

2003 SENATE BILL 508

February 27, 2004 – 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. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

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

Analysis by the Legislative Reference Bureau

Current law requires the Department of Workforce Development (DWD) to fix reasonable classifications and to impose general or special orders determining a living wage that employers are required to pay to their employees. Under that requirement, DWD has provided, by rule, minimum hourly wages for various classes of employees, but has exempted from the minimum wage rules an employee who resides in his or her employer's household for the purpose of providing companionship services for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs and who spends less than 15 hours per week on general household work.

Current law also requires 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 a minimum wage and to be paid overtime pay, but exempts from those requirements employees employed

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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 adopts the federal definition of “companionship services,” thereby exempting persons who provide companionship services from the state minimum wage and overtime pay laws in the same manner as those persons who are exempt from the federal minimum wage and overtime pay laws. As such, under the bill, a person who provides companionship services is exempt from the state minimum wage and overtime pay laws regardless of whether the person resides in the employer’s household and regardless of whether the person is employed by the household or by a third-party employer. Under the bill, that exemption applies retroactively to January 1, 2001.

For further information see the *state and local* 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

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1 performed by a trained professional such as a registered nurse or a licensed practical
2 nurse.

3 **SECTION 3.** 103.01 (2) of the statutes is amended to read:

4 103.01 (2) “Employment” means any trade, occupation or process of
5 manufacture, or any method of carrying on such trade or occupation in which any
6 person may be engaged, or for any place of employment. “Employment” does not
7 include companionship services.

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

9 103.025 (2) An employer described in s. 103.01 ~~(4)~~ (1r) (b) may provide an
10 employee, in lieu of overtime compensation, compensatory time off as permitted
11 under 29 USC 207 (o), as amended to April 15, 1986.

12 **SECTION 5.** 104.01 (2) (b) 5. of the statutes is created to read:

13 104.01 (2) (b) 5. Any individual engaged in companionship services, as defined
14 in s. 103.01 (1g).

15 **SECTION 6. Initial applicability.**

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

21 **SECTION 7. Effective date.**

22 (1) MINIMUM WAGE AND OVERTIME PAY EXEMPTION FOR COMPANIONSHIP SERVICES
23 PROVIDERS. This act takes effect retroactively to January 1, 2001.

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(END)