# GENERAL ASSEMBLY
## COMMONWEALTH OF KENTUCKY

## 2016 REGULAR SESSION

HOUSE BILL NO. 149

TUESDAY, JANUARY 26, 2016

The following bill was reported to the Senate from the House and ordered to be printed.

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

1 AN ACT relating to work periods within consolidated local governments and
2 declaring an emergency.
3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***
4 ➔Section 1. KRS 337.285 is amended to read as follows:
5 (1) No employer shall employ any of his employees for a work week longer than forty
6 (40) hours, unless such employee receives compensation for his employment in
7 excess of forty (40) hours in a work week at a rate of not less than one and one-half
8 (1-1/2) times the hourly wage rate at which he is employed.
9 (2) This provision shall not apply to the following:
10 (a) Employees of retail stores engaged in work connected with selling,
11 purchasing, and distributing merchandise, wares, goods, articles, or
12 commodities;
13 (b) Employees of restaurant, hotel, and motel operations;
14 (c) Employees as defined and exempted from the overtime provision of the Fair
15 Labor Standards Act in Sections 213(b)(1), 213(b)(6), 213(b)(10), and
16 213(b)(17) of Title 29, U.S.C.;
17 (d) Employees whose function is to provide twenty-four (24) hour residential care
18 on the employer's premises in a parental role to children who are primarily
19 dependent, neglected, and abused and who are in the care of private nonprofit
20 childcaring facilities licensed by the Cabinet for Health and Family Services
21 under KRS 199.640 to 199.670; or
22 (e) Any individual who is employed by a third-party employer or agency other
23 than the family or household using his or her services to provide in-home
24 companionship services for a sick, convalescing, or elderly person.
25 (3) As used in subsection (2) of this section, "companionship services" means those
26 services which provide in-home fellowship, care, and protection for a person who,
27 because of advanced age or physical or mental infirmity, cannot care for his or her

1 own needs. These services may include household work related to the care of the
2 aged or infirm person such as meal preparation, bed making, washing of clothes,
3 and other similar services. They may also include the performance of general
4 household work, provided that the household work is incidental, i.e., does not
5 exceed twenty percent (20%) of the total weekly hours worked. The term
6 "companionship services" does not include services relating to the care and
7 protection of the aged or infirm which require and are performed by trained
8 personnel, such as a registered or practical nurse.
9 (4) Notwithstanding the provisions of subsection (1) of this section or any other chapter
10 of the KRS to the contrary, upon written request by a county or city employee, made
11 freely and without coercion, pressure, or suggestion by the employer, and upon a
12 written agreement reached between the employer and the county or city employee
13 before the performance of the work, a county or city employee who is authorized to
14 work one (1) or more hours in excess of the prescribed hours per week may be
15 granted compensatory leave on an hour-for-hour basis. Upon the written request by
16 a county or city employee, made freely and without coercion, pressure, or
17 suggestion by the employer, and upon a written agreement reached between the
18 employer and the county or city employee before the performance of the work, a
19 county or city employee who is not exempt from the provisions of the Federal Fair
20 Labor Standards Act of 1938, as amended, 29 U.S.C. secs. 201 et seq., may be
21 granted compensatory time in lieu of overtime pay, at the rate of not less than one
22 and one-half (1-1/2) hours for each hour the county or city employee is authorized
23 to work in excess of forty (40) hours in a work week.
24 (5) (a) Upon the request of the county or city employee, and as provided in
25 subsection (4) of this section, compensatory time shall be awarded as follows:
26 1. A county or city employee who provided work in excess of forty (40)
27 hours in a public safety activity, an emergency response activity, or a

