



2005 ASSEMBLY BILL 11

January 18, 2005 – Introduced by JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES. Referred to Committee on Labor.

- 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

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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

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

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

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

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

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

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

19 **SECTION 2. Initial applicability.**

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

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(END)