

Senate Bill 392

Sponsored by Senator BENTZ (at the request of Doug Lamm) (Pre-session 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

1
2 Relating to work time limits in certain places of employment; amending ORS 652.020, 653.261 and
3 653.265.

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

5 **SECTION 1.** ORS 652.020 is amended to read:

6 652.020. (1) As used in this section:

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

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

12 (c) "Manufacturing establishment" means an establishment engaged in manufacturing.

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

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

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

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

26 (A) 10 hours in any one day; or

27 (B) 55 hours in any one workweek.

28 (b) An employer may permit an employee described in paragraph (a) of this subsection to work
29 up to 60 hours in one workweek if the employee requests or consents in writing to work more than
30 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.

1 (c) Notwithstanding paragraph (b) of this subsection, during the period of time that an employer
2 is eligible for an undue hardship period exemption under subsection (4) of this section, an employer
3 may permit an employee described in paragraph (a) of this subsection to work:

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

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

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

8 (A) Eight hours, exclusive of one hour, more or less, in one day; or

9 (B) 48 hours in one workweek.

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

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

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

18 (A) The applicable limit for the maximum allowable hours of employment in one day as described
19 in subsection (2) of this section; and

20 (B) Forty hours in one workweek as described in ORS 653.261 (1).

21 (d) An employer that makes an overtime payment to an employee pursuant to paragraph (c) of
22 this subsection satisfies the overtime compensation requirements under this subsection and ORS
23 653.261 (1).

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

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

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

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

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

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

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

45 (iv) A statement that the employer may require the employee to work up to 80 hours per

1 workweek for the remainder of the undue hardship period;

2 (v) A statement that the employee consents to working up to 84 hours per workweek for up to
3 four workweeks during the undue hardship period and up to 80 hours per workweek for the re-
4 mainder of the undue hardship period;

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

6 (vii) Any other information required by the commissioner.

7 (5) An employer may not:

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

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

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

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

19 (6) This section does not apply to:

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

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

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

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

27 (e) An employee employed in a mill, factory or other manufacturing establishment whose prin-
28 cipal duties are administrative in nature or who is not otherwise engaged in the direct processing
29 of goods in the usual course of the employee's duties[.]; or

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

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

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

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

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

1 quiring the employee to work more than:

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

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

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

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

8 (B) Equitable relief; and

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

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

14 [(9)(a)] (10)(a) Notwithstanding ORS 652.900, in addition to any other penalty provided by law,
15 the commissioner may assess the following civil penalties against an employer that the commissioner
16 determines has coerced an employee into consenting to work more than 55 hours in one workweek:

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

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

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

25 (c) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS
26 183.745. All sums collected as penalties under this subsection shall be applied and paid over as
27 provided in ORS 652.900.

28 **SECTION 2.** ORS 653.261 is amended to read:

29 653.261. (1)(a) The Commissioner of the Bureau of Labor and Industries may adopt rules pre-
30 scribing such minimum conditions of employment, excluding minimum wages, in any occupation as
31 may be necessary for the preservation of the health of employees. The rules may include, but are
32 not limited to, minimum meal periods and rest periods, and maximum hours of work, but not less
33 than eight hours per day or 40 hours per workweek; however, after 40 hours of work in one
34 workweek overtime may be paid, but in no case at a rate higher than one and one-half times the
35 regular rate of pay of the employees when computed without benefit of commissions, overrides, spiffs
36 and similar benefits.

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

42 (c) **For the purpose of calculating a workweek under this subsection, a workweek may**
43 **begin on any day of the week and at any hour of the day and need not coincide with a cal-**
44 **endar week.**

45 (d) **The beginning of the workweek may be changed if the change is intended to be per-**

1 **manent and is not designed to evade overtime requirements.**

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

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

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

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

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

21 (d) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS
22 183.745. All sums collected as penalties under this subsection shall be applied and paid over as
23 provided in ORS 653.256 (4).

24 **SECTION 3.** ORS 653.265 is amended to read:

25 653.265. (1) As used in this section:

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

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

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

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

39 (A) 10 hours in any one day; or

40 (B) 55 hours in one workweek.

41 (b) An employer may permit an employee described in paragraph (a) of this subsection to work
42 up to 60 hours in one workweek if the employee requests or consents in writing to work more than
43 55 hours in the workweek.

44 (c) Notwithstanding paragraph (b) of this subsection, during the period of time that an employer
45 is eligible for an undue hardship period exemption under subsection (5) of this section, an employer

1 may permit an employee described in paragraph (a) of this subsection to work:

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

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

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

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

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

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

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

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

15 (4) An employer that makes an overtime payment to an employee pursuant to subsection (3) of
16 this section satisfies the overtime compensation requirements under this section and ORS 653.261
17 (1).

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

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

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

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

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

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

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

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

40 (v) A statement that the employee consents to working up to 84 hours per workweek for up to
41 four workweeks during the undue hardship period and up to 80 hours per workweek for the re-
42 mainder of the undue hardship period;

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

44 (vii) Any other information required by the commissioner.

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

1 given workweek.

2 (7) This section does not apply to:

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

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

7 (c) An employee employed by a seafood processor, as that term is defined in ORS 653.263; [or]

8 (d) An employee employed in a cannery, drier or packing plant whose principal duties are ad-
9 ministrative in nature or who is not otherwise, in the usual course of the employee's duties, engaged
10 in the direct processing of goods[.]; **or**

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

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

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

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

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

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

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

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

36 (c) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS
37 183.745. All sums collected as penalties under this subsection shall be applied and paid over as
38 provided in ORS 653.256.

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

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

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

1 (B) Equitable relief; and

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

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

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