



2013 SENATE BILL 651

February 28, 2014 - Introduced by Senator GROTHMAN, cosponsored by Representative KNODL. Referred to Committee on Judiciary and Labor.

1 **AN ACT to renumber and amend** 103.02; **to amend** 103.03; and **to create**
2 103.02 (3) and 103.023 of the statutes; **relating to:** the exemption of
3 companionship services providers from the overtime pay requirements of the
4 wage and hours laws and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Current law requires the Department of Workforce Development (DWD), to promulgate rules requiring employers to pay employees 1.5 times their regular rates of pay for all hours worked in excess of 40 hours per week (overtime pay).

Similarly, the federal Fair Labor Standards Act (FLSA) requires employees to pay employees overtime pay, but regulations promulgated under the FLSA exempt from the overtime pay requirement employees who are employed to 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 who spend less than 20 percent of their total weekly hours worked on general household work (companionship services providers).

This bill requires DWD to promulgate rules exempting companionship services providers from state overtime pay requirements in the same manner as those providers are exempt from those requirements under the FLSA.

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

SENATE BILL 651**SECTION 1**

1 **SECTION 1.** 103.02 of the statutes is renumbered 103.02 (1) and amended to
2 read:

3 103.02 (1) No person may be employed or be permitted to work in any place of
4 employment or at any employment for such any period of time during any day, night,
5 or week, ~~as~~ that is dangerous or prejudicial to the person's life, health, safety, or
6 welfare.

7 (2) The department shall investigate, ascertain, determine, and fix such
8 reasonable ~~classification, classifications, issue general or special orders,~~ and
9 promulgate rules fixing a period of time, or hours of beginning and ending work
10 during any day, night, or week, ~~which shall~~ that may be necessary to protect the life,
11 health, safety, or welfare of any person, or to carry out the purposes of ss. 103.01 to
12 103.03. The department shall, by rule, classify such periods of time into periods to
13 be paid for at regular rates and periods to be paid for at the rate of at least ~~one and~~
14 ~~one-half~~ 1.5 times the regular rates. Such investigations, classifications, rules, and
15 orders shall be made as provided in s. 103.005 ~~and the penalties under s. 103.005 (12)~~
16 ~~shall apply to and be imposed for any violation of ss. 103.01 to 103.03.~~ Such orders
17 shall be subject to review in the manner provided in ch. 227. ~~Section 111.322 (2m)~~
18 ~~applies to discharge or other discriminatory acts arising in connection with any~~
19 ~~proceeding under this section.~~

20 **SECTION 2.** 103.02 (3) of the statutes is created to read:

21 103.02 (3) The employment of any person in any employment or place of
22 employment at any time other than the permissible hours of labor under this section
23 shall be prima facie evidence of a violation of this section.

24 **SECTION 3.** 103.023 of the statutes is created to read:

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1 **103.023 Hours of labor; companionship providers. (1) DEFINITIONS.** In
2 this section:

3 (a) “Companionship services” mean those services, including household work,
4 that provide fellowship, care, and protection for a person who, because of advanced
5 age or physical or mental infirmity, cannot care for his or her own needs.
6 “Companionship services” do not include services that are performed by trained
7 personnel, such as a registered nurse or a licensed practical nurse.

8 (b) “Household work” includes all of the following:

9 1. Household work related to the care of a person who, because of advanced age
10 or physical or mental infirmity, cannot care for his or her own needs, including meal
11 preparation, bed making, clothes washing and the provision of other similar services.

12 2. General household work not described in subd. 1.

13 **(2) EXEMPTION.** In promulgating rules under s. 103.02 (2) classifying periods
14 of time into periods to be paid for at regular rates and periods to be paid for at a rate
15 of at least 1.5 times the regular rates, the department shall exempt from the
16 application of those rules employees who are employed to provide companionship
17 services and who spend less than 20 percent of their total weekly hours worked on
18 general household work.

19 **SECTION 4.** 103.03 of the statutes is amended to read:

20 **103.03 Violations; penalty.** ~~The employment of any person in any~~
21 ~~employment or place of employment at any time other than the permissible hours of~~
22 ~~labor shall be prima facie evidence of a violation of this section. Any employer that~~
23 ~~violates s. 103.02 or 103.023 is subject to the penalties under s. 103.005 (12).~~ Every
24 day for each person employed, and every week for each person employed, during
25 which any employer fails to observe or to comply with any order of the department,

SENATE BILL 651**SECTION 4**

1 or to perform any duty enjoined by ~~ss. 103.01 to 103.03~~ required by s. 103.02 or
2 103.023, shall constitute a separate offense. Section 111.322 (2m) applies to
3 discharge or other discriminatory acts arising in connection with any proceeding
4 under s. 103.02 or 103.023.

5 **SECTION 5. Initial applicability.**

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

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(END)