State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX -

PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Transfer Requested: 01/13/2005 (Per: GMM)

☞ The 2003 drafting file for LRB 03–4533

has been transferred to the drafting file for

2005 LRB 05–1620

☞ This cover sheet, the final request sheet, and the final version of the 2003 draft were copied on yellow paper, and returned to the original 2003 drafting file.

☞ The attached 2003 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2003 DRAFTING REQUEST

Bill

Received: **05/04/2004**

Received By: **gmalaise**

Wanted: **05/07/2004**

Identical to LRB:

For: **Glenn Grothman (608) 264-8486**

By/Representing: **Ron Sklansky, LC**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - minimum wage**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Grothman@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Companionshp services providers; overtime pay exception

Instructions:

See Attached--redraft SSA1 to SB 508 in support of Joint Committee for Review of Administrative Rules' suspension of DWD 274.035

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise 05/04/2004	kfollett 05/06/2004		_____ _____			State
/1			jfrantze 05/06/2004	_____ _____	lnorthro 05/06/2004		State

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/2	gmalaise 05/24/2004	csicilia 05/24/2004	jfrantze 05/24/2004	_____ _____	lnorthro 05/24/2004		

FE Sent For:

<END>

LRB-4533

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/1			jfrantze 05/06/2004	_____ _____	lnorthro 05/06/2004		

/2 gjs 5/24 5/24 5/24

FE Sent For:

<END>

LRB-4533

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May Contact:

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Pre Topic:

No specific pre topic given

Topic:

Companionshp services providers; overtime pay exception

Instructions:

See Attached--redraft SSA1 to SB 508 in support of Joint Committee for Review of Administrative Rules' suspension of DWD 274.035

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	gmalaise	1/ 5/6	5/6	5/6			

FE Sent For:

<END>

Malaise, Gordon

From: Sklansky, Ron
Sent: Friday, April 30, 2004 9:24 AM
To: Malaise, Gordon
Subject: FW: companionship services

Gordon:

Here is the motion that goes along with the drafting request I left with Bob this morning. Give me a call or stop up if you have any questions. Thanks.

Ron

-----Original Message-----
From: Vander Sanden, Patrick
Sent: Friday, April 30, 2004 9:10 AM
To: Sklansky, Ron; Delaporte, Maggie
Subject: RE: companionship services

Emergency Rule DWD 274.035 Relating to overtime pay for employees performing companionship services. Moved by Representative Grothman, seconded by Senator Lazich that, pursuant to s. 227.26(2)(d) & 227.19(4)(d) 1-3, Stats, the suspends Emergency Rule DWD 274.035 in it's entirety.
Ayes 6, Noes 4 **Motion Carried.**

-----Original Message-----
From: Sklansky, Ron
Sent: Friday, April 30, 2004 9:09 AM
To: Vander Sanden, Patrick; Delaporte, Maggie
Subject: companionship services

Patrick and Maggie:

I'm going to give drafting instructions to the LRB for a bill to sustain JCRAR's suspension of DWD's emergency rule. Could you send a copy of the motion to me? I'll forward it to the appropriate drafter. Thanks.

Ron

State of Wisconsin
Department of Workforce Development

EMERGENCY RULE

Overtime Pay for Employees Performing Companionship Services

Chapter DWD 274

The Wisconsin Department of Workforce Development orders the repeal and recreation of ss. DWD 274.015 and 274.03 and the creation of s. DWD 274.035, relating to overtime pay for employees performing companionship services.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

On January 21, 2004, pursuant to s. 227.26(2)(b), Stats., the Joint Committee for Review of Administrative Rules directed the Department of Workforce Development to promulgate an emergency rule regarding their overtime policy for nonmedical home care companion employees of an agency as part of DWD 274.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005, 103.02, and 227.11, Stats.
Statutes interpreted: Sections 103.01 and 103.02, Stats.

Section 103.02, Stats., provides that "no person may be employed or be permitted to work in any place of employment or at any employment for such period of time during any day, night or week, as is prejudicial to the person's life, health, safety or welfare." Section 103.01 (3), Stats., defines "place of employment" as "any manufactory, mechanical or mercantile establishment, beauty parlor, laundry, restaurant, confectionary store, or telegraph or telecommunications office or exchange, or any express or transportation establishment or any hotel."

