

**2SHB 2301** - H AMD TO H AMD (H-3250.2/24) **1011**

By Representative Dye

1 On page 2, line 34 of the striking amendment, after "food" insert  
2 ", including continuing to discuss how to support agricultural food  
3 producers to ensure seasonal, perishable, picked food is not wasted"

4  
5 On page 8, line 34 of the striking amendment, after "(3)" insert  
6 "(a)"

7  
8 On page 9, after line 3 of the striking amendment, insert the  
9 following:

10 "(b) To help reduce pick and pack costs, agricultural food  
11 producers that have donated agricultural products to food bank  
12 distributors, food bank distribution centers, or both, are eligible to  
13 participate in the pilot program established in section 703 of this  
14 act."

15  
16 On page 30, after line 37 of the striking amendment, insert the  
17 following:

18 "NEW SECTION. Sec. 703. A new section is added to chapter 43.23  
19 RCW to read as follows:

20 HARVEST SUPPORT PILOT PROGRAM FOR AGRICULTURAL PRODUCERS. (1)(a)  
21 The five-year harvest support pilot program, administered by the  
22 department, is created for agricultural producers that meet the  
23 criteria under subsection (2) of this section.

24 (b) The purpose of the pilot program is to better understand the  
25 nexus between unharvested agricultural products that result in food  
26 waste and the cost barriers to harvesting faced by agricultural  
27 producers due to overtime pay requirements. The ultimate goal of the

1 pilot program is to reduce the amount of waste caused by unharvested  
2 agricultural products.

3 (2)(a) To be eligible under the pilot program, an agricultural  
4 producer must have donated agricultural products to food bank  
5 distributors, food bank distribution centers, or both, within the  
6 period between January 1, 2017, through the effective date of this  
7 section.

8 (b) The agricultural producer must be able to show proof of its  
9 donations upon request.

10 (3)(a) Until the expiration of the pilot program, an agricultural  
11 producer participating in the pilot program may select any 12 weeks in  
12 a calendar year as special circumstance weeks for labor demand.  
13 During each of the selected 12 weeks, the agricultural producer may  
14 employ agricultural employees for up to 50 hours before the  
15 requirement to pay overtime under RCW 49.46.130 applies.

16 (b) In addition to the records required to be kept under RCW  
17 49.30.020, an agricultural producer must maintain records of which  
18 special circumstance weeks were utilized.

19 (c) An agricultural producer must provide an annual initial  
20 disclosure of a good-faith estimate of the selected 12 weeks to the  
21 agricultural producer's agricultural employees at least 30 days in  
22 advance of the first expected special circumstance week, or upon  
23 hiring for those who start work fewer than 30 days in advance. For  
24 agricultural employees employed under, and in compliance with federal  
25 requirements for, temporary work visas, the disclosure of a good-faith  
26 estimate must be made no later than the date of the worker's visa  
27 application, contemporaneous with required federal preemployment  
28 written disclosures to visa workers ordinarily due by the date of the  
29 worker's visa application.

30 (4) The department shall submit reports, beginning December 1,  
31 2025, and each year thereafter, to the appropriate committees of the  
32 legislature. The reports shall include, at a minimum, the following  
33 information:

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1 (a) The number of agricultural producers participating in the  
2 pilot program;

3 (b) A list of the special circumstances weeks selected for each  
4 commodity donated; and

5 (c) The type and volume of food donations from participating  
6 agricultural producers.

7 (5) This section expires on December 31, 2029.

8

9 **Sec. 704.** RCW 49.46.130 and 2021 c 249 s 2 are each amended to  
10 read as follows:

11 (1) Except as otherwise provided in this section, no employer  
12 shall employ any of his or her employees for a workweek longer than  
13 forty hours unless such employee receives compensation for his or her  
14 employment in excess of the hours above specified at a rate not less  
15 than one and one-half times the regular rate at which he or she is  
16 employed.

