

# COMMITTEE REPORT

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## MR. PRESIDENT:

The Senate Committee on Pensions and Labor, to which was referred House Bill No. 2051, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 2, line 34, delete "for more than".
- 2 Page 2, line 35, delete "thirty (30) hours and less than" and insert
- 3 "up to".
- 4 Page 2, line 41, delete "(h)" and insert "(i)".
- 5 Page 2, line 42, strike "(e)," and insert "(h),".
- 6 Page 3, line 5, delete "(i)" and insert "(j)".
- 7 Page 3, line 20, delete "(j)" and insert "(k)".
- 8 Page 8, after line 6, begin a new paragraph and insert:
- 9 "SECTION 4. IC 22-2-2-4 IS AMENDED TO READ AS
- 10 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) Every employer
- 11 employing four (4) or more employees during a work week shall:
- 12 (1) in any work week beginning on or after July 1, 1968, in which
- 13 he is subject to the provisions of this chapter, pay each of his
- 14 employees wages of not less than one dollar and twenty-five cents
- 15 (\$1.25) per hour;
- 16 (2) in any work week beginning on or after July 1, 1977, in which
- 17 he is subject to this chapter, pay each of his employees wages of
- 18 not less than one dollar and fifty cents (\$1.50) per hour;

1 (3) in any work week beginning on or after January 1, 1978, in  
2 which he is subject to this chapter, pay each of his employees  
3 wages of not less than one dollar and seventy-five cents (\$1.75)  
4 per hour; and

5 (4) in any work week beginning on or after January 1, 1979, in  
6 which he is subject to this chapter, pay each of his employees  
7 wages of not less than two dollars (\$2) per hour.

8 (b) Except as provided in subsection (c), every employer employing  
9 at least two (2) employees during a work week shall, in any work week  
10 in which the employer is subject to this chapter, pay each of the  
11 employees in any work week beginning on and after July 1, 1990, and  
12 before October 1, 1998, wages of not less than three dollars and  
13 thirty-five cents (\$3.35) per hour.

14 (c) An employer subject to subsection (b) is permitted to apply a "tip  
15 credit" in determining the amount of cash wage paid to tipped  
16 employees. In determining the wage an employer is required to pay a  
17 tipped employee, the amount paid the employee by the employee's  
18 employer shall be an amount equal to:

19 (1) the cash wage paid the employee which for purposes of the  
20 determination shall be not less than the cash wage required to be  
21 paid to employees covered under the federal Fair Labor Standards  
22 Act of 1938, as amended (29 U.S.C. 210(m)(1)) on August 20,  
23 1996, which amount is two dollars and thirteen cents (\$2.13) an  
24 hour; and

25 (2) an additional amount on account of the tips received by the  
26 employee, which amount is equal to the difference between the  
27 wage specified in subdivision (1) and the wage in effect under  
28 subsections (b), (f), and (g).

29 An employer is responsible for supporting the amount of tip credit  
30 taken through reported tips by the employees.

31 (d) No employer having employees subject to any provisions of this  
32 section shall discriminate, within any establishment in which  
33 employees are employed, between employees on the basis of sex by  
34 paying to employees in such establishment a rate less than the rate at  
35 which he pays wages to employees of the opposite sex in such  
36 establishment for equal work on jobs the performance of which  
37 requires equal skill, effort, and responsibility, and which are performed  
38 under similar working conditions, except where such payment is made

1 pursuant to:

- 2 (1) a seniority system;  
 3 (2) a merit system;  
 4 (3) a system which measures earnings by quantity or quality of  
 5 production; or  
 6 (4) a differential based on any other factor other than sex.

7 (e) An employer who is paying a wage rate differential in violation  
 8 of subsection (d) shall not, in order to comply with subsection (d),  
 9 reduce the wage rate of any employee, and no labor organization, or its  
 10 agents, representing employees of an employer having employees  
 11 subject to subsection (d) shall cause or attempt to cause such an  
 12 employer to discriminate against an employee in violation of  
 13 subsection (d).

14 (f) Except as provided in subsection (c), every employer employing  
 15 at least two (2) employees during a work week shall, in any work week  
 16 in which the employer is subject to this chapter, pay each of the  
 17 employees in any work week beginning on or after October 1, 1998,  
 18 and before March 1, 1999, wages of not less than four dollars and  
 19 twenty-five cents (\$4.25) per hour.

