

2003 DRAFTING REQUEST

Senate Amendment (SA-SB508)

Received: **03/02/2004**

Received By: **gmalaise**

Wanted: **Today**

Identical to LRB:

For: **Robert Cowles (608) 266-0484**

By/Representing: **Jay Schulze**

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: **Sen.Cowles@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Overtime pay exemption for companionship care providers; delete minimum wage exemption; prohibit retroactive recovery of overpayments

Instructions:

1. Take out exemption from minimum wage law.
2. Prohibit employer from recovering any overtime pay paid for work performed before publication of act.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 03/02/2004	wjackson 03/02/2004		_____			
/1			jfrantze 03/02/2004	_____	mbarman 03/02/2004	mbarman 03/02/2004	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	gmalaise 03/04/2004	kfollett 03/05/2004	jfrantze 03/05/2004	_____	Inorthro 03/05/2004	Inorthro 03/05/2004	

FE Sent For:

<END>

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2. Prohibit employer from recovering any overtime pay paid for work performed before publication of act.

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/?	gmalaise 03/02/2004	wjackson 03/02/2004		_____			
/1		12 kjf 3/5	jfrantze 03/02/2004	_____	mbarman 03/02/2004	mbarman 03/02/2004	

(Handwritten signatures and dates are present in the Drafting History table, including a large signature over the 'Typed' column for the second row.)

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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/?	gmalaise	1 wj 3/2		Selb			

FE Sent For:

<END>



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBa2505/7
.....
GMM:WJ:

Today! 3/2
DRAFT

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE AMENDMENT,
TO 2003 SENATE BILL 508

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 1, line 2: delete "minimum".

3 ✓ 2. Page 1, line 3: delete that line and substitute ^g "an overtime pay exemption
4 for providers of companionship services."

5 ✓ 3. Page 3, line 12: delete lines 12 to 14 and substitute:

6 "SECTION 5m. Nonstatutory provisions.

7 (1) RETROACTIVE RECOVERY OF OVERTIME OVERPAYMENTS PROHIBITED.

8 Notwithstanding section 103.01 (1g) of the statutes, as created by this act, section

9 103.01 (2) of the statutes, as affected by this act, and ~~SECTION~~ ⁽⁵⁾ 7 of this act, an

10 employer may not recover from a person employed in the provision of companionship

11 services, as defined in section 103.01 (1g) of the statutes, as created by this act, any

1 overtime compensation, as defined in section 103.025 (1) (c) of the statutes, paid to
2 that person for work performed before the date of publication of this act.”

3 **4.** Page 3, line 22: delete “MINIMUM WAGE AND OVERTIME” and substitute
4 “OVERTIME”.

5 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa2505/1dn

GMM.....

WLj

Senator Cowles:

This amendment does all of the following:

1. Removes the exemption of providers of companionship services from the minimum wage law. As such, the bill, as affected by the amendment, will only exempt those providers from the overtime pay law.
2. Provides that , notwithstanding the retroactive effective date of the bill, an employer may not recover overtime pay paid to a companionship services provider for work performed before the date of publication of the bill.

At the meeting this morning, a concern was raised that the bill might impair collective bargaining agreements that provide for overtime pay, and so we discussed removing from the bill the initial applicability provision, which states that the bill first applies to a collective bargaining agreement that contains provisions that are inconsistent with the bill when the agreement expires or is extended, modified, or renewed. On further review, however, it is precisely this language that protects existing collective bargaining agreements from impairment by the bill. Accordingly, this amendment does not remove the initial applicability provision from the bill.

As for future collective bargaining agreements, the bill does not prevent an employer from voluntarily agreeing to provide overtime pay; rather, the bill merely removes the mandate that an employer provide that pay. A good analogy is the minimum wage law, which sets the floor below which an employee may not be paid, but which does not prevent an employer from agreeing to pay an employee more than the minimum wage.

If you have any questions about the amendment or this drafter's note, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

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

LRBa2505/1dn
GMM:wlj:jf

March 2, 2004

Senator Cowles:

This amendment does all of the following:

1. Removes the exemption of providers of companionship services from the minimum wage law. As such, the bill, as affected by the amendment, will only exempt those providers from the overtime pay law.
2. Provides that , notwithstanding the retroactive effective date of the bill, an employer may not recover overtime pay paid to a companionship services provider for work performed before the date of publication of the bill.

