



House of Representatives

File No. 726

General Assembly

February Session, 2014

(Reprint of File No. 305)

Substitute House Bill No. 5453
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 30, 2014

AN ACT CONCERNING EMPLOYERS AND HOME CARE WORKERS.

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

1 Section 1. Section 31-76b of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective January 1, 2015*):

3 As used in sections 31-76b to 31-76j, inclusive:

4 (1) The "regular rate" at which an employee is employed shall be
5 deemed to include all remuneration for employment paid to, or on
6 behalf of, the employee, but shall not be deemed to include (A) sums
7 paid as gifts; payments in the nature of gifts made at Christmas time or
8 on other special occasions, as a reward for service, the amounts of
9 which are not measured by or dependent on hours worked,
10 production or efficiency; (B) payments made for occasional periods
11 when no work is performed due to vacation, holiday, illness, failure of
12 the employer to provide sufficient work, or other similar cause;
13 reasonable payments for traveling expenses, or other expenses,
14 incurred by an employee in the furtherance of the employer's interests
15 and properly reimbursable by the employer; and other similar

16 payments to an employee that are not made as compensation for the
17 employee's hours of employment; (C) sums paid in recognition of
18 services performed during a given period if either, (i) both the fact that
19 payment is to be made and the amount of the payment are determined
20 at the sole discretion of the employer at or near the end of the period
21 and not pursuant to any prior contract, agreement or promise causing
22 the employee to expect such payments regularly; (ii) the payments are
23 made pursuant to a bona fide profit-sharing plan or trust or bona fide
24 thrift or savings plan, meeting the approval of the Labor
25 Commissioner who shall give due regard, among other relevant
26 factors, to the extent to which the amounts paid to the employee are
27 determined with regard to hours of work, production or efficiency; (D)
28 contributions irrevocably made by an employer to a trustee or third
29 person pursuant to a bona fide plan for providing old-age, retirement,
30 life, accident or health insurance or similar benefits for employees; (E)
31 extra compensation provided by a premium rate paid for certain hours
32 worked by the employee in any day or workweek because such hours
33 are hours worked in excess of eight in a day or in excess of the
34 maximum workweek applicable to such employee under section 31-
35 76c, or in excess of the employee's normal working hours or regular
36 working hours, as the case may be; (F) extra compensation provided
37 by a premium rate paid for work by the employee on Saturdays,
38 Sundays, holidays or regular days of rest, or on the sixth or seventh
39 day of the workweek, where such premium rate is not less than one
40 and one-half times the rate established in good faith for like work
41 performed in nonovertime hours on other days; or (G) extra
42 compensation provided by a premium rate paid to the employee, in
43 pursuance of an applicable employment contract or collective-
44 bargaining agreement, for work outside of the hours established in
45 good faith by the contract or agreement as the basic, normal or regular
46 workday, not exceeding the maximum workweek applicable to such
47 employee under section 31-76c, where such premium rate is not less
48 than one and one-half times the rate established in good faith by the
49 contract or agreement for like work performed during such workday
50 or workweek. For the purpose of calculating the overtime rate of

51 compensation required to be paid to an employee who is (i) employed
52 as a delivery driver or sales merchandiser, (ii) paid on a base salary
53 and commission basis, and (iii) not exempt from the overtime
54 requirements of this chapter, the employee's regular rate shall be one-
55 fortieth of the employee's weekly remuneration;

56 (2) (A) "Hours worked" include all time during which an employee
57 is required by the employer to be on the employer's premises or to be
58 on duty, or to be at the prescribed work place, and all time during
59 which an employee is employed or permitted to work, whether or not
60 required to do so, provided time allowed for meals shall be excluded
61 unless the employee is required or permitted to work. Such time
62 includes, but shall not be limited to, the time when an employee is
63 required to wait on the premises while no work is provided by the
64 employer. (B) All time during which an employee is required to be on
65 call for emergency service at a location designated by the employer
66 shall be considered to be working time and shall be paid for as such,
67 whether or not the employee is actually called upon to work. (C) When
68 an employee is subject to call for emergency service but is not required
69 to be at a location designated by the employer but is simply required
70 to keep the employer informed as to the location at which he may be
71 contacted, or when an employee is not specifically required by his
72 employer to be subject to call but is contacted by his employer or on
73 the employer's authorization directly or indirectly and assigned to
74 duty, working time shall begin when the employee is notified of his
75 assignment and shall end when the employee has completed his
76 assignment. (D) Notwithstanding the provisions of this subdivision,
77 when an individual employed by a third-party provider to provide
78 "companionship services", as defined in the regulations of the federal
79 Fair Labor Standards Act, is required to be present at a worksite for a
80 period of not less than twenty-four consecutive hours, such individual
81 and his or her employer may agree in writing to exclude a regularly
82 scheduled sleeping period of not more than eight hours from hours
83 worked, provided (i) adequate on-site sleeping facilities are furnished
84 to such individual, and (ii) such individual receives at least five hours