20 (g) Except as provided in subsections (c) and (i), every employer  
 21 employing at least two (2) employees during a work week shall, in any  
 22 work week in which the employer is subject to this chapter, pay each  
 23 of the employees in any work week beginning on or after March 1,  
 24 1999, wages of not less than five dollars and fifteen cents (\$5.15) an  
 25 hour.

26 (h) This section does not apply if an employee:

- 27 (1) provides companionship services to the aged and infirm (as  
 28 defined in 29 CFR 552.6); and  
 29 (2) is employed by an employer or agency other than the family  
 30 or household using the companionship services, as provided in 29  
 31 CFR 552.109 (a).

32 (i) This subsection applies only to an employee who has not attained  
 33 the age of twenty (20) years. Instead of the rates prescribed by  
 34 subsections (c), (f), and (g), an employer may pay an employee of the  
 35 employer, during the first ninety (90) consecutive calendar days after  
 36 the employee is initially employed by the employer, a wage which is  
 37 not less than four dollars and twenty-five cents (\$4.25) per hour,  
 38 effective March 1, 1999. However, no employer may take any action

1 to displace employees (including partial displacements such as  
2 reduction in hours, wages, or employment benefits) for purposes of  
3 hiring individuals at the wage authorized in this subsection.

4 (j) Except as otherwise provided in this section, no employer shall  
5 employ any employee for a workweek longer than forty (40) hours  
6 unless the employee receives compensation for employment in excess  
7 of the hours above specified at a rate not less than one and one-half  
8 (1.5) times the regular rate at which he is employed.

9 (k) For purposes of this section the following apply:

10 (1) "Overtime compensation" means the compensation required  
11 by subsection (j).

12 (2) "Compensatory time" and "compensatory time off" mean  
13 hours during which an employee is not working, which are not  
14 counted as hours worked during the applicable workweek or other  
15 work period for purposes of overtime compensation, and for  
16 which the employee is compensated at the employee's regular  
17 rate.

18 (3) "Regular rate" means the rate at which an employee is  
19 employed is considered to include all remuneration for  
20 employment paid to, or on behalf of, the employee, but is not  
21 considered to include the following:

22 (A) Sums paid as gifts, payments in the nature of gifts made at  
23 Christmas time or on other special occasions, as a reward for  
24 service, the amounts of which are not measured by or  
25 dependent on hours worked, production, or efficiency.

26 (B) Payments made for occasional periods when no work is  
27 performed due to vacation, holiday, illness, failure of the  
28 employer to provide sufficient work, or other similar cause,  
29 reasonable payments for traveling expenses, or other expenses,  
30 incurred by an employee in the furtherance of his employer's  
31 interests and properly reimbursable by the employer, and other  
32 similar payments to an employee which are not made as  
33 compensation for his hours of employment.

34 (C) Sums paid in recognition of services performed during a  
35 given period if:

36 (i) both the fact that payment is to be made and the amount  
37 of the payment are determined at the sole discretion of the  
38 employer at or near the end of the period and not pursuant

- 1 to any prior contract, agreement, or promise causing the  
2 employee to expect the payments regularly;
- 3 (ii) the payments are made pursuant to a bona fide profit  
4 sharing plan or trust or bona fide thrift or savings plan,  
5 meeting the requirements of the administrator set forth in  
6 appropriately issued regulations, having due regard among  
7 other relevant factors, to the extent to which the amounts  
8 paid to the employee are determined without regard to hours  
9 of work, production, or efficiency; or
- 10 (iii) the payments are talent fees paid to performers,  
11 including announcers, on radio and television programs.
- 12 (D) Contributions irrevocably made by an employer to a  
13 trustee or third person pursuant to a bona fide plan for  
14 providing old age, retirement, life, accident, or health  
15 insurance or similar benefits for employees.
- 16 (E) Extra compensation provided by a premium rate paid for  
17 certain hours worked by the employee in any day or workweek  
18 because those hours are hours worked in excess of eight (8) in  
19 a day or in excess of the maximum workweek applicable to the  
20 employee under subsection (h) or in excess of the employee's  
21 normal working hours or regular working hours, as the case  
22 may be.
- 23 (F) Extra compensation provided by a premium rate paid for  
24 work by the employee on Saturdays, Sundays, holidays, or  
25 regular days of rest, or on the sixth or seventh day of the  
26 workweek, where the premium rate is not less than one and  
27 one-half (1.5) times the rate established in good faith for like  
28 work performed in nonovertime hours on other days.
- 29 (G) Extra compensation provided by a premium rate paid to  
30 the employee, in pursuance of an applicable employment  
31 contract or collective bargaining agreement, for work outside  
32 of the hours established in good faith by the contract or  
33 agreement as the basic, normal, or regular workday (not  
34 exceeding eight hours) or workweek (not exceeding the  
35 maximum workweek applicable to the employee under  
36 subsection (a)) where the premium rate is not less than one  
37 and one-half (1.5) times the rate established in good faith by  
38 the contract or agreement for like work performed during the