At the meeting this morning, a concern was raised that the bill might impair collective bargaining agreements that provide for overtime pay, and so we discussed removing from the bill the initial applicability provision, which states that the bill first applies to a collective bargaining agreement that contains provisions that are inconsistent with the bill when the agreement expires or is extended, modified, or renewed. On further review, however, it is precisely this language that protects existing collective bargaining agreements from impairment by the bill. Accordingly, this amendment does not remove the initial applicability provision from the bill.

As for future collective bargaining agreements, the bill does not prevent an employer from voluntarily agreeing to provide overtime pay; rather, the bill merely removes the mandate that an employer provide that pay. A good analogy is the minimum wage law, which sets the floor below which an employee may not be paid, but which does not prevent an employer from agreeing to pay an employee more than the minimum wage.

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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, March 04, 2004 4:38 PM
To: Malaise, Gordon
Subject: draft

Please draft an Assembly amendment and a senate amendment as we discussed:

- 1) removes minimum wage language
- 2) removes retroactivity
- 3) contains a drafter's note (as you already wrote) explaining the collective bargaining stuff.

We need them as soon as is possible. Tomorrow before noon would be great. Thanks!

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

Fri 3/3 Noon  
DNOTE

LRBa2505/1  
GMM:wlj:jt

2  
RJR  
EJK

SENATE AMENDMENT,  
TO 2003 SENATE BILL 508

1 At the locations indicated, amend the bill as follows:

2 1. Page 1, line 2: delete "minimum".

3 2. Page 1, line 3: delete that line and substitute "an overtime pay exemption  
4 for providers of companionship services."

Change  
companionship

5 3. Page 3, line 12: delete lines 12 to 14 and substitute: ①

6 ~~SECTION 5m. Nonstatutory provisions.~~  
7 (1) RETROACTIVE RECOVERY OF OVERTIME OVERPAYMENTS PROHIBITED.  
8 Notwithstanding section 103.01 (1g) of the statutes, as created by this act, section  
9 103.01 (2) of the statutes, as affected by this act, and SECTION 7 of this act, an  
10 employer may not recover from a person employed in the provision of companionship  
11 services, as defined in section 103.01 (1g) of the statutes, as created by this act, any  
12 overtime compensation, as defined in section 103.025 (1) (c) of the statutes, paid to  
13 that person for work performed before the date of publication of this act."

16

1  
2  
3  
4. Page 3, line ~~22~~: delete "MINIMUM WAGE AND OVERTIME" and substitute "OVERTIME".

(END)

# Page 3, line 21: delete lines 21 to 23.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBa2505/1dn  
GMM:wlj:jf

March 2, 2004

②  
E. G. J.

Senator Cowles:

This amendment does all of the following:

1. Removes the exemption of providers of companionship services from the minimum wage law. As such, the bill, as affected by the amendment, will only exempt those providers from the overtime pay law. (Remove)
2. Provides that, notwithstanding the retroactive effective date of the bill, <sup>(will be liable for)</sup> an employer <sup>(As such)</sup> may not recover overtime pay paid to a companionship services provider for work performed before the date of publication of the bill.

At the meeting this morning, a concern was raised that the bill might impair collective bargaining agreements that provide for overtime pay, and so we discussed removing from the bill the initial applicability provision, which states that the bill first applies to a collective bargaining agreement that contains provisions that are inconsistent with the bill when the agreement expires or is extended, modified, or renewed. On further review, however, it is precisely this language that protects existing collective bargaining agreements from impairment by the bill. Accordingly, this amendment does not remove the initial applicability provision from the bill.

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa2505/2dn  
GMM:wlj&kjf:jf

March 5, 2004

Senator Cowles:

This amendment does all of the following:

1. Removes the exemption of providers of companionship services from the minimum wage law. As such, the bill, as affected by the amendment, will only exempt those providers from the overtime pay law.
2. Removes the retroactive effective date of the bill. As such, an employer will be liable for overtime pay for work performed before the date of publication of the bill.

At the meeting this morning, a concern was raised that the bill might impair collective bargaining agreements that provide for overtime pay, and so we discussed removing from the bill the initial applicability provision, which states that the bill first applies to a collective bargaining agreement that contains provisions that are inconsistent with the bill when the agreement expires or is extended, modified, or renewed. On further review, however, it is precisely this language that protects existing collective bargaining agreements from impairment by the bill. Accordingly, this amendment does not remove the initial applicability provision from the bill.

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