Chapter DWD 274 governs hours of work and overtime. Section DWD 274.015, the applicability section of the chapter, incorporates the statutory definition of "place of employment" and limits coverage of the chapter to the places of employment delineated in s. 103.01 (3), Stats., and various governmental bodies. Section DWD 274.015 also

provides that the chapter does not apply to employees employed in domestic service in a household by a household.

Section 103.02, Stats., directs that the "department shall, by rule, classify such periods of time into periods to be paid for at the rate of at least one and one-half times the regular rates." Under s. DWD 274.03, "each employer subject to this chapter shall pay to each employee time and one-half the regular rate of pay for all hours worked in excess of 40 hours per week." Section DWD 274.04 lists 15 types of employees who are exempt from this general rule and s. DWD 274.08 provides that the section is inapplicable to public employees.

Nonmedical home care companion employees who are employed by a third-party, commercial agency are covered by the overtime provision in s. DWD 274.03. Section DWD 274.03 applies to all employees who are subject to the chapter and not exempt under ss. DWD 274.04 or 274.08. The chapter applies to companion employees of a commercial agency because under s. DWD 274.015 a commercial agency is considered a mercantile establishment. Section DWD 270.01 (5) defines a mercantile establishment as a commercial, for-profit business. The chapter does not apply to companion employees of a nonprofit agency or a private household. In addition, none of the exemptions to the overtime section in ss. DWD 274.04 or 274.08 apply to companion employees of a commercial agency.

The Joint Committee for the Review of Administrative Rules has directed DWD to promulgate an emergency rule regarding the overtime policy for nonmedical home care companion employees of an agency. This provision is created at s. DWD 274.035 to say that employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s. DWD 274.03. "Companionship services" is defined as those services which provide fellowship, care, and protection for a person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such services may include general household work and work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. The term "companionship services" does not include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

This order also repeals and recreates the applicability of the chapter section and the overtime section to write these rules in a clearer format. There is no substantive change in these sections.

SECTION 1. DWD 274.015 and 274.03 are repealed and recreated to read:

DWD 274.015 Applicability of chapter. (1) This chapter applies to employees who work in any of the following places of employment:

(a) Manufactories.

(b) Mechanical or mercantile establishments.

(c) Beauty parlors.

(d) Laundries.

(e) Restaurants.

(f) Confectionary stores.

(g) Telegraph or telephone offices or exchanges.

(h) Express or transportation establishments.

(i) Hotels.

(j) The state, its political subdivision and any office, department, independent agency, authority, institution, association, society, or other body in state or local government created or authorized to be created by the constitution or any law, including the legislature and the courts.

(2) This chapter does not apply to domestic service employees in a household who are employed by a household.

DWD 274.03 Overtime pay. Each employer shall pay to each employee time and one-half the regular rate of pay for all hours worked in excess of 40 hours per week, except any of the following:

(1) Employees who are not subject to this chapter pursuant to s. DWD 274.015.

(2) Employees who are exempt from this section under s. DWD 274.04.

(3) Public employees who are exempt from this section under s. DWD 274.08.

SECTION 2. DWD 274.035 and 274.035 (note) are created to read:

DWD 274.035 Companionship services. (1) Employees who are employed by a mercantile establishment to perform companionship services shall be subject to the overtime pay requirement in s. DWD 274.03.

(2) For the purpose of this section, "companionship services" means those services which provide fellowship, care, and protection for a person who because of advanced age, physical infirmity, or mental infirmity cannot care for his or her own needs. Such services may include general household work and work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. The term "companionship services" does not include services relating to the care and protection of the aged or infirm person that require and are performed by trained personnel, such as registered or practical nurses.

Note: This section was promulgated in response to a motion by the Joint Committee for Review of Administrative Rules under s. 227.26(2)(b), Stats. The overtime pay requirement in s. DWD 274.03 applies to all employees who are subject to this chapter under s. DWD 274.015 and not exempt under ss. DWD 274.04 or 274.08. The existence of this section should not be construed to affect the coverage of employees or occupations that are not specifically enumerated.

SECTION 3. EFFECTIVE DATE. This rule shall take effect upon publication as provided in s. 227.24 (1)(d), Stats.