1           workday or workweek.

2           (l) No employer shall be considered to have violated subsection (j)  
3 by employing any employee for a workweek in excess of that specified  
4 in subsection (a) without paying the compensation for overtime  
5 employment prescribed therein if the employee is so employed:

6           (1) in pursuance of an agreement, made as a result of collective  
7 bargaining by representatives of employees certified as bona fide  
8 by the National Labor Relations Board, which provides that no  
9 employee shall be employed more than one thousand forty (1,040)  
10 hours during any period of twenty-six (26) consecutive weeks; or

11          (2) in pursuance of an agreement, made as a result of collective  
12 bargaining by representatives of employees certified as bona fide  
13 by the National Labor Relations Board, which provides that  
14 during a specified period of fifty-two (52) consecutive weeks the  
15 employee shall be employed not more than two thousand two  
16 hundred forty (2,240) hours and shall be guaranteed not less than  
17 one thousand eight hundred forty (1,840) hours (or not less than  
18 forty-six (46) weeks at the normal number of hours worked per  
19 week, but not less than thirty (30) hours per week) and not more  
20 than two thousand eighty (2,080) hours of employment for which  
21 the employee shall receive compensation for all hours guaranteed  
22 or worked at rates not less than those applicable under the  
23 agreement to the work performed and for all hours in excess of  
24 the guaranty which are also in excess of the maximum workweek  
25 applicable to the employee under subsection (a) or two thousand  
26 eighty (2,080) in that period at rates not less than one and  
27 one-half (1.5) times the regular rate at which the employee is  
28 employed. ✕

29          (m) No employer shall be considered to have violated subsection (j)  
30 by employing any employee for a workweek in excess of the maximum  
31 workweek applicable to the employee under subsection (a) if the  
32 employee is employed pursuant to a bona fide individual contract, or  
33 pursuant to an agreement made as a result of collective bargaining by  
34 representatives of employees, if the duties of the employee necessitate  
35 irregular hours of work, and the contract or agreement includes the  
36 following:

37          (1) Specifies a regular rate of pay of not less than the minimum  
38 hourly rate provided in subsections (c), (f), (g), and (i) (whichever

1 is applicable) and compensation at not less than one and one-half  
2 (1.5) times that rate for all hours worked in excess of the  
3 maximum workweek.

4 (2) Provides a weekly guaranty of pay for not more than sixty  
5 hours based on the rates so specified.

6 (n) No employer shall be considered to have violated subsection (j)  
7 by employing any employee for a workweek in excess of the maximum  
8 workweek applicable to the employee under that subsection if, pursuant  
9 to an agreement or understanding arrived at between the employer and  
10 the employee before performance of the work, the amount paid to the  
11 employee for the number of hours worked by him in the workweek in  
12 excess of the maximum workweek applicable to the employee under  
13 that subsection:

14 (1) in the case of an employee employed at piece rates, is  
15 computed at piece rates not less than one and one-half (1.5) times  
16 the bona fide piece rates; applicable to the same work when  
17 performed during nonovertime hours; ~~or~~

18 (2) in the case of an employee performing two (2) or more kinds  
19 of work for which different hourly or piece rates have been  
20 established, is computed at rates not less than one and one-half  
21 (1.5) times those bona fide rates; applicable to the same work  
22 when performed during nonovertime hours; or

