) Rules adopted by the commissioner pursuant to subsection (1) of this section do not apply

to individuals employed by [this] the state or a political subdivision or quasi-municipal corporation
[thereof] of the state if other provisions of law or collective bargaining agreements prescribe rules
pertaining to conditions of employment referred to in subsection (1) of this section, including meal
periods, rest periods, maximum hours of work and overtime.

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

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

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

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

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

SECTION 3. ORS 653.265 is amended to read:

653.265. (1) As used in this section:

(a) “Perishable product” [means] is any product that may spoil, deteriorate or undergo other
material changes that render it unsuitable for the use for which it was produced. “Perishable
product” includes, including agricultural crops, meat and fish.

(b) “Undue hardship period” means the period of time during which perishable product must be
processed after harvesting, slaughter or catch.

(c) “Workweek” means a fixed period of time established by an employer that reflects a regu-
larly recurring period of 168 hours or seven consecutive 24-hour periods. [A workweek may begin
on any day of the week and any hour of the day and need not coincide with a calendar week. The
beginning of the workweek may be changed if the change is intended to be permanent and is not de-
signed to evade overtime requirements.]

(2)(a) Except as provided in paragraphs (b) to (d) of this subsection, an employer may not require
or permit an employee employed in any cannery, drier or packing plant in this state to work more
than:

(A) 10 hours in any one day; or

(B) 55 hours in one workweek.

(b) An employer may permit an employee described in paragraph (a) of this subsection to work
up to 60 hours in one workweek if the employee requests or consents in writing to work more than
55 hours in the workweek.

(c) Notwithstanding paragraph (b) of this subsection, during the period of time that an employer
is eligible for an undue hardship period exemption under subsection (5) of this section, an employer
may permit an employee described in paragraph (a) of this subsection to work:

(A) Up to 84 hours per workweek for four workweeks; and

(B) Up to 80 hours per workweek for the remainder of the undue hardship period.

(d) An employer may permit an employee described in paragraph (a) of this subsection to work more than 10 hours in any one day if the employer compensates the employee as follows:

(A) One and one-half times the employee’s regular rate of pay for each hour the employee works over 10 hours in any one day if the employee is an hourly employee; or

(B) One and one-half times the regular price for all work done during the time the employee is employed over 10 hours per day if the employee is a piece worker.

(3) An employer shall calculate an employee’s overtime on a daily basis under subsection (2)(d) of this section and on a weekly basis under ORS 653.261 (1) and pay the greater of the two amounts if, during the same workweek, the employee works more than:

(a) 10 hours in one day as described in subsection (1) of this section; and

(b) 40 hours in one workweek as described in ORS 653.261 (1).

(4) An employer that makes an overtime payment to an employee pursuant to subsection (3) of this section satisfies the overtime compensation requirements under this section and ORS 653.261 (1).

(5)(a) An employer is eligible for an undue hardship period exemption from the restrictions on work hours under subsection (2)(a) of this section if the employer, in the ordinary course of the employer’s business, processes perishable products. The undue hardship period exemption shall be effective only during an undue hardship period. An employer may be eligible for more than one undue hardship period exemption in a calendar year. However, the combined total duration of the employer’s undue hardship period exemptions may not exceed 21 workweeks in a calendar year.

(b) To claim an undue hardship period exemption, an employer must provide notice of the undue hardship period to the Commissioner of the Bureau of Labor and Industries and obtain written consent from each employee whom the employer will request to work more than 55 hours in any workweek during the undue hardship period.

(c)(A) The notice the employer sends to the commissioner under paragraph (b) of this subsection must be in a form prescribed by the commissioner by rule and include a description of the reasons for the undue hardship period, the start and expected end dates of the undue hardship period and any other information required by the commissioner.

(B) The employee’s written consent shall be in a form prescribed by the commissioner by rule and include:

(i) A description of the employer’s reasons for the undue hardship period;

(ii) The start and expected end dates of the undue hardship period;

(iii) A statement that the employer may require the employee to work up to 84 hours per workweek for up to four workweeks during the undue hardship period;

(iv) A statement that the employer may require the employee to work up to 80 hours per workweek for the remainder of the undue hardship period;

(v) A statement that the employee consents to working up to 84 hours per workweek for up to four workweeks during the undue hardship period and up to 80 hours per workweek for the remainder of the undue hardship period;

(vi) Contact information for the Bureau of Labor and Industries; and

(vii) Any other information required by the commissioner.

(6) An employer may not coerce an employee into consenting to work more than 55 hours in a
given workweek.

(7) This section does not apply to:

(a) An employee employed in a cannery, drier or packing plant that is located on a farm and
primarily processes products produced on the farm;

(b) An employee employed in a cannery, drier or packing plant who is engaged in manufacturing,
as that term is defined in ORS 652.020;

(c) An employee employed by a seafood processor, as that term is defined in ORS 653.263; [or]
(d) An employee employed in a cannery, drier or packing plant whose principal duties are ad-
ministrative in nature or who is not otherwise, in the usual course of the employee’s duties, engaged
in the direct processing of goods[.]; or

(e) An employee employed in a cannery, drier or packing plant that primarily processes,
sorts and packs onions.

(8) Subsections (2) to (6) of this section do not apply to employees who are represented by a
labor organization for purposes of collective bargaining with their employer, provided limits on the
required hours of work and overtime payment have been agreed to between the employer and labor
organization, or if no agreement is reached, then, for the purposes of this subsection, such limits and
payments shall not be deemed to be changed from the previous collective bargaining agreement be-
tween the employer and labor organization unless the employees have been locked out or are en-
gaged in a strike or the employer has unilaterally implemented new terms and conditions of
employment.

(9)(a) For the purpose of calculating a workweek, a workweek may begin on any day of
the week and at any hour of the day and need not coincide with a calendar week.

(b) The beginning of the workweek may be changed if the change is intended to be per-
manent and is not designed to evade overtime requirements.

[(9)(a)] (10)(a) Notwithstanding ORS 653.256, in addition to any other penalty provided by law,
the commissioner may assess the following civil penalties against an employer:

(A) $2,000 per violation if the commissioner determines the employer coerced an employee into
consenting under subsection (2)(b) of this section to work more than 55 hours in any given
workweek; and

(B) $3,000 per violation if the commissioner determines the employer coerced an employee into
consenting under subsection (5) of this section to work more than 55 hours per workweek in any
given workweek during an undue hardship period.

(b) Each violation described in paragraph (a) of this subsection is a separate and distinct offense.
In the case of a continuing violation, each workweek’s continuance is a separate and distinct vio-
lration.

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

[(10)(a)] (11)(a) In addition to any other remedy provided by law, an employee has a private
cause of action against an employer if the employer violates subsection (2) of this section by re-
quiring the employee to work more than the applicable limit for the maximum allowable hours of
employment in one workweek.

(b) If the employee prevails in an action brought under this section, the court may enter judg-
ment against the employer for:

(A) Actual damages or $3,000 per claim, whichever is greater;
(B) Equitable relief; and
(C) Liquidated damages in an amount equal to twice the employee's overtime wages earned
during the period not allowed under subsection (2) of this section.

(c) In an action brought under this section, the court may award to the prevailing plaintiff costs,
disbursements and reasonable attorney fees. Any attorney fee agreement is subject to approval by
the court.