

**2003-04 SESSION
COMMITTEE HEARING
RECORDS**

Committee Name:

Senate Committee on
Health, Children,
Families, Aging and
Long Term Care
(SC-HCFALTC)

Sample:

Record of Comm. Proceedings ... RCP

- 03hrAC-EdR_RCP_pt01a
- 03hrAC-EdR_RCP_pt01b
- 03hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ **

➤ Committee Hearings ... CH

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Hearing Records ... HR

➤ 03hr_sb0508b

➤ Miscellaneous ... Misc

➤ **

➤ Record of Comm. Proceedings ... RCP

➤ **

Call
Noyen?
OK
5/17
no 4/17

SB 508

Doyle vetoes companionship-care OT pay bill

By John Dipko

Press-Gazette Madison bureau, jdipko@greenbaypressgazette.com

MADISON — Gov. Jim Doyle vetoed a bill Monday that would have created an overtime pay exemption for workers at for-profit companies who provide nonmedical home care.

Senate Bill 508, co-authored by Sen. Robert Cowles, R-Allouez, and Rep. Karl Van Roy, R-Howard, would have applied to those who provide companionship services, such as housekeeping and meal preparation.

In his message, Doyle said the federal definition of companionship services included in the bill is defined so broadly that the exemptions could be misused.

"By downgrading the pay status of the companionship services occupation at a time when the demand for home-care workers is increasing, Senate Bill 508 will lead to a less professional and less stable home-care work force" Doyle said.

But Van Roy called the veto shortsighted because the federal government already recognizes the exemption, as does state law for families and nonprofit agencies.

Employees currently are to be paid 1.5 times their regular pay rate when they work more than 40 hours in a week.

Under the bill, they would have been paid straight time for anything worked beyond 40 hours.

The Service Employees International Union said the veto actually helps seniors and the disabled because the bill would have made it harder to attract and retain caregivers, many of whom are already underpaid.

The veto was among five that Doyle announced Monday.

Nooyen, Steve
105 Washington Ave
Oshkosh, WI 54901-4958

Email: hisc149nooyen@juno.com

Contact Date: 02/27/2004

Contact Type: E-mail

Summary: AB903

Issue:

Position:

Description: -----Original Message-----

From: Steven J. Nooyen [mailto:hisc149nooyen@juno.com]
Sent: Thursday, February 26, 2004 6:15 PM
To: Sen.Roessler@legis.state.wi.us
Subject: Re: Thanks!

Hello Senator Roessler,

I just wanted to say thanks for co-sponsoring bill AB903 (and it's companion bill) and also for the opportunity to testify at your committee hearing on Tuesday. As you know, I own a senior care service called Home Instead Senior Care with an office in Oshkosh and we contract with the Winnebago County Community Options Program. I look forward to meeting you in person.

Sincerely,
Steve Nooyen
Home Instead Senior Care

Status: Done

Closed Date: 02/27/2004

Assigned: Halbur, Jennifer

Owner: Halbur, Jennifer

Note **Note Date:** 02/27/2004

Summary: JH printed e-mail to show CR

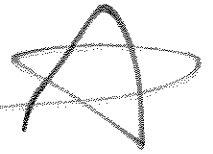
Contact Type:

Description:

**Senate Bill 508
(Cowles/Van Roy)**

Relating to minimum wage and overtime pay exemptions for providers of companionship services.

- Cannot exec on this bill because we need the fiscal note.
- 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.



~~★~~ Old state
w/ federal
exemption

asked under federal
exemption —
dept.

Clear under
federal
exemption

— Agency would
have to go back
to pay back
pay.

~~SBSOX~~

Rep Van Roy + Grothman

Steve Noyam

- all caregivers are bonded + insured.

SEIU - Healthcare Worker Union

- written testimony

Retroactive - does this mean that state can take overtime away?

- Jauch guest: does bill affect bargaining right?

Gene Plautz

- Do have exemption for the sleep.

