

ASSEMBLY BILL

No. 739

Introduced by Assembly Member Bustamante

February 22, 1995

An act to amend Sections 750, 750.5, 751, 751.5, and 752 of, and to add Sections 751.2, 751.8, and 752.5 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 739, as introduced, Bustamante. Employment: hours of employment: smelters and underground workings.

Existing law regulates the hours of labor that employees employed in underground mines, underground workings, smelting plants and plants for the reduction or refining of ores and metals, may be employed. Existing law specifies that the period of employment in these industries may not exceed 8 hours within any 24-hour period, except where hours of employment are otherwise prescribed pursuant to a collective bargaining agreement or under prescribed circumstances related to emergencies.

This bill would specify that the hours of employment in these industries also shall not exceed 40 hours in a 7-day period, subject to the above-described exceptions. The bill would provide for additional exceptions to the daily and weekly hours of employment (1) where a majority of the employees who work for a particular employer vote in an election, conducted under prescribed procedures, to adopt a policy that authorizes periods of work that exceed the statutory periods, (2) on the day a scheduled change of shift

takes effect, and (3) where no qualified employee is available to relieve an employee. The bill would also add to the prescribed conditions that permit an employer to require extended hours of employment to include environmental emergencies and maintenance of machinery or equipment.

This bill would further allow exceeding the hours of employment if overtime wages are paid for the excess hours in accordance with wage orders of the Industrial Welfare Commission.

Under existing law, any person who violates and any person in a prescribed position who commands, persuades or allows any person to violate, any of the provisions of law regulating the hours of labor that employees employed in these industries, is guilty of a misdemeanor.

This bill would make those criminal penalties applicable only for willful violations. By revising the definition of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 750 of the Labor Code is
- 2 amended to read:
- 3 750. *Except as otherwise provided in this chapter, no*
- 4 *employee may be employed for a period that exceeds,*
- 5 ~~The period of employment shall not exceed~~ eight hours
- 6 within any ~~twenty-four hours~~ *twenty-four-hour* period or
- 7 40 hours in a seven-day period and the hours of
- 8 employment *of any work day* shall be consecutive,
- 9 excluding intermissions for meals, for all persons who are
- 10 employed or engaged in work in *any of the following*:
- 11 (a) Underground mines or underground workings.



1 (b) Smelters and plants for the reduction or refining
2 of ores or metals.

3 SEC. 2. Section 750.5 of the Labor Code is amended
4 to read:

5 750.5. ~~The provisions of Notwithstanding~~ Section 750,
6 ~~shall not prohibit a period of employment up to 12 an~~
7 *employee may be employed for a period that exceeds*
8 *eight hours within a 24-hour period, or 40 hours within a*
9 *seven-day period, under the following circumstances:*

10 (a) ~~when~~ *If the employer and a labor organization*
11 *representing employees of the employer have entered*
12 *into a valid collective-bargaining agreement —where the*
13 ~~agreement~~ *that expressly provides for the wages, hours of*
14 *work, and working conditions of the employees; or*

15 (b) *If a majority of the employees of that employer*
16 *whose hours are regulated by this chapter have voted in*
17 *an election to adopt a policy that specifies periods of work*
18 *that may exceed eight hours in a 24-hour period, or 40*
19 *hours in a seven-day period, or both, and the employer*
20 *adopts that policy, subject to all of the following*
21 *conditions:*

22 (1) *The agreement adopted with respect to that policy*
23 *reflects the results of the election.*

24 (2) *The election is conducted with the use of secret*
25 *ballots, during regular working hours.*

26 (3) *All employees of that employer whose hours are*
27 *regulated by this chapter and who have become*
28 *employed by that employer within 24 hours of the time*
29 *the election is commenced are eligible to vote in the*
30 *election.*

31 (4) *The policy shall be effective for the period*
32 *specified therein, not exceeding 12 months.*

33 (5) *Before an election may be conducted, the*
34 *employer shall hold informational meetings for the*
35 *affected employees on each shift during the regular*
36 *working hours of the affected employees. At each of these*
37 *meetings, the employer shall explain the effect of the*
38 *proposed policy on the hours and compensation of the*
39 *employees. Written notice of the time, date, place, and*
40 *purpose of these informational meetings shall be*



1 conspicuously posted in at least three locations
2 throughout the mine site for at least seven consecutive
3 days before the date of the meetings. Written notice of
4 the time, date, place, and purpose of the election shall be
5 posted in the same manner and for the same period.
6 Failure to comply with the procedural requirements of
7 this paragraph shall void the results of the election for
8 purposes of this section.

