



House of Representatives

General Assembly

File No. 288

January Session, 2011

Substitute House Bill No. 6454

House of Representatives, March 30, 2011

The Committee on Banks reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT ADOPTING THE FEDERAL HIGHLY COMPENSATED
EMPLOYEE EXEMPTION FOR MORTGAGE LOAN ORIGINATORS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-76i of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 The provisions of sections 31-76b to 31-76j, inclusive, shall not apply
4 with respect to (a) any driver or helper, excluding drivers or helpers
5 employed by exempt employers, with respect to whom the Interstate
6 Commerce Commission or its successor agency or the Secretary of
7 Transportation has power to establish qualifications and maximum
8 hours of service pursuant to the provisions of applicable federal law or
9 regulation of any employee of a carrier by air subject to the Railway
10 Labor Act or any employee of any employer subject to said Railway
11 Labor Act; (b) any employee employed as a seaman; (c) any employee
12 employed as an announcer, a news editor or chief engineer by a radio
13 station or television station; (d) repealed by 1972, P.A. 116, S. 3, 6; (e)
14 any person employed in a bona fide executive, administrative or

15 professional capacity as defined in the regulations of the Labor
16 Commissioner issued pursuant to section 31-60; (f) any person
17 employed in the capacity of outside salesman as defined in the
18 regulations of the Federal Fair Labor Standards Act; (g) any inside
19 salesperson whose sole duty is to sell a product or service (1) whose
20 regular rate of pay is in excess of two times the minimum hourly rate
21 applicable to him under section 31-58, (2) more than half of whose
22 compensation for a representative period, being not less than one
23 month, represents commissions on goods or services, and (3) who does
24 not work more than fifty-four hours during a work week of seven
25 consecutive calendar days. In determining the proportion of
26 compensation representing commissions, all earnings resulting from
27 the application of a bona fide commission rate shall be deemed
28 commissions on goods or services without regard to whether the
29 computed commissions exceed the draw or guarantee; (h) any person
30 employed as a taxicab driver by any employer engaged in the business
31 of operating a taxicab, if such driver is paid forty per cent or more of
32 the fares recorded on the meter of the taxicab operated by him; (i) any
33 person employed in the capacity of a household delivery route
34 salesman engaged in delivering milk or bakery products to consumers
35 and who is paid on a commission basis as defined in the regulations of
36 the Labor Commissioner issued pursuant to section 31-60; (j) any
37 salesman primarily engaged in selling automobiles. For the purposes
38 of this subsection, "salesman" includes any person employed by a
39 licensed new car dealer (1) whose primary duty is to sell maintenance
40 and repair services, (2) whose regular rate of pay is in excess of two
41 times the minimum hourly rate applicable to him under the provisions
42 of section 31-58, (3) more than half of whose compensation for a
43 representative period, being not less than one month, represents
44 commissions on goods or services, and (4) who does not work more
45 than fifty-four hours during a work week of seven consecutive days. In
46 determining the proportion of compensation representing
47 commissions, all earnings resulting from the application of a bona fide
48 commission rate shall be deemed commissions on goods or services
49 without regard to whether the computed commissions exceed the

50 draw or guarantee; (k) any person employed in agriculture; (l) any
51 permanent paid members of the uniformed police force of
52 municipalities and permanent paid members of the uniformed
53 firefighters of municipalities; (m) any person employed as a firefighter
54 by a private nonprofit corporation which on May 24, 1984, has a valid
55 contract with any municipality to extinguish fires and protect its
56 inhabitants from loss by fire; (n) any person, except a person paid on
57 an hourly basis, employed as a beer delivery truck driver by a licensed
58 distributor, as defined by section 12-433; [or] (o) any person employed
59 as a mechanic primarily engaged in the servicing of motor vehicles, as
60 defined in section 14-1, or farm implements, as defined in section 14-1,
61 by a nonmanufacturing employer primarily engaged in the business of
62 selling such vehicles or implements to consumers, to the extent that
63 such employees are exempt under the federal Wage-Hour and Equal
64 Pay Act, 29 USC 201 et seq. and 29 USC 213(b)(10), provided such
65 person's actual weekly earnings exceed an amount equal to the total of
66 (1) such person's basic contractual hourly rate of pay times the number
67 of hours such person has actually worked plus (2) such person's basic
68 contractual hourly rate of pay times one-half the number of hours such
69 person has actually worked in excess of forty hours in such week. For
70 the purposes of this section, "basic contractual hourly rate" means the
71 compensation payable to a person at an hourly rate separate from and
72 exclusive of any flat rate, incentive rate or any other basis of
73 calculation; or (p) any mortgage loan originator, as defined in section
74 36a-485, including, any person whose primary duty is to assist the
75 customers or prospective customers of such person's employer in
76 identifying and securing a mortgage loan, who is a highly
77 compensated employee, as defined in 29 CFR 541.601, as from time to
78 time amended.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	31-76i

Statement of Legislative Commissioners:

In section 1(p) "29 CFR Section 541.601" was changed to "29 CFR 541.601" to maintain consistency in citation form to federal regulations.

BA *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

Excluding highly compensated mortgage loan originators from the state's overtime pay requirements results in no state or municipal fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 6454*****AN ACT ADOPTING THE FEDERAL HIGHLY COMPENSATED EMPLOYEE EXEMPTION FOR MORTGAGE LOAN ORIGINATORS.*****SUMMARY:**

This bill excludes from the state's overtime pay requirements (time and one-half after 40 hours a week) mortgage loan originators who are designated as highly compensated employees under federal regulations. It applies the banking statute's current definition of mortgage loan originator and specifies that this includes anyone whose primary duty is to assist his or her employer's customers or prospective customers in identifying and securing a mortgage loan.

EFFECTIVE DATE: Upon passage

BACKGROUND***Mortgage Loan Originators***

The banking law defines "mortgage loan originator" as an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for or with the expectation of compensation or gain. The law specifically excludes:

1. an individual engaged solely as a loan processor or underwriter, except those acting as independent contractors;
2. a person who only performs real estate brokerage activities and is licensed under the statutes governing real estate brokers and salespersons, unless the person is compensated by a mortgage lender, correspondent lender, broker, or other originator or by one of their agents;
3. a person solely involved in extensions of credit relating to

timeshare plans; or

4. any individual who only renegotiates terms for existing mortgages and does not otherwise act as an originator, unless the U.S. Department of Housing and Urban Development or a court of competent jurisdiction determines the individual needs to be licensed under the federal S.A.F.E. Act (CGS § 36a-485(15)).

Highly Compensated Employees

Under federal regulations, someone with total annual compensation of at least \$100,000, whose primary duty includes office or non-manual work, and who customarily and regularly performs exempt duties or responsibilities of an executive, administrative, or professional employee as identified by regulation, is exempt from the minimum wage and overtime pay requirements of the federal Fair Labor Standards Act (29 C.F.R. § 541.601).

Related Bill

sSB 1110, favorably reported by the Banks Committee, amends two of the exclusions to the current definition of mortgage loan originator. In exclusion (1) above, it deletes the exception for independent contractors. In exclusion (4) above, it adds the requirement that the individual renegotiates existing mortgage terms on a mortgagee's behalf.

COMMITTEE ACTION

Banks Committee

Joint Favorable

Yea 17 Nay 0 (03/15/2011)