23 (3) is computed at a rate not less than one and one-half (1.5) times  
24 the rate established by the agreement or understanding as the  
25 basic rate to be used in computing overtime compensation  
26 thereunder, provided that the rate so established shall be  
27 substantially equivalent to the average hourly earnings of the  
28 employee, exclusive of overtime premiums, in the particular work  
29 over a representative period of time;

30 and if the employee's average hourly earnings for the workweek  
31 exclusive of payments described in this section are not less than the  
32 minimum hourly rate required by applicable law, and extra overtime  
33 compensation is properly computed and paid on other forms of  
34 additional pay required to be included in computing the regular rate.

35 (o) Extra compensation paid as described in this section shall be  
36 creditable toward overtime compensation payable pursuant to this  
37 section.

38 (p) No employer shall be considered to have violated subsection (j)

1 by employing any employee of a retail or service establishment for a  
2 workweek in excess of the applicable workweek specified therein, if:

3 (1) the regular rate of pay of the employee is in excess of one and  
4 one-half (1.5) times the minimum hourly rate applicable to the  
5 employee under section 2 of this chapter; and

6 (2) more than half of the employee's compensation for a  
7 representative period (not less than one (1) 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 fide  
11 commission rate shall be considered commissions on goods or services  
12 without regard to whether the computed commissions exceed the draw  
13 or guarantee.

14 (q) No employer engaged in the operation of a hospital or an  
15 establishment which is an institution primarily engaged in the care of  
16 the sick, the aged, or the mentally ill or defective who reside on the  
17 premises shall be considered to have violated subsection (j) if, pursuant  
18 to an agreement or understanding arrived at between the employer and  
19 the employee before performance of the work, a work period of  
20 fourteen (14) consecutive days is accepted in lieu of the workweek of  
21 seven (7) consecutive days for purposes of overtime computation and  
22 if, for his employment in excess of eight (8) hours in any workday and  
23 in excess of eighty (80) hours in that fourteen (14) day period, the  
24 employee receives compensation at a rate not less than one and  
25 one-half (1.5) times the regular rate at which the employee is  
26 employed.

27 (r) No employer shall employ any employee in domestic service in  
28 one (1) or more households for a workweek longer than forty (40)  
29 hours unless the employee receives compensation for that employment  
30 in accordance with subsection (j).

31 (s) In the case of an employee of an employer engaged in the  
32 business of operating a street, suburban or interurban electric railway,  
33 or local trolley or motorbus carrier (regardless of whether or not the  
34 railway or carrier is public or private or operated for profit or not for  
35 profit), in determining the hours of employment of such an employee  
36 to which the rate prescribed by subsection (j) applies there shall be  
37 excluded the hours the employee was employed in charter activities by  
38 the employer if both of the following apply:

- 1 (1) The employee's employment in the charter activities was  
 2 pursuant to an agreement or understanding with the employer  
 3 arrived at before engaging in that employment.
- 4 (2) If employment in the charter activities is not part of the  
 5 employee's regular employment.
- 6 (t) Any employer may employ any employee for a period or periods  
 7 of not more than ten (10) hours in the aggregate in any workweek in  
 8 excess of the maximum workweek specified in subsection (j) without  
 9 paying the compensation for overtime employment prescribed in  
 10 subsection (j), if during that period or periods the employee is receiving  
 11 remedial education that:
- 12 (1) is provided to employees who lack a high school diploma or  
 13 educational attainment at the eighth grade level;
- 14 (2) is designed to provide reading and other basic skills at an  
 15 eighth grade level or below; and
- 16 (3) does not include job specific training.
- 17 (u) Subsection (j) does not apply to an employee of a motion picture  
 18 theater.
- 19 **(v) Subsection (j) does not apply to an employee of a seasonal**  
 20 **amusement or recreational establishment, an organized camp, or**  
 21 **a religious or nonprofit educational conference center that is**  
 22 **exempt under the federal Fair Labor Standards Act of 1938, as**  
 23 **amended (29 U.S.C. 213).".**
- 24 Renumber all SECTIONS consecutively.  
 (Reference is to HB 2051 as reprinted March 5, 1999.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 11, Nays 0.

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**Senator Harrison, Chairperson**