85 of sleep time. If the scheduled sleeping period is more than eight
 86 hours, only eight hours will be excluded. If the scheduled sleeping
 87 period is interrupted by an assignment to work, the interruption shall
 88 be counted as hours worked. If such individual does not receive at
 89 least five hours of sleep time during the scheduled sleeping period, the
 90 entire sleeping period shall be considered hours worked. The
 91 provisions of this subparagraph shall be effective on and after the
 92 effective date of the United States Department of Labor's Final Rule
 93 concerning the Application of the federal Fair Labor Standards Act to
 94 Domestic Service published in the Federal Register of October 1, 2013;

95 (3) "Employee" means employee, as defined in section 31-58.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2015	31-76b

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

The bill establishes an exclusion from overtime pay requirements for certain workers who work in their employer's home. This does not result in any fiscal impact to the state or municipalities.

House "A" made technical and clarifying changes that had no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5453 (as amended by House "A")*****AN ACT CONCERNING EMPLOYERS AND HOME CARE WORKERS.****SUMMARY:**

This bill allows a “sleep-time” exclusion from overtime pay requirements for certain employees employed by third-party providers (e.g., home care agencies) to provide “companionship services” as defined by federal regulations. In general, these regulations define “companionship services” to mean fellowship, protection, and limited care for an elderly person or person with an illness, injury, or disability. The bill’s sleep-time exclusion aligns state law with changes in federal regulations effective January 1, 2015 (see BACKGROUND).

Specifically, the bill allows such an employee and third-party provider to agree to exclude a regularly scheduled sleep period of up to eight hours from the work hours used to determine the employee’s overtime pay if (1) the employee is required to be present at a worksite for at least 24 consecutive hours, (2) adequate on-site sleeping facilities are provided to the employee, and (3) the employee receives at least five hours of sleep-time.

Under the bill, the employer cannot exclude more than eight hours from the employee’s work hours even if the sleep period is scheduled for longer than eight hours. If the sleep period is interrupted by a work assignment, the interruption must be counted as hours worked. If the employee receives less than five hours of sleep time during the scheduled sleep period, the entire sleep period must be considered hours worked.

The bill specifies that it becomes effective on the effective date of the

U.S. Department of Labor's Final Rule on the Application of the federal Fair Labor Standards Act to Domestic Service published in the October 1, 2013 Federal Register (January 1, 2015).

*House Amendment "A" replaces the original bill (File 305), which allowed similar sleep-time exclusions for employees required to be on duty in their employer's home for at least 24 hours.

EFFECTIVE DATE: January 1, 2015

BACKGROUND

Companionship Services in Federal Regulations

Because the state's overtime law mirrors federal law and regulations regarding domestic workers, recent changes in federal regulations will expand the range of workers entitled to overtime pay. Current federal regulations do not require overtime pay for any domestic service workers providing companionship services, but upcoming changes to these regulations eliminate this "companionship exemption" for third-party providers' employees. Consequently, these employees will be entitled to overtime pay for any hours worked beyond 40 in a week and could include many who work (and sleep) on at least a 24-hour shift at a worksite. While federal regulations allow a sleep-time exemption from overtime pay for such employees, current state law does not.

Federal Sleep-Time Exemption

Under federal regulations, if a domestic service worker is required to be on duty for at least 24 hours, the worker and his or her employer can agree to exempt as hours worked a regularly scheduled sleeping period of up to eight hours, provided the employer furnishes adequate sleeping facilities and the employee's time spent sleeping is usually uninterrupted (22 CFR § 785.22).

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 8 Nay 2 (03/18/2014)