17 (2) This section does not apply to:

18 (a) Any person exempted pursuant to RCW 49.46.010(3). The payment  
19 of compensation or provision of compensatory time off in addition to a  
20 salary shall not be a factor in determining whether a person is  
21 exempted under RCW 49.46.010(3)(c);

22 (b) Employees who request compensating time off in lieu of  
23 overtime pay;

24 (c) Any individual employed as a seaman whether or not the seaman  
25 is employed on a vessel other than an American vessel;

26 (d) Seasonal employees who are employed at concessions and  
27 recreational establishments at agricultural fairs, including those  
28 seasonal employees employed by agricultural fairs, within the state  
29 provided that the period of employment for any seasonal employee at  
30 any or all agricultural fairs does not exceed fourteen working days a  
31 year;

32 (e) Any individual employed as a motion picture projectionist if  
33 that employee is covered by a contract or collective bargaining  
34 agreement which regulates hours of work and overtime pay;

1 (f) An individual employed as a truck or bus driver who is subject  
2 to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec.  
3 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation  
4 system under which the truck or bus driver is paid includes overtime  
5 pay, reasonably equivalent to that required by this subsection, for  
6 working longer than forty hours per week;

7 (g) Any individual employed as an agricultural employee. This  
8 exemption from subsection (1) of this section applies only until  
9 December 31, 2021;

10 (h) Any industry in which federal law provides for an overtime  
11 payment based on a workweek other than forty hours. However, the  
12 provisions of the federal law regarding overtime payment based on a  
13 workweek other than forty hours shall nevertheless apply to employees  
14 covered by this section without regard to the existence of actual  
15 federal jurisdiction over the industrial activity of the particular  
16 employer within this state. For the purposes of this subsection,  
17 "industry" means a trade, business, industry, or other activity, or  
18 branch, or group thereof, in which individuals are gainfully employed  
19 (section 3(h) of the Fair Labor Standards Act of 1938, as amended  
20 (Public Law 93-259));

21 (i) Any hours worked by an employee of a carrier by air subject to  
22 the provisions of subchapter II of the Railway Labor Act (45 U.S.C.  
23 Sec. 181 et seq.), when such hours are voluntarily worked by the  
24 employee pursuant to a shift-trading practice under which the employee  
25 has the opportunity in the same or in other workweeks to reduce hours  
26 worked by voluntarily offering a shift for trade or reassignment; and

27 (j) Any individual licensed under chapter 18.85 RCW unless the  
28 individual is providing real estate brokerage services under a written  
29 contract with a real estate firm which provides that the individual is  
30 an employee. For purposes of this subsection (2)(j), "real estate  
31 brokerage services" and "real estate firm" mean the same as defined in  
32 RCW 18.85.011.

33 (3) No employer shall be deemed to have violated subsection (1) of  
34 this section by employing any employee of a retail or service

1 establishment for a workweek in excess of the applicable workweek  
2 specified in subsection (1) of this section if:

3 (a) The regular rate of pay of the employee is in excess of one  
4 and one-half times the minimum hourly rate required under RCW  
5 49.46.020; and

6 (b) More than half of the employee's compensation for a  
7 representative period, of not less than one month, represents  
8 commissions on goods or services.

9 In determining the proportion of compensation representing  
10 commissions, all earnings resulting from the application of a bona  
11 fide commission rate is to be deemed commissions on goods or services  
12 without regard to whether the computed commissions exceed the draw or  
13 guarantee.

14 (4) No employer of commissioned salespeople primarily engaged in  
15 the business of selling automobiles, trucks, recreational vessels,  
16 recreational vessel trailers, recreational vehicle trailers,  
17 recreational campers, manufactured housing, or farm implements to  
18 ultimate purchasers shall violate subsection (1) of this section with  
19 respect to such commissioned salespeople if the commissioned  
20 salespeople are paid the greater of:

21 (a) Compensation at the hourly rate, which may not be less than  
22 the rate required under RCW 49.46.020, for each hour worked up to  
23 forty hours per week, and compensation of one and one-half times that  
24 hourly rate for all hours worked over forty hours in one week; or

25 (b) A straight commission, a salary plus commission, or a salary  
26 plus bonus applied to gross salary.

27 (5) No public agency shall be deemed to have violated subsection  
28 (1) of this section with respect to the employment of any employee in  
29 fire protection activities or any employee in law enforcement  
30 activities (including security personnel in correctional institutions)  
31 if: (a) In a work period of twenty-eight consecutive days the employee  
32 receives for tours of duty which in the aggregate exceed two hundred  
33 forty hours; or (b) in the case of such an employee to whom a work  
34 period of at least seven but less than twenty-eight days applies, in

1 his or her work period the employee receives for tours of duty which  
2 in the aggregate exceed a number of hours which bears the same ratio  
3 to the number of consecutive days in his or her work period as two  
4 hundred forty hours bears to twenty-eight days; compensation at a rate  
5 not less than one and one-half times the regular rate at which he or  
6 she is employed.