2004 Session

LRB or Bill No./Adm. Rule No.
DWD 274

Amendment No. if Applicable

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

FISCAL ESTIMATE
DOA-2048 N(R03/97)

Subject
Overtime pay for employees performing companionship services

Fiscal Effect

State: ☒ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs - May be possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local: ☒ No local government costs

1. ☐ Increase Costs
   ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs
   ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues
   ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues
   ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected:
   ☐ Towns ☐ Villages ☐ Cities
   ☐ Counties ☐ Others _____
   ☐ School Districts ☐ WTCS Districts

Fund Sources Affected
☐ GPR ☐ FED ☐ PRO ☐PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The new rule section duplicates coverage of existing rules.

Long-Range Fiscal Implications
None

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
DWD/Elaine Pridgen 267-9403		

FISCAL ESTIMATE WORKSHEET

2004 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.	Amendment No.
DWD 274	

Subject
Overtime pay for employees performing companionship services

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

0

II. Annualized Costs:	**Annualized Fiscal impact on State funds from:**	
	Increased Costs	**Decreased Costs**
A. State Costs by Category State Operations - Salaries and Fringes	**$0**	**$0 -**
(FTE Position Changes)	0 (FTE)	0
State Operations - Other Costs	0	0 -
Local Assistance	0	0 -
Aids to Individuals or Organizations	0	0 -
TOTAL State Costs by Category	**$0**	**$**
B. State Costs by Source of Funds	**Increased Costs**	**Decreased Costs**
GPR	**$0**	**$0-**
FED	0	0
PRO/PRS	0	0 -
SEG/SEG-S	0	0 -
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	**Increased Rev.**	**Decreased Rev.**
GPR Taxes	**$**	**$ -**
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	**$0**	**$0-**

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	0	0
NET CHANGE IN REVENUES	$0	$0

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
DWD/ Elaine Pridgen 267-9403		

-4533/1

2003 – 2004 LEGISLATURE

LRB~~s0437/1~~
GMM:kjf:~~jf~~

This week
(In 5/4)

~~SENATE SUBSTITUTE AMENDMENT 1~~,

~~TO 2003 SENATE BILL 508~~

nonprofit agency or ~~to an employee employed by~~ a

~~March 8, 2004 – Offered by Senator COWLES~~.

a commercial for-profit,

Regen

. The DWD

, however, do not apply to

AN ACT ***to renumber*** 103.01 (1); ***to amend*** 103.02 and 103.025 (2); and ***to create*** 103.01 (1g) of the statutes; **relating to:** an overtime pay exemption for providers of companionship services.

Analysis by the Legislative Reference Bureau

Current law requires the Department of Workforce Development (DWD) to classify, by rule, hours worked by an employee into periods of time to be paid at the employee's regular rate of pay and periods of time to be paid at a rate that is at least 1.5 times the employee's regular rate of pay. Under that requirement, DWD has promulgated rules requiring ~~an~~ employer to pay an employee 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per week (overtime pay), ~~but has exempted from the~~ overtime pay rules an employee employed by a household to provide domestic service in the household.

Current federal law also requires employees to be paid overtime pay, but exempts from that requirement employees employed in domestic service employment to provide companionship services for individuals who, because of age or infirmity, are unable to care for themselves. Federal regulations define "companionship services" as services that provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs and include among those services household work relating to the care of an aged or infirm person such as meal preparation, bed making, clothes

bill

commercial, for-profit

washing, and other similar services and general household work that does not exceed 20 percent of the total weekly hours worked. Federal regulations, however, exclude from that definition services relating to the care and protection of the aged or infirm that require and are performed by a trained professional such as a registered nurse or a practical nurse.

This ~~substitute amendment~~ exempts employers of persons employed to perform companionship services from the requirement that those persons be paid overtime pay. The ~~substitute amendment~~ defines "companionship services" in the same manner as that term is defined under federal law.

Text A

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 103.01 (1) of the statutes is renumbered 103.01 (1r).

SECTION 2. 103.01 (1g) of the statutes is created to read:

103.01 **(1g)** "Companionship services" mean services that provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs, including household work relating to the care of that person such as meal preparation, bed making, clothes washing, and other similar services and including general household work that does not exceed 20 percent of the total weekly hours worked. "Companionship services" do not include services relating to the care and protection of a person who, because of age or physical or mental infirmity, cannot care for his or her own needs that require and are performed by a trained professional such as a registered nurse or a licensed practical nurse.