9 (c) On the day a scheduled change of shift takes effect.

10 SEC. 3. Section 751 of the Labor Code is amended to
11 read:

12 751. In the case of an emergency where life or
13 property is in imminent danger, or when there is an
14 imminent danger involving actual or potential
15 environmental pollution, the ~~hours of labor~~ work shift
16 may be ~~longer~~ extended during the continuance of the
17 emergency.

18 SEC. 4. Section 751.2 is added to the Labor Code, to
19 read:

20 751.2. Where no qualified employee is available to
21 relieve an employee on duty, the work shift of the
22 employee on duty may be extended until qualified relief
23 is available.

24 SEC. 5. Section 751.5 of the Labor Code is amended
25 to read:

26 ~~751.5. In the case of aboveground operations where~~
27 ~~emergency~~ Where repairs to, or maintenance or
28 replacement of, machinery or equipment are necessary
29 for the continuous operation thereof, the ~~hours of labor~~
30 work shift of the employees engaged in making ~~such~~
31 ~~emergency~~ the repairs, maintenance, or replacements
32 may, ~~during the continuance of the emergency, be longer~~
33 ~~than the period specified in Section 750~~ be extended to
34 complete those activities.

35 SEC. 6. Section 751.8 is added to the Labor Code, to
36 read:

37 751.8. Notwithstanding Section 750, the period of
38 employment may not exceed eight hours in any 24-hour
39 period, or 40 hours in a seven-day period, if the employee
40 is paid at the overtime rate of pay, as prescribed by the



1 *wage orders of the Industrial Welfare Commission, for*
2 *hours worked in excess of that employee's regularly*
3 *scheduled shift and for hours worked in excess of 40 hours*
4 *in a seven-day period. Unless regularly scheduled shifts*
5 *are established pursuant to Section 750.5, overtime rates*
6 *of pay shall be paid for all hours worked in excess of those*
7 *hours prescribed by Section 750, as the hours of*
8 *employment. This subdivision does not apply to*
9 *employees who are employed in an executive,*
10 *administrative, or professional capacity, as defined by*
11 *wage orders of the commission, or employed as an outside*
12 *salesperson.*

13 SEC. 7. Section 752 of the Labor Code is amended to
14 read:

15 752. Any person who *willfully* violates any provision
16 of this chapter and any person who, as foreman, manager,
17 director or officer of a corporation, or as the employer or
18 superior officer of any person, commands, persuades, or
19 allows any person to violate any provision of this chapter
20 is guilty of a misdemeanor, punishable by a fine of not less
21 than one hundred dollars (\$100) nor more than six
22 hundred dollars (\$600) or by imprisonment of not more
23 than 90 days, or both.

24 SEC. 8. Section 752.5 is added to the Labor Code, to
25 read:

26 752.5. *The provisions of this chapter are severable. If*
27 *any provision of this chapter or its application is held*
28 *invalid, that invalidity shall not affect other provisions or*
29 *applications that can be given effect without the invalid*
30 *provision or application.*

31 SEC. 9. No reimbursement is required by this act
32 pursuant to Section 6 of Article XIII B of the California
33 Constitution because the only costs that may be incurred
34 by a local agency or school district will be incurred
35 because this act creates a new crime or infraction,
36 eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section
38 17556 of the Government Code, or changes the definition
39 of a crime within the meaning of Section 6 of Article
40 XIII B of the California Constitution.

1 Notwithstanding Section 17580 of the Government
2 Code, unless otherwise specified, the provisions of this act
3 shall become operative on the same date that the act
4 takes effect pursuant to the California Constitution.

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