1 seasonal activity as described in 29 C.F.R. sec. 553.24, may accrue not
2 more than four hundred eighty (480) hours of compensatory time; or
3 2. A county or city employee engaged in other work in excess of forty (40)
4 hours, may accrue not more than two hundred forty (240) hours of
5 compensatory time.
6 (b) A county or city employee who has accrued four hundred eighty (480) hours
7 of compensatory time off pursuant to paragraph (a)1. of this subsection, or
8 two hundred forty (240) hours of compensatory time off pursuant to paragraph
9 (a)2. of this subsection, shall for additional overtime hours of work, be paid
10 overtime compensation.
11 (6) A county or city employee who has accrued compensatory time off as provided in
12 subsection (4) of this section, and who requested the use of compensatory time,
13 shall be permitted by the employer to use the compensatory time within a
14 reasonable period after making the request if the use of the compensatory time does
15 not unduly disrupt the operations of the employer. Mere inconvenience to the
16 employer shall not constitute a sufficient basis for denial of a county or city
17 employee's request for compensatory time off.
18 (7) If compensation is paid to a county or city employee for accrued compensatory time
19 off, the compensation shall be paid at the regular rate earned by the county or city
20 employee at the time the county or city employee receives the payment.
21 (8) Upon a county or city employee's termination of employment, all unused accrued
22 compensatory time shall be paid at a rate of compensation not less than:
23 (a) The average regular rate received by the county or city employee during the
24 last three (3) years of the county or city employee's employment; or
25 (b) The final regular rate received by the county or city employee, whichever is
26 higher.
27 (9) Compensatory time shall not be used as a means to avoid statutory overtime

1 compensation. A county or city employee shall have the right to use compensatory
2 time earned and shall not be coerced to accept more compensatory time than an
3 employer can realistically and in good faith expect to be able to grant within a
4 reasonable period upon the county or city employee making the request for
5 compensatory time off.
6 (10) Nothing in subsections (4) to (9) of this section shall be construed to supersede any
7 collective bargaining agreement, memorandum of understanding, or any other
8 agreement between the employer and representative of the county or city
9 employees.
10 (11) As used in subsections (4) to (9) of this section, "county or city employee" means an
11 employee of any county, city, charter county, consolidated local government,
12 unified local government, or urban-county government, including an employee of a
13 county or city elected official.
14 (12) In addition to the designation of a work week under subsection (1) of this section,
15 local governments, as defined in KRS 95A.210(3), may designate a work period for
16 professional firefighter employees as defined in KRS 95A.210. The designated
17 work period shall be not less than one (1) work week of seven (7) consecutive days
18 and not more than four (4) work weeks of twenty-eight (28) consecutive days for
19 purposes of complying with the requirements of the Federal Labor Standards Act of
20 1938, as amended, 29 U.S.C. secs. 201 et seq. This subsection shall not exempt
21 local governments from complying with the overtime requirements set forth in
22 subsection (1) of this section and is intended to:
23 (a) Clarify the option to designate both a work week for compliance with
24 Kentucky law and a work period for compliance with the Fair Labor Standards
25 Act of 1938, as amended, 29 U.S.C. secs. 201 et seq.; and
26 (b) Allow for the application of the partial exemption set forth in 29 U.S.C. sec.
27 207(k) in determining overtime pay under the Fair Labor Standards Act of

1 1938, as amended, 29 U.S.C. secs. 201 et seq., only.

2 ***(13) (a) A law enforcement department of a consolidated local government***
3 ***organized under KRS Chapter 67C shall not be deemed to have violated***
4 ***subsection (1) of this section with respect to the employment of a peace***
5 ***officer if:***
6 ***1. The officer works eighty (80) hours or less in a work period of***
7 ***fourteen (14) consecutive days; and***
8 ***2. The law enforcement department and a representative of a collective***
9 ***bargaining unit certified under KRS 67C.408 that includes the officer***
10 ***agree to the exception.***
11 ***(b) It is the intent of this subsection to allow the employment of a peace officer***
12 ***for longer than forty (40) hours in any seven (7) consecutive days within a***
13 ***fourteen (14) day work period without incurring the obligation to pay a rate***
14 ***of not less than one and one-half (1-1/2) times the officer's hourly wage***
15 ***under subsection (1) of this section.***
16 ➔Section 2. Whereas work schedules for law enforcement are a matter of public
17 safety, an emergency is declared to exist, and this Act takes effect upon its passage and
18 approval by the Governor or upon its otherwise becoming a law.

Speaker-House of Representatives

President of Senate

Attest: Chief Clerk of House of Representatives

Approved Governor

Date 6 APRIL 2016