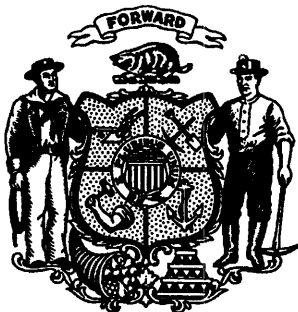


State of Wisconsin



2003 Senate Bill 508

Date of enactment:
Date of publication*:

2003 WISCONSIN ACT

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.

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~~ any period of time during any day, night, or week, as ~~that~~ 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

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

2003 Wisconsin Act

2003 Senate Bill 508

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.

SENATE BILL 508 (LRB -4384)

An Act to renumber 103.01 (1); to amend 103.01 (2) and 103.025 (2); and to create 103.01 (1g) and 104.01 (2) (b) 5. of the statutes; relating to: minimum wage and overtime pay exemptions for providers of companionship services. (FE)

2004

- 03-02. S. Introduced by Senators **Cowles, Ellis, A. Lasee, Roessler, Darling and Lazich**; cosponsored by Representatives **Van Roy, Krawczyk, Grothman, Gunderson, Hines, Gronemus, Montgomery, McCormick, Weber, Gielow, Hahn, Wieckert, Vukmir, Seratti, M. Williams, Ladwig, Jeskewitz, Ott, Suder and Nischke**.
- 02-27. S. Read first time and referred to committee on Health, Children, Families, Aging and Long Term Care 644
- 03-02. S. Public hearing held.
- 03-03. S. Fiscal estimate received.
- 03-05. S. Senate amendment 1 offered by Senator Cowles (**LRB a2505**).
- 03-08. S. Senate substitute amendment 1 offered by Senator Cowles (**LRB s0437**).
- 03-08. S. Executive action taken.
- 03-08. S. Report adoption of Senate Substitute Amendment 1 recommended by committee on Health, Children, Families, Aging and Long Term Care, Ayes 7, Noes 2.
- 03-08. S. Report passage as amended recommended by committee on Health, Children, Families, Aging and Long Term Care, Ayes 5, Noes 4.
- 03-08. S. Available for scheduling.
- 03-09. S. Placed on calendar 3-10-2004 by committee on Senate Organization.
- 03-10. S. Read a second time 704
- 03-10. S. Senate amendment 2 offered by Senators Carpenter, Robson, Erpenbach, Wirch, Hansen, Moore, M. Meyer, Coggins and Lassa (**LRB a2513**) 704
- 03-10. S. Senate amendment 1 to Senate substitute amendment 1 offered by Senator Carpenter (**LRB a2866**) 704
- 03-10. S. Senate amendment 1 to Senate substitute amendment 1 rejected, Ayes 19, Noes 13 705
- 03-10. S. Senate amendment 2 to Senate substitute amendment 1 offered by Senator Carpenter (**LRB a2867**) 705
- 03-10. S. Senate amendment 2 to Senate substitute amendment 1 rejected, Ayes 19, Noes 14 705
- 03-10. S. Refused to refer to committee on Health, Children, Families, Aging and Long Term Care, Ayes 14, Noes 19 705
- 03-10. S. Senate substitute amendment 1 **adopted** 705
- 03-10. S. Ordered to a third reading 705
- 03-10. S. Rules suspended 705
- 03-10. S. Read a third time and **passed**, Ayes 20, Noes 13 705
- 03-10. S. Ordered immediately messaged 705
- 03-11. A. Received from Senate.
- 03-11. A. Read first time.
- 03-11. A. Rules suspended and taken up.
- 03-11. A. Read a second time.
- 03-11. A. Assembly amendment 1 offered by Representative Krusick (**LRB a2864**).
- 03-11. A. Laid on the table.
- 03-11. A. Taken from the table.
- 03-11. A. Assembly amendment 1 laid on table, Ayes 60, Noes 39.
- 03-11. A. Ordered to a third reading.
- 03-11. A. Rules suspended.
- 03-11. A. Read a third time and **concurred in**, Ayes 59, Noes 40.
- 03-11. A. Ordered immediately messaged.
- 03-11. S. Received from Assembly concurred in.

**2003
ENROLLED BILL**

03en SB-508

ADOPTED DOCUMENTS:

Orig Engr

3 SubAmdt L

03 S 0437 1

Amendments to above (if none, write "NONE"):

None

Corrections - show date (if none, write "NONE"):

None

Topic

relax

3/12/04
Date

[Signature]
Enrolling Drafter

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

March 8, 2004 - Offered by Senator COWLES.

1 **AN ACT** *to renumber* 103.01 (1); *to amend* 103.02 and 103.025 (2); and *to create*
2 103.01 (1g) of the statutes; **relating to:** an overtime pay exemption for
3 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

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.

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:

14 **103.02 Hours of labor.** No person may be employed or be permitted to work
15 in any place of employment or at any employment for such any period of time during
16 any day, night, or week, as that is dangerous or prejudicial to the person’s life, health,
17 safety, or welfare. The department shall investigate, ascertain, determine, and fix

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

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

16 103.025 (2) An employer described in s. 103.01 ~~(1)~~ (1r) (b) may provide an
17 employee, in lieu of overtime compensation, compensatory time off as permitted
18 under 29 USC 207 (o), as amended to April 15, 1986.

19 **SECTION 5. 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.

24 (END)