- Have to be there 23 hrs.

- Did not intend to deal w/ min wage - just overtime.

- Did not intend to deal w/ bargaining rights.

- Working under federal exemption that Dept. said they could practice ~~for~~ under.

- Rule to JCAR that would implement rule.

- Retroactivity just makes sure that Home instead would not have to pay overtime from 2 yrs back.

Companionship Exemption?

	<u>Federal</u>	<u>State</u>
Private Hire:	Yes	Yes
Agency:	Yes	No

The U.S. Dept. of Labor recognizes the uniqueness of non-medical companionship care and exempts it from overtime pay whether the caregiver is hired privately, or through an agency.

The State of Wisconsin also recognizes the uniqueness of non-medical companionship care and exempts it from overtime pay when a caregiver is hired privately, *but excludes those hired through an agency*, even when the work is identical.

The Wisconsin labor code therefore inadvertently encourages the hiring of caregivers privately, yet agencies offer several distinct advantages.

Agency Advantages: Bonding & Insurance
Background Checks (to prevent elder abuse)
Proper Tax Withholding (Fed & State)
Worker's Compensation
Unemployment Insurance
Staff Supervision (to prevent elder abuse)
Backup Caregivers (for sick/vacation days)

Refroactive Jan 2001 ?

03-02-2004

710
8:10

for his
collecting
background

Companionship Exemption?

Grandmother
8 hr sleep
52 hrs -

	<u>Federal</u>	<u>State</u>
Private Hire:	Yes	Yes
Agency:	Yes	No

All bonded + insured
proprietary with
VEMP
Backup care gives

The U.S. Dept. of Labor recognizes the uniqueness of non-medical companionship care and exempts it from overtime pay whether the caregiver is hired privately, or through an agency.

The State of Wisconsin also recognizes the uniqueness of non-medical companionship care and exempts it from overtime pay when a caregiver is hired privately, but excludes those hired through an agency, even when the work is identical.



The Wisconsin labor code therefore inadvertently encourages the hiring of caregivers privately, yet agencies offer several distinct advantages.

- Agency Advantages:
- Bonding & Insurance
 - Background Checks (to prevent elder abuse)
 - Proper Tax Withholding (Fed & State)
 - Worker's Compensation
 - Unemployment Insurance
 - Staff Supervision (to prevent elder abuse)
 - Backup Caregivers (for sick/vacation days)

Winnipeg
Atkinson
Brown

Uniqueness non med care — excludes hires through agency



Testimony on SB 508
Robert Kraig, Ph.D., Political Director, SEIU Wisconsin State Council
Senate Committee on Health, Children, Families,
Aging and Long Term Care, March 2, 2004

Thank you Chair Roessler, and the members of the Committee.

This bill raises a number of serious and complex issues that have significant implications for the future of long term care in Wisconsin, and should not be rushed into law at the eleventh hour of the legislative session.

First, there is a general consensus that there is a critical need for Wisconsin to expand community options for senior citizens and people with disabilities, and that the structure of the long term care system overemphasizes institutional care. In addition, it is generally recognized that with the demographic shift to an older population, and with more disabled citizens living longer, that there will be tremendous demand for community based service workers. One of the major barriers to the expansion of community based and in home supports has been the lack of a stable and well trained workforce. The expansion of the so-called companionship exemption to agency employees goes in the opposite direction that we need to go in order to encourage the development of this workforce. Work as meaningful and as socially important as this should not be exempted from minimum wage laws and overtime rules.

Second, the bill expands the companionship exemption to a much larger class of workers than its supporters claim. Under current state wage and hour rules, the companionship exemption applies to less than 15 hours of work done by a person who lives in the home and is paid directly by the recipient. This is a relatively narrow exemption that is both reasonable and traditional. By expanding this exemption to agencies, which are increasingly for-profit operations, this exemption may be applied to the work done by supportive home care workers. The classification of supportive home care aid is one of the fastest growing occupations in the nation. As such, to change the law so that a portion of this work is not covered by a wage and hour laws is a very serious matter.

