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LC01192/SUB A
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO LABOR --OVERTIME PAY

Introduced By: Senators Ciccone, Picard, McCaffrey, and P Fogarty

Date Introduced: February 15, 2012

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-12-4.3 of the General Laws in Chapter 28-12 entitled "Minimum
2 Wages" is hereby amended to read as follows:

3 **28-12-4.3. Exemptions.** -- (a) The provisions of sections 28-12-4.1 and 28-12-4.2 do not
4 apply to the following employees:

5 (1) Any employee of a summer camp when it is open no more than six (6) months of the
6 year.

7 (2) Police officers, firefighters, and rescue service personnel employed by the cities and
8 towns.

9 (3) Employees of the state or political subdivision of the state who may elect through a
10 collective bargaining agreement, memorandum of understanding, or any other agreement between
11 the employer and representatives of the employees, or if the employees are not represented by an
12 exclusive bargaining agent, through an agreement or understanding arrived at between the
13 employer and the employee prior to the performance of work, to receive compensatory time off
14 for hours worked in excess of forty (40) in a week. The compensatory hours shall at least equal
15 one and one half (1 1/2) times the hours worked over forty (40) in a week. If compensation is paid
16 to an employee for accrued compensatory time, the compensation shall be paid at the regular rate
17 earned by the employee at the time of payment. At the time of termination, unused accrued
18 compensatory time shall be paid at a rate not less than:

19 (i) The average regular rate received by the employee during the last three (3) years of

1 the employee's employment, or

2 (ii) The final regular rate received by the employee, whichever is higher.

3 (4) Any employee employed in a bona fide executive, administrative, or professional
4 capacity, as defined by the Fair Labor Standards Act of 1938, 29 U.S.C. section 201 et seq.,
5 compensated for services on a salary basis of not less than two hundred dollars (\$200) per week.

6 (5) Any employee as defined in subparagraph (a)(4) of this section unless the wages of
7 the employee, if computed on an hourly basis, would violate the applicable minimum wage law.

8 (6) Any salaried employee of a nonprofit national voluntary health agency who elects to
9 receive compensatory time off for hours worked in excess of forty (40) hours per week.

10 (7) Any employee, including ~~drivers, driver's helpers,~~ mechanics, and loaders of any
11 motor carrier, including private carriers, with respect to whom the U.S. secretary of transportation
12 has power to establish qualifications and maximum hours of service pursuant to the provisions of
13 49 U.S.C. section ~~3102~~ [31502](#).

14 (8) Any employee who is a salesperson, parts person, or mechanic primarily engaged in
15 the sale and/or servicing of automobiles, trucks or farm implements, and is employed by a non-
16 manufacturing employer primarily engaged in the business of selling vehicles or farm implements
17 to ultimate purchasers, to the extent that the employers are exempt under the federal Wage-Hour
18 and Equal Pay Act, 29 U.S.C. section 201 et seq. and 29 U.S.C. section 213(b)(10); provided, that
19 the employee's weekly, bi-weekly, or monthly actual earnings exceed an amount equal to the
20 employee's basic contractual hourly rate of pay times the number of hours actually worked plus
21 the employee's basic contractual hourly rate of pay times one-half (1/2) the number of hours
22 actually worked in excess of forty (40) hours per week.

23 (9) Any employee employed in agriculture; however, this exemption applies to all
24 agricultural enterprises that produce greenhouse crops, fruit and vegetable crops, herbaceous
25 crops, sod crops, viticulture, viniculture, floriculture, feed for livestock, forestry, dairy farming,
26 aquaculture, the raising of livestock, furbearing animals, poultry and eggs, bees and honey,
27 mushrooms, and nursery stock. This exemption also applies to nursery workers.

28 (b) Nothing in this section exempts any employee who under applicable federal law is
29 entitled to overtime pay or benefits related to overtime pay.

30 [\(c\) Delivery drivers and sales merchandisers are specifically not exempt from the](#)
31 [application of the provisions of sections 28-12-4.1 and 28-12-4.2.](#)

1 SECTION 2. This act shall take effect upon passage and apply retroactively to July 1,
2 2010.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR --OVERTIME PAY

1 This act would apply the overtime provisions of this chapter to hours worked by delivery
2 drivers and sales merchandisers, even though they may also be subject to regulation by the United
3 States secretary of transportation.

4 This act would take effect upon passage and would apply retroactively to July 1, 2010.

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