

CHAPTER 933

H.B. No. 2250

AN ACT

relating to the hours of labor of fire fighters and police officers in certain cities.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 6, Chapter 38, Acts of the 49th Legislature, Regular Session, 1945 (Article 1269p, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. (a) It shall be unlawful for any city having more than ten thousand (10,000) inhabitants ~~[but not more than sixty thousand (60,000) inhabitants, according to the last preceding Federal Census,]~~ to require or permit any fire fighter or emergency medical service personnel to work more than the number of hours which bears the same relationship to 212 hours as the number of days in the work period bears to 28 days without being paid overtime for the excess hours in accordance with Subsection (e) of this section. ~~[seventy two (72) hours during any one calendar week. It shall be unlawful for any city having more than sixty thousand (60,000) inhabitants but not more than one hundred twenty five thousand (125,000) inhabitants, according to the last preceding Federal Census, to require or permit any fire fighter to work more than an average, during a calendar year, of sixty three (63) hours per week. It shall be unlawful for any city having more than one hundred twenty five thousand (125,000) inhabitants, according to the last preceding Federal Census, to require or permit any fire fighter to work more than an average, during a calendar year, of sixty (60) hours per week.]~~

(b) Provided further, that in any city having more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census, the number of hours in the work cycle of members of the fire department whose duties do not include fighting fires or providing emergency medical services, including but not limited to mechanics, clerks, investigators, inspectors, fire marshals, fire alarm dispatchers and maintenance men, shall not, except in an emergency, average more hours in a week than the number of hours in the normal work week of the majority of the employees of said city other than fire fighters, emergency medical service personnel and police officers. The number of days on duty in a work week or the average number of days on duty per week in a work cycle of an employee subject to this subsection may not exceed the number of days on duty during the work week of the majority of the employees of the city other than fire fighters, emergency medical service personnel and police officers. In this section, "work cycle" means that period of time in a posted work schedule starting at the time the cycle begins and ending at the time the cycle begins to repeat itself. The cycle may span any number of weeks or days or a portion of a week or day.

(c) Provided further, that in computing the hours in the work week or the average number of hours in a work week in a work cycle of a fire fighter or other member of the fire department subject to the provisions of this section, there shall be included and counted any and all hours during which such fire fighter or other member of the fire department is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes. The time a person is required to leave a telephone number where he or she may be reached, or is required to remain accessible by radio or pager is not considered as hours worked ~~[available for immediate call to duty by continuously remaining in contact with a fire department office by telephone or by radio].~~ In computing the hours in the work week or the average number of hours in a work week in a work cycle of fire fighter or emergency medical service personnel vacation, sick time, holidays, time in lieu of holidays or compensatory time may be excluded as hours worked.

(d) A fire fighter or other member of the fire department who is required in an emergency to work more hours in a work week or work cycle than authorized by

Subsection (a) or (b) of this section is entitled to be paid overtime for the excess hours worked in accordance with Subsection (e) of this section without regard to the number of hours worked in any one week of the work cycle.

(e) A fire fighter or other member of the fire department *not exempt under the Fair Labor Standards Act of 1938, 29 U.S.C. 201 et seq.*, may be required to work more than the maximum number of hours herein provided; and in such event *said nonexempt [the]* fire fighter or other member of the fire department working more than the maximum hours herein provided shall be compensated for such overtime at a rate equal to one and one-half times the compensation paid to the fire fighter or other member of the fire department for regular hours.

SECTION 2. Section 6A, Chapter 695, Acts of the 69th Legislature, Regular Session, 1985 (Article 1269p, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6A. It shall be unlawful for any city having more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census, to require any policeman to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen.

Provided, however, that in any such city having more than ten thousand (10,000) inhabitants, in the event of an emergency, policemen may be required to work more than the number of hours in the normal work week of the majority of other city employees; and in the event policemen are ordered to work a greater number of hours than the number of hours in such normal work week of other city employees, such policemen shall be compensated for any such overtime at a rate equal to one and one-half times the compensation paid to such policemen for regular hours unless a policeman decides, with the approval of the city governing body, to accept compensatory time equal to one and one-half times the number of overtime hours. *Compensable hours of work includes all of the time during which a policeman is on duty on the city's premises or at a prescribed workplace, as well as all other time during which the policeman is suffered or permitted to work for the city. Such time includes all preshift activities and postshift activities which are an integral part of the policeman's principal activity or which are closely related to the performance of the principal activity. Time spent away from the city's premises under conditions that are so circumscribed that they restrict the policeman from effectively using the time for personal pursuits also constitutes hours of work. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. The policeman must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The policeman is not relieved if he is required to perform any duties, whether active or inactive, while eating.*

Provided, further that in cases where a majority of policemen working for a city sign a written waiver of the prohibition against cities requiring any policeman to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen, a city may adopt a work schedule for policemen requiring any policeman to work more hours than the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen, so long as no policeman works more hours during any calendar month than the number of hours in the normal work month of the majority of the employees of said city other than firemen and policemen without overtime pay. An emergency shall be defined as any unexpected happening or event, or unforeseen situation or crisis that calls for immediate action and requires the police chief or head of the department to order policemen to work overtime.