The vast major of in home care *is not* done by nurses, which are specifically exempted in this bill, but by home care aides and personal care workers who assist in all of the activities of daily living (or ADL). The reality of care is that so-called companionship services such as preparing food and ADL services such as feeding go hand-in-hand. Generally, a client who needs to be fed also needs to have the food prepared, and a client who needs to be physically moved to avoid bed sores also needs to have their beds made. One of the bill's supporters has characterizes this work as watching TV with a client, but

this trivializes the important work that supportive home care workers do everyday in this state to enable seniors and disabled citizens to live independently in the community.

Third, some of the supporters of this bill have claimed in the media that over time pay begins to accrue very early in the week if the worker sleeps over. This is an erroneous claim, as both federal and state rules currently exempt 8 hours of time for workers who sleep over in the homes of their clients.

Fourth, the bill also attacks fundamental labor rights. Section 6 (1) of the bill supercedes collective bargaining agreements upon their expiration or extension, which suggests that workers will not even be allowed to bargain for overtime pay or for wages above the minimum wage. Why should workers who do this valuable work not have the same fundamental right to bargain for better wages and working conditions as other workers do?

Fifth, this bill goes in the opposite direction that the state needs to go to replace family supporting manufacturing jobs that are leaving the state with high quality service sector employment. As supportive home care work is a fast growing field, and needs to grow even faster in order to give more citizens the opportunity to avoid more costly institutional care, it makes no economic sense to exempt portions of this work with the basic economic standards and rights that pertain to other professions.

Sixth, the retroactivity of this bill is exceedingly unfair and mean spirited. Section 7 (1) reads: "The act takes effect retroactively to January, 2001." It is our understanding that this bill was in part instigated by a particular home care agency which lost a wage and hour complaint filed with the Department of Work Force Development. The implication of this clause is that the home care agency will be allowed to reclaim overtime wages already paid to caregivers who lodged a successful complaint. As these in home services were all provided under current law, we think simple fairness demands Section 7 be stricken from this bill. Indeed, the very presence of this clause, allowing the ex post facto taking of earned wages raises disturbing questions about the origins and intent of this bill.

In conclusion, I think we have made a strong case that this bill raises far to many profound issues to be brushed over in the last week and half of the legislative session.



FOR IMMEDIATE RELEASE:
Tuesday, March 2

CONTACT:
Robert Kraig
414-322-5324

Bill to Eliminate Minimum Wage for Home Caregivers Would Jeopardize Quality of Home Care

Legislation Denies Home Caregivers Overtime Pay, Allows Agencies to Dock Workers Retroactively

Madison—Proposed legislation in the state legislature (AB 903/SB 508) would eliminate the minimum wage and overtime pay for home caregivers, which could force more caregivers to leave a profession already facing a shortage of workers.

The proposed changes could force workers to pay back overtime wages they have earned in the last three years and could leave some seniors and people with disabilities without a caregiver.

"Finding a home care aide is not easy, and this bill will make it even more difficult," said Kim Geib, a disabled woman who relies on home care to stay in her house with her children. "I've gone through many caregivers. I'm afraid that if they were paid any less, our caregivers would have to leave us to earn more at McDonald's."

Poor training, low wages, and few benefits have made it difficult for caregivers to stay in the field. It is difficult for seniors and people with disabilities to find professional, experienced aides willing to work at the low wages. A further reduction in home caregivers' wages could decimate an industry already facing a severe shortage.

Home caregivers help seniors and people with disabilities stay in their homes and out of institutions by providing day-to-day care, including bathing, cooking, and feeding. Much of home care aides' work is physically intensive, including lifting and moving clients.

