

**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~~ 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)