SECTION 3. Section 6D, Chapter 695, Acts of the 69th Legislature, Regular Session, 1985 (Article 1269p, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6D. (a) In all cities having more than 1,500,000 inhabitants according to the last preceding federal census it shall be unlawful to require or permit any [~~fireman~~] *fire fighter or fire fighter emergency medical personnel* to work more than an average, during a calendar year, of forty-six and seven-tenths (46.7) hours per week. In the event that any such [~~fireman~~] *fire fighter or fire fighter emergency medical personnel* shall

be required to work more than forty-eight (48) hours per week, he shall be compensated for such overtime at a rate equal to one and one-half (1-½) times the compensation paid to such ~~firemen~~ fire fighters or fire fighter emergency medical personnel for regular hours.

(b) *Provided further, the number of hours in the work cycle of members of the fire department whose duties do not include fighting fires or providing fire fighter emergency medical services, including but not limited to mechanics, clerks, investigators, inspectors, fire marshals, fire alarm dispatchers and maintenance men, shall not, except in an emergency, average more hours in a week than the number of hours in the normal work week of the majority of the employees of said city other than fire fighters, fire fighter emergency medical personnel and police officers. The number of days on duty in a work week or the average number of days on duty per week in a work cycle of an employee subject to this subsection may not exceed the number of days on duty during the work week of the majority of the employees of the city other than fire fighters, fire fighter emergency medical personnel and police officers. In this section, "work cycle" means that period of time in a posted work schedule starting at the time the cycle begins and ending at the time the cycle begins to repeat itself. The cycle may span any number of weeks or days or a portion of a week or day.*

(c) *Provided further, that in computing the hours in the work week or the average number of hours in a work week in a work cycle of a fire fighter or other member of the fire department subject to the provisions of this section, there shall be included and counted any and all hours during which such fire fighter or other member of the fire department is required to remain available for immediate call to duty by continuously remaining in contact with a fire department office by telephone or by radio. In calculating the hours in a work week sick time, vacation time, meal time, holidays, compensatory time, death in the family leave or any other authorized leave shall also be counted as time actually worked.*

(d) *A fire fighter or other member of the fire department who is required in an emergency to work more hours in a work week or work cycle than authorized by Subsection (a) or (b) of this section is entitled to be paid overtime for the excess hours worked in accordance with Subsection (a) of this section without regard to the number of hours worked in any one week of the work cycle.*

SECTION 4. Chapter 38, Acts of the 49th Legislature, Regular Session, 1945 (Article 1269p, Vernon's Texas Civil Statutes), is amended by adding Section 6E to read as follows:

Sec. 6E. In all cities having a population of more than 1,500,000 inhabitants according to the last preceding federal census it shall be unlawful to require or permit any police officer to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said city other than fire fighters and policemen.

Provided, however, that in any such city in the event of an emergency, policemen may be required to work more than the number of hours in the normal work week of the majority of other city employees; and in the event policemen are ordered to work a greater number of hours than the number of hours in such normal work week of other city employees, such policemen shall be compensated for any such overtime at a rate equal to one and one-half times the compensation paid to such policemen for regular hours unless a policeman decides, with the approval of the city governing body, to accept compensatory time equal to one and one-half times the number of overtime hours. In computing the hours in the work week or the average number of hours in a work week in a work cycle of a policeman sick time, vacation time, meal time, holidays, compensatory time, death in the family leave or any other authorized leave shall also be counted as time actually worked. There shall be included and counted all hours during which policemen are required to remain on call on the employer's premises or so close thereto that the policeman cannot use the time effectively for his own purpose.

Provided, further that in cases where a majority of policemen working for a city sign a written waiver of the prohibition against cities requiring any policeman to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said city other than fire fighters and policemen, a city may adopt a work schedule for policemen requiring any policeman to work more hours than the number of hours in the normal work week of the majority of the employees of said city other than fire fighters and policemen, so long as no policeman works more hours during any calendar month than the number of hours in the normal work month of the majority of the employees of said city other than fire fighters and policemen without overtime pay. An emergency shall be defined as any unexpected happening or event, or unforeseen situation or crisis that calls for immediate action and requires the police chief or head of the department to order policemen to work overtime.

SECTION 5. Section 6B, Chapter 38, Acts of the 49th Legislature, 1945 (Article 1269p, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6B. The governing body of each city which comes under the provisions of this Act shall put into effect the provisions hereof, without referendum or election, on or before the first day of the next fiscal year of such city after the effective date of this Act. *The provisions of this Act shall not apply when the terms of this Act are inconsistent with the terms of a collective bargaining agreement that is in effect and was entered into in accordance with The Fire and Police Employee Relations Act (Article 5154c-1, Vernon's Texas Civil Statutes).*

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 6, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2250 on May 28, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 25, 1987, by the following vote: Yeas 29, Nays 0.

Approved June 20, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.