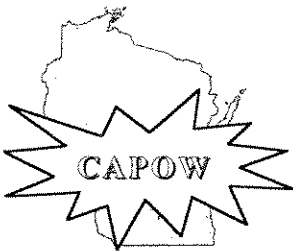
"I take care of senior citizens, but I can't even afford to pay my family's medical bills," said Norma Silas-Martin, a home caregiver from Milwaukee. "If our pay is cut, I don't know what I'll do."

Some consumers need around the clock care, requiring overnight monitoring by home caregivers. Despite claims to the contrary by home care agencies, overnight monitoring is currently not covered by state or federal laws.

The bill's overtime exemption for home care agencies is retroactive to January 2001, which would allow the agencies to bill caregivers for the past overtime pay or dock future paychecks.

Caregivers, advocates, home care consumers, and elected officials are opposing the legislation. They are asking lawmakers instead to stand up for seniors and people with disabilities and take action to create a more stable, professional home care workforce.

#####



Community Alliance of Providers of Wisconsin

Providers for Change

See CAPOW mtg too

President
Nancy Leipzig
Vice President
Lori Hofmeister
Treasurer
Shelley Hansen

Charter Members Agape

Avenues to
Community

CCLS, Inc.

Clarity Care

Community Work
Services

Dungarvin

Garlick's CBRF

HIL

LSS

MARC, Inc.

New Horizons
North

Options in
Community Living

Paragon

REM Wisconsin

RFDF

Rise Up, Inc.

Work Plus, Inc.

Testimony

To: Senator Carol Roessler, Chair
Members of the Senate Committee on
Health, Children, Families, Aging and Long-Term Care
From: Richard Berling, Legislative Director
Date: Tuesday, March 2, 2004
Re: Urge Support and Passage of Senate Bill 508

The Community Alliance of Providers of Wisconsin (CAPOW) represents seventeen providers of community-based services for over a thousand adults with severe developmental disabilities throughout Wisconsin who require 24/7 care. Many of our members provide live-in personal care, often referred to as "companionship services". Assembly Bill 903 and Senate Bill 508 reflect the Federal Fair Labor Standards Act and provide exemptions to overtime pay for live-in companions.

CAPOW continues to favor overtime compensation for "shift" residential direct care workers who do not live-in, but we support a continued exemption for live-in "companions". "Shift" residential care and "companion services" are fundamentally different. It is our concern that classifying shift-residential direct care workers and live-in companions as identical employment categories for wage compensation purposes would significantly increase fringe benefit, recruitment and supervision costs in consequence of having to hire several companions (instead of one or two) to lower overtime costs.

The men and women providing these services are dedicated and caring individuals, often providing companionship services as live-in or shared housing care attendants, and as such may technically be construed at the work site 24 hours per day. Therefore, a companion could attain the 40-hour per week overtime limit in less than two days. Increased costs could prove to be a hardship on the individuals and the consumer families both financial as it relates to finding several suitable companions (instead of one or two) to provide these services. Keep in mind these services are very personal and the individual requiring assistance and the families must be comfortable with and fully trust the companion(s) – since this is in essence a companion live-in or roommate relationship, rather than a "shift" relationship.

CAPOW views companions as live-in caregivers who provide around the clock care and supervision of individuals with developmental and/or physical disabilities. Many persons who rely on companion services to live in their home may otherwise be placed into a more restrictive setting in one of the state's mental institutions or into a nursing home if it were not for companion services.

On behalf of the Community Alliance of Providers of Wisconsin, we again urge committee members to support Assembly Bill 903 and Senate Bill 508 on the basis of what is best for the caregiver, the working relationship, the consumer and their families.

Thank you.

Richard C. Berling
Legislative Committee Chair
rberling@marc-inc.org

Workforce Development + Living Wages = Quality Services

Learn more about us at: www.capow.org
Email your questions to info@capow.org

ROBERT L. COWLES
Wisconsin State Senator • 2nd Senate District

Senator Cowles Testimony Regarding Senate Bill 508

Submitted 3/2/04 to the Senate Committee on Health, Children, Families, Aging and Long Term Care

Good morning. Thank you Madam Chairwoman and members of the committee. I appreciate the opportunity to speak before you today in favor of Senate Bill 508.

Again, the goal of SB 508 would be to exempt from state overtime rules agencies that provide workers for "companionship services," or nonmedical help to elderly and disabled residents who need assistance but can otherwise remain in their homes.

Companionship services are an integral part of elderly care because companions provide fellowship, care and protection for those who cannot care for their own needs but do not require medical care. Oftentimes, companions work with seniors suffering from various forms of dementia who require around-the-clock supervision to remain safely in their homes.

Because of the unique nature of companionship services, the Federal Fair Labor Standards Act provide exemptions from overtime pay rules for domestic employees who provide non-medical companionship services.

The federal exemption covers companions employed by an employer or agency, as well as those employed directly by the family or household using the services.

Current DWD code also exempts "domestic service employment" for "an employee of a private householder". However, the DWD recently ruled that state administrative code does not exempt companionship services when performed by an employee of an agency.

This ruling is troubling because seniors rely on agencies to provide them with well-qualified and reputable companions. If no overtime exemption were available, the thousands of caregivers employed by agencies in Wisconsin could reach the 40-hour overtime threshold on the second day of the workweek. The cost of excessive overtime to senior clients would increase the cost of care and increase the likelihood that seniors will simply enter nursing homes.

This legislation will federalize state statutes to exempt caregivers employed by agencies in Wisconsin.

Again, SB 508 basically brings Wisconsin statutes in line with the Federal Labor Standard Act. Without this change, Mr. Nooyen and his company along with many other companies that offer this service will likely have to close their doors.

In closing, I feel this legislation is a common-sense measure designed to give our elderly the opportunity to stay in their own homes.

Thank you, and I look forward to hearing your input. I would be happy to address any questions at this time.



Wisconsin Personal Services Association, Inc.

**TO: MEMBERS OF THE SENATE COMMITTEE ON HEALTH, CHILDREN,
FAMILIES, AGING AND LONG TERM CARE**

FROM: JEAN RUMACHIK, WPSA Legislative Chairperson
Phone: (262) 637-9128

DATE: March 2, 2004

RE: SUPPORT OF SENATE BILL 508

My name is Jean Rumachik and I am Legislative Chairperson for the Wisconsin Personal Services Association (WPSA). This organization represents over 60 personal care/supportive home care providers and others interested in the provision of quality, consumer-directed personal care services that assist consumers in living in their homes. The members of our organization employ personal care workers/aides and provide services to thousands of individuals on a daily basis.

WPSA supports Bill SB 508. This bill would mirror the Federal Fair Labor Standards Act and provide exemptions from overtime pay for caregivers who provide non-skilled in-home companionship services. This bill would allow, as the Federal Act does, the exemption to cover companions employed by an agency, as well as a caregiver employed directly by the consumer or family. The Wisconsin Department of Workforce Development ruled that this exemption does not apply to caregivers providing in-home non-skilled companionship caregivers who are hired by an agency. This bill would allow this exemption for both employees hired by an agency or for caregivers hired by the consumer and/or consumer's family directly.

WPSA supports this bill for the following reasons:

- The exemption should apply to caregivers hired by agencies as well as families as the work performed by the caregiver is the same. There should be no discrepancy with this exemption as far as who is paying the caregiver. It is not fair that a caregiver is exempt when working directly for a consumer or family and not when employed by an agency.
- Workers providing companionship home care services to an elderly person or person with a disability have a unique relationship with the consumer. When companionship is a part of the provision of home care services, it means that the caregiver is able to sit and visit with the consumer. The caregiver is not performing an "activity of daily living task" all the time he or she is in the home.

In respite cases, the caregiver is often able to watch television, read a book, etc. after required assistance is completed.

- In Wisconsin, funding sources allow family and friends, who are deemed competent, to be paid by agencies to provide companionship services to a loved one in the home. It cannot always be defined when the caregiver starts working and quits working when they are family, and particularly, when they live with the consumer. Families and friends are grateful to be paid to help out a family member. They do not think that they are short changed money-wise as they are satisfied that they can receive compensation for "helping out". Funding sources that provide coverage for companionship services have low rates. If they are being paid privately, the consumer expects to pay a reasonable rate.
- Limiting this exemption to caregivers employed directly by family or consumer will create barriers for consumers who wish to live independently in their own homes. If someone cannot get help at home, they will be forced to go to a nursing home which is a more restrictive and costly alternative for our elderly and persons with disabilities.

On behalf of WPSA I ask for your support of SB 508 and thank you for your time.

Rep. Van Roy Testimony on Senate Bill 508 / Assembly Bill 903

Good morning. Thank you for the opportunity to share with you the importance of SB 508 regarding companionship services.

I'm sure that many of you do not know what companionship services are. Before I tell you what companions do, let me tell you what they don't do. They do not provide medical care. They do not provide personal care. They do not administer prescription drugs or injections. Companions are not nurses. They do not need any special training or skill of any kind to perform companionship services.

So, what do companions do? They provide non-medical care and companionship to senior citizens. Under federal law, companions may provide such services as light housekeeping, laundry, errand running, and meal preparation. However, this type of **work** may **not exceed 20%** of the total weekly hours worked. Therefore, at a **minimum, 80%** of a companion's time is spent providing fellowship and companionship – watching TV, playing cards, going for walks, or just visiting with the senior. Some of that time is also spent sleeping when overnight supervision is required, particularly in the cases of individuals suffering from dementia.

For many years, my brother was paid to be a companion. Part of the time he had several daytime clients where he would provide companionship services during the day and return to his own home at night. However, for one and a half years he worked exclusively for one client and lived in the client's home. My brother's job was to drive the client around, lay out his clothes to be worn each day, remind him to take his pills, go out for lunch at a restaurant every day, and just be a companion.

As you can see, companionship service requires no training or skill and is not difficult work. Because of the unique nature of these services, Section 13(d)(15) of the Federal Fair Labor Standards Act exempts companionship services from the minimum wage and overtime requirements. This federal exemption applies to companions hired directly by a **family**, as well as those employed by an **agency**.

It is my understanding that companionship service providers in Wisconsin have, as an entire industry, been following the federal law which provides this exemption. They have been doing this because they believed that Wisconsin law provided the same overtime exemption as the federal law and because the Department of Workforce Development specifically told them to follow the federal law. Just recently the Department of Workforce Development took the opposite opinion and told the companionship service industry that the federal exemption did not apply to companions hired by **agencies**; that it only applied to those hired by private **individuals**.

I have introduced SB 508 which adopts the federal definition of "companionship services" and thereby exempts these services from the state overtime laws in the same manner they are already exempt under federal law. SB 508 will reverse the recent DWD ruling and **restore** what has been **standard practice** in the companionship service industry all these years.

SB
508
3/2/04
Publ Hearing

This bill is about keeping seniors in their homes and giving them the best quality of life they can have. Companionship services help keep seniors independent, in the community, and out of nursing homes for as long as possible. This is consistent with Governor Doyle's policy of closing down the state centers for the developmentally disabled in order to integrate people into the community.

Wisconsin is facing a crisis in providing long-term care for the elderly, and it is only going to get worse. People are living much longer than they used to and in four years, an additional 77 million people from the baby boom generation will become eligible for social security. By 2005, eldercare is expected to replace childcare as the number one dependent care issue in the United States. Last week, our nation's economist, Alan Greenspan, recommended cutting Social Security and Medicare benefits because we simply cannot keep up with the financial demand.

We need a long-term care system that keeps seniors in their homes and out of costly institutional settings. DWD's change in its interpretation of the exemption status of companionship services puts these services in jeopardy and ~~exacerbates~~ the long-term care crisis in Wisconsin.