7 ~~(6)((a) Beginning January 1, 2022, any agricultural employee~~  
8 ~~shall not be employed for more than 55 hours in any one workweek~~  
9 ~~unless the agricultural employee receives one and one-half times that~~  
10 ~~agricultural employee's regular rate of pay for all hours worked over~~  
11 ~~55 in any one workweek.~~

12 ~~(b) Beginning January 1, 2023, any agricultural employee shall not be~~  
13 ~~employed for more than 48 hours in any one workweek unless the~~  
14 ~~agricultural employee receives one and one-half times that~~  
15 ~~agricultural employee's regular rate of pay for all hours worked over~~  
16 ~~48 in any one workweek.~~

17 ~~—(c))~~ Beginning January 1, 2024, any agricultural employee shall  
18 not be employed for more than 40 hours in any one workweek unless the  
19 agricultural employee receives one and one-half times that  
20 agricultural employee's regular rate of pay for all hours worked over  
21 40 in any one workweek, except as provided under section 703 of this  
22 act.

23 (7)(a) No damages, statutory or civil penalties, attorneys' fees  
24 and costs, or other type of relief may be granted against an employer  
25 to an agricultural or dairy employee seeking unpaid overtime due to  
26 the employee's historical exclusion from overtime under subsection (2)  
27 (g) of this section, as it existed on November 4, 2020.

28 (b) This subsection applies to all claims, causes of actions, and  
29 proceedings commenced on or after November 5, 2020, regardless of when  
30 the claim or cause of action arose. To this extent, this subsection  
31 applies retroactively, but in all other respects it applies  
32 prospectively.

33 (c) This subsection does not apply to dairy employees entitled to  
34 back pay or other relief as a result of being a member in the class of

1 plaintiffs in *Martinez-Cuevas v. DeRuyter Bros. Dairy*, 196 Wn.2d 506  
2 (2020).

3 (8) For the purposes of this section, "agricultural employee"  
4 means any individual employed: (a) On a farm, in the employ of any  
5 person, in connection with the cultivation of the soil, or in  
6 connection with raising or harvesting any agricultural or  
7 horticultural commodity, including raising, shearing, feeding, caring  
8 for, training, and management of livestock, bees, poultry, and  
9 furbearing animals and wildlife, or in the employ of the owner or  
10 tenant or other operator of a farm in connection with the operation,  
11 management, conservation, improvement, or maintenance of such farm and  
12 its tools and equipment; (b) in packing, packaging, grading, storing  
13 or delivering to storage, or to market or to a carrier for  
14 transportation to market, any agricultural or horticultural commodity;  
15 or (c) [in] commercial canning, commercial freezing, or any other  
16 commercial processing, or with respect to services performed in  
17 connection with the cultivation, raising, harvesting, and processing  
18 of oysters or in connection with any agricultural or horticultural  
19 commodity after its delivery to a terminal market for distribution for  
20 consumption. An agricultural employee does not include a dairy  
21 employee.

22 (9) For the purposes of this section, "dairy employee" includes  
23 any employee engaged in dairy cattle and milk production activities  
24 described in code 112120 of the North American industry classification  
25 system."

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27 Renumber the remaining sections consecutively and correct any  
28 internal references accordingly.

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EFFECT:

- Creates a five-year harvest support pilot program for the purpose  
of better understanding the nexus between unharvested

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agricultural products that result in food waste and the cost barriers to harvesting due to overtime pay requirements.

- Provides that agricultural producers that have donated agricultural products to food bank distributors or food bank distribution centers within the period of January 1, 2017, to the effective date of the act are eligible to participate in the pilot program.
- Provides that participating agricultural producers may select any 12 weeks in a calendar year as special circumstance weeks for labor demand, and during each of the selected 12 weeks, the agricultural producer may employ agricultural employees up to 50 hours before the requirement to pay overtime applies.
- Requires agricultural producers to provide an annual initial disclosure to employees of good-faith estimates of the selected special circumstance weeks.
- Requires the Department of Agriculture to administer the pilot program and submit reports to the Legislature.
- Adds language to the section establishing the Commodities Donation Grant Program to reflect the creation of the pilot program.

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