SECTION 3. 103.02 of the statutes is amended to read:

103.02 Hours of labor. No person may be employed or ~~be~~ permitted to work in any place of employment or at any employment for ~~such~~ any period of time during any day, night, or week~~, as~~ that is dangerous or prejudicial to the person's life, health, safety, or welfare. The department shall investigate, ascertain, determine, and fix

~~such~~ reasonable ~~classification~~ classifications, and promulgate rules fixing a period of time, or hours of beginning and ending work during any day, night, or week, ~~which shall be~~ as are necessary to protect the life, health, safety, or welfare of any person~~,~~ or to carry out the purposes of ss. 103.01 to 103.03. The department shall, by rule, classify ~~such~~ those periods of time into periods to be paid for at regular rates and periods to be paid for at the rate of at least ~~one and one-half~~ 1.5 times the regular rates~~. Such~~, except that no employer of a person employed to perform companionship services may be required to pay that person at the rate of at least 1.5 times the person's regular rate for any overtime hours worked. Those investigations, classifications, and orders shall be made as provided in s. 103.005, and the penalties under s. 103.005 (12) shall apply to and be imposed for any violation of ss. 103.01 to 103.03. ~~Such~~ Those orders shall be subject to review in the manner provided in ch. 227. Section 111.322 (2m) applies to discharge or other discriminatory acts arising in connection with any proceeding under this section.

SECTION 4. 103.025 (2) of the statutes is amended to read:

103.025 **(2)** An employer described in s. 103.01 ~~(1)~~ (1r) (b) may provide an employee, in lieu of overtime compensation, compensatory time off as permitted under 29 USC 207 (o), as amended to April 15, 1986.

SECTION 5. Initial applicability.

(1) OVERTIME PAY EXEMPTION FOR COMPANIONSHIP SERVICES PROVIDERS. This act first applies to an employee who is affected by a collective bargaining agreement that contains provisions that are inconsistent with this act on the day on which the agreement expires or is extended, modified, or renewed, whichever occurs first.

(END)

D-Note

2003–2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

C-MM LRB 4533/1

(INSERT A)

Read

repeal

This bill is introduced as required by s. 227.26 (2) (f), stats., in support of the action of the Joint Committee for Review of Administrative Rules in suspending section DWD 274.035, Wis. Adm. Code, an emergency rule of DWD, on April 28, 2004. The suspended rule provided that employees who are employed by a commercial, for–profit business to provide companionship services are subject to the overtime pay requirement.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

(END OF INSERT)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4533/1dn
GMM..

Date

Representative Grothman:

Because the document that the legislature actually adopted relating to companionship services providers was SSA1 to SB-508, rather than SB-508 itself, this draft is a redraft of SSA 1 to SB-508.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266–9738
E–mail: gordon.malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4533/1dn
GMM:kjf:jf

May 6, 2004

Representative Grothman:

Because the document that the legislature actually adopted relating to companionship services providers was SSA 1 to SB–508, rather than SB–508 itself, this draft is a redraft of SSA 1 to SB–508.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266–9738
E–mail: gordon.malaise@legis.state.wi.us

Malaise, Gordon

From: Hein, Tanya
Sent: Thursday, May 20, 2004 3:54 PM
To: Malaise, Gordon
Subject: companionship services

Gordon -

Below is the language (from your amendments) that I forwarded to Maggie in Rep. Grothman's office. She will discuss it with Glenn and see if JCRAR wants to make any changes, and then she will get in touch with you. I wanted to let you know that this is the starting point. As I referenced on the phone -- the language does not include a reporting requirement nor a disccussion of transportation.

Tanya

103.027 Hours of labor; companionship services. (1) In this section:

(a) "Care" means intimate personal care services provided to a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs, such as feeding the person or assisting the person with bathing, dressing, grooming, or toileting.

(b) "Companionship services" means services that provide fellowship and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. "Companionship services" does not include services relating to the care and protection of a person who, because of age or physical or mental infirmity, cannot care for his or her own needs that require and are performed by a trained individual, regardless of whether the trained individual is a registered nurse or a licensed practical nurse, such as catheter and ostomy care, injections, and tube feeding.

(c) "Household work" means household work that is directly related to the care of a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs, such as preparing the person's meals, making the person's bed, washing the person's clothes, and other similar services that are directly related to the care of the person.

(d) "Protection" means being present in the home of a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs to ensure the safety and well-being of the person.

(2) An employer is not required to pay overtime compensation, as defined in s. 103.025 (1) (c), to an individual engaged in providing companionship services if all of the following conditions are met:

(a) Fellowship and protection are the sole core duties of the individual, and the individual spends not less that 80 percent of his or her total weekly hours worked exclusively providing fellowship and protection.

(b) The individual spends no more than 20 percent of his or her total weekly

hours worked providing care and household work.

Tanya R. Hein
Legislative Aide
~~~~~~~~~~~~~~~~~~~~~~~~
State Representative Karl Van Roy
8 West, State Capitol
P.O. Box 8953
Madison, WI 53708
Tel: 608-266-0616
Fax: 608-282-3690
~~~~~~~~~~~~~~~~~~~~~~~~

State of Wisconsin
2003 – 2004 LEGISLATURE

LRB–4533/1
GMM:kjf:jf

Today!
Mon 5/24

& CS

2003 BILL

SA ✓
x-ref ✓

Regenerate

AN ACT *to renumber* 103.01 (1); *to amend* 103.02 and 103.025 (2); and *to create* 103.01 (1g) of the statutes; **relating to:** an overtime pay exemption for providers of companionship services.

Analysis by the Legislative Reference Bureau

Current law requires the Department of Workforce Development (DWD) to classify, by rule, hours worked by an employee into periods of time to be paid at the employee's regular rate of pay and periods of time to be paid at a rate that is at least 1.5 times the employee's regular rate of pay. Under that requirement, DWD has promulgated rules requiring a commercial, for–profit employer to pay an employee 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per week (overtime pay). The DWD overtime pay rules, however, do not apply to an employee employed by a nonprofit agency or a household to provide domestic service in the household.

Current federal law also requires employees to be paid overtime pay, but exempts from that requirement employees employed in domestic service employment to provide companionship services for individuals who, because of age or infirmity, are unable to care for themselves. Federal regulations define "companionship services" as services that provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs and include among those services household work relating to the care of an aged or infirm person such as meal preparation, bed making, clothes washing, and other similar services and general household work that does not exceed

20 percent of the total weekly hours worked. Federal regulations, however, exclude from that definition services relating to the care and protection of the aged or infirm that require and are performed by a trained professional such as a registered nurse or a practical nurse.

This bill exempts commercial, for–profit employers of persons employed to perform companionship services from the requirement that those persons be paid overtime pay. The bill defines "companionship services" in the same manner as that term is defined under federal law.

INSERT A

This bill is introduced as required by s. 227.26 (2) (f), stats., in support of the action of the Joint Committee for Review of Administrative Rules in suspending section DWD 274.035, Wis. Adm. Code, an emergency rule of DWD, on April 28, 2004. The suspended rule provided that employees who are employed by a commercial, for–profit business to provide companionship services are subject to the overtime pay requirement.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 103.01 (1) of the statutes is renumbered 103.01 (1r).

2 **SECTION 2.** 103.01 (1g) of the statutes is created to read:

3 103.01 **(1g)** "Companionship services" mean services that provide fellowship,
4 care, and protection for a person who, because of advanced age or physical or mental
5 infirmity, cannot care for his or her own needs, including household work relating to
6 the care of that person such as meal preparation, bed making, clothes washing, and
7 other similar services and including general household work that does not exceed 20
8 percent of the total weekly hours worked. "Companionship services" do not include
9 services relating to the care and protection of a person who, because of age or physical
10 or mental infirmity, cannot care for his or her own needs that require and are
11 performed by a trained professional such as a registered nurse or a licensed practical
12 nurse.

13 **SECTION 3.** 103.02 of the statutes is amended to read:

1 **103.02 Hours of labor.** ~~No person may be employed or be permitted to work~~
2 in any place of employment or at any employment for ~~such~~ any period of time during
3 any day, night, or week~~, as~~ that is dangerous or prejudicial to the person's life, health,
4 safety, or welfare. The department shall investigate, ascertain, determine, and fix
5 ~~such~~ reasonable ~~classification~~ classifications, and promulgate rules fixing a period
6 of time, or hours of beginning and ending work during any day, night, or week, ~~which~~
7 ~~shall be~~ as are necessary to protect the life, health, safety, or welfare of any person~~,~~
8 or to carry out the purposes of ss. 103.01 to 103.03. The department shall, by rule,
9 classify ~~such~~ those periods of time into periods to be paid for at regular rates and
10 periods to be paid for at the rate of at least ~~one and one–half~~ 1.5 times the regular
11 rates~~. Such~~, except that no employer of a person employed to perform companionship
12 services may be required to pay that person at the rate of at least 1.5 times the
13 person's regular rate for any overtime hours worked. Those investigations,
14 classifications, and orders shall be made as provided in s. 103.005, and the penalties
15 under s. 103.005 (12) shall apply to and be imposed for any violation of ss. 103.01 to
16 103.03. ~~Such~~ Those orders shall be subject to review in the manner provided in ch.
17 227. Section 111.322 (2m) applies to discharge or other discriminatory acts arising
18 in connection with any proceeding under this section.

19 **SECTION 4.** 103.025 (2) of the statutes is amended to read:

20 103.025 **(2)** An employer described in s. 103.01 ~~(1)~~ (1r) (b) may provide an
21 employee, in lieu of overtime compensation, compensatory ~~time off as permitted~~
22 under 29 USC 207 (o), as amended ~~to April~~ 15, 1986.

23 **SECTION 5. Initial applicability.**

24 (1) OVERTIME PAY EXEMPTION FOR COMPANIONSHIP SERVICES PROVIDERS. This act
25 first applies to an employee who is affected by a collective bargaining agreement that

Insert 3-22

1 contains provisions that are inconsistent with this act on the day on which the
2 agreement expires or is extended, modified, or renewed, whichever occurs first.
3 **(END)**

~~2003 – 2004~~ LEGISLATURE

LRBa2867/1
GMM:wlj:jf

Insert 3-22

SENATE AMENDMENT 2,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 508

~~March 10, 2004 – Offered by Senator CARPENTER.~~

LPS: Thaw frozen section numbers bill

~~At the locations indicated, amend the substitute amendment as follows:~~

1. Page 1, line 3: after "services" insert "and granting rule-making authority".

2. Page 2, line 1: delete lines 1 to 10.

3. ~~Page 3, line 1: delete lines 1 to 18 and substitute:~~

"SECTION 4m. 103.027 of the statutes is created to read:

103.027 Hours of labor; companionship services. (1) In this section:

(a) "Care" means intimate personal care services provided to a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs, such as feeding the person or assisting the person with bathing, dressing, grooming, or toileting.

(b) "Companionship services" means services that provide fellowship and protection for a person who, because of advanced age or physical or mental infirmity,

cannot care for his or her own needs. "Companionship services" does not include services relating to the care and protection of a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs that require and are performed by a trained individual, regardless of whether the trained individual is a registered nurse or a licensed practical nurse, such as catheter and ostomy care, injections, and tube feeding.

(c) "Household work" means household work that is directly related to the care of a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs, such as preparing the person's meals, making the person's bed, washing the person's clothes, and other similar services that are directly related to the care of the person.

(d) "Protection" means being present in the home of a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs to ensure the safety and well–being of the person.

(2) An employer is not required to pay overtime compensation, as defined in s. 103.025 (1) (c), to an individual engaged in providing companionship services if all of the following conditions are met:

(a) Fellowship and protection are the sole core duties of the individual, and the individual spends not less ~~that~~ than 80 percent of his or her total weekly hours worked exclusively providing fellowship and protection.

(b) The individual spends no more than 20 percent of his or her total weekly hours worked providing care and household work.

~~**(3)** The department shall promulgate rules requiring employers that employ individuals to provide companionship services to report information to the department as necessary for the department to enforce this section and may conduct~~

1 periodic compliance audits of those employers. Those rules shall require an
2 employer that hires an individual to provide any amount of companionship services
3 to notify the department within 30 days after the individual is hired and shall require
4 an employer that employs an individual to provide companionship services to keep
5 a weekly time log that provides a detailed accounting of the individual's tasks as
6 verified by the person for whom the companionship services are provided, the
7 employer, and a 3rd party that may not be the individual that provides the
8 companionship services but that may be a deputy of the department.".
9 (END)

(end of insert)

2003–2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

(INSERT A)

This bill exempts a commercial, for–profit employer of an individual engaged in providing companionship services from the requirement that the individual be paid overtime pay ~~of~~ if all of the following conditions are met:

1. Fellowship and protection are the sole core duties of the individual, and the individual spends not less than 80 percent of his or her total weekly hours worked exclusively providing fellowship and protection.

2. The individual spends no more than 20 percent of his or her total weekly hours worked providing care and household work.

The bill defines "companionship services" as services that provide fellowship and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs, but excludes from that definition services that require and are performed by a trained individual, such as catheter and ostomy care, injections, and tube feeding. The bill also defines "protection" as being present in the home of the person to ensure his or her safety and well–being; " care" as intimate personal care services such as feeding the person or assisting the person with bathing, dressing, grooming, or toileting; and "household work" as household work that is directly related to the care of a person, such as preparing the person's meals, making the person's bed, washing the person's clothes, and other similar services that are directly related to the care of the person.

(END OF INSERT)

2003 BILL

1 AN ACT *to create* 103.027 of the statutes; **relating to:** an overtime pay
2 exemption for providers of companionship services.

Analysis by the Legislative Reference Bureau

Current law requires the Department of Workforce Development (DWD) to classify, by rule, hours worked by an employee into periods of time to be paid at the employee's regular rate of pay and periods of time to be paid at a rate that is at least 1.5 times the employee's regular rate of pay. Under that requirement, DWD has promulgated rules requiring a commercial, for–profit employer to pay an employee 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per week (overtime pay). The DWD overtime pay rules, however, do not apply to an employee employed by a nonprofit agency or a household to provide domestic service in the household.

This bill exempts a commercial, for–profit employer of an individual engaged in providing companionship services from the requirement that the individual be paid overtime pay if all of the following conditions are met:

1. Fellowship and protection are the sole core duties of the individual, and the individual spends not less than 80 percent of his or her total weekly hours worked exclusively providing fellowship and protection.

2. The individual spends no more than 20 percent of his or her total weekly hours worked providing care and household work.

The bill defines "companionship services" as services that provide fellowship and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs, but excludes from that definition

services that require and are performed by a trained individual, such as catheter and ostomy care, injections, and tube feeding. The bill also defines "protection" as being present in the home of the person to ensure his or her safety and well–being; " care" as intimate personal care services such as feeding the person or assisting the person with bathing, dressing, grooming, or toileting; and "household work" as household work that is directly related to the care of a person, such as preparing the person's meals, making the person's bed, washing the person's clothes, and other similar services that are directly related to the care of the person.

This bill is introduced as required by s. 227.26 (2) (f), stats., in support of the action of the Joint Committee for Review of Administrative Rules in suspending section DWD 274.035, Wis. Adm. Code, an emergency rule of DWD, on April 28, 2004. The suspended rule provided that employees who are employed by a commercial, for–profit business to provide companionship services are subject to the overtime pay requirement.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 103.027 of the statutes is created to read:

2 **103.027 Hours of labor; companionship services. (1)** In this section:

3 (a) "Care" means intimate personal care services provided to a person who,
4 because of advanced age or physical or mental infirmity, cannot care for his or her
5 own needs, such as feeding the person or assisting the person with bathing, dressing,
6 grooming, or toileting.

7 (b) "Companionship services" means services that provide fellowship and
8 protection for a person who, because of advanced age or physical or mental infirmity,
9 cannot care for his or her own needs. "Companionship services" does not include
10 services relating to the care and protection of a person who, because of advanced age
11 or physical or mental infirmity, cannot care for his or her own needs that require and
12 are performed by a trained individual, regardless of whether the trained individual

is a registered nurse or a licensed practical nurse, such as catheter and ostomy care, injections, and tube feeding.

(c) "Household work" means household work that is directly related to the care of a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs, such as preparing the person's meals, making the person's bed, washing the person's clothes, and other similar services that are directly related to the care of the person.

(d) "Protection" means being present in the home of a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs to ensure the safety and well–being of the person.

(2) An employer is not required to pay overtime compensation, as defined in s. 103.025 (1) (c), to an individual engaged in providing companionship services if all of the following conditions are met:

(a) Fellowship and protection are the sole core duties of the individual, and the individual spends not less than 80 percent of his or her total weekly hours worked exclusively providing fellowship and protection.

(b) The individual spends no more than 20 percent of his or her total weekly hours worked providing care and household work.

SECTION 2. Initial applicability.

(1) OVERTIME PAY EXEMPTION FOR COMPANIONSHIP SERVICES PROVIDERS. This act first applies to an employee who is affected by a collective bargaining agreement that contains provisions that are inconsistent with this act on the day on which the agreement expires or is extended, modified, or renewed, whichever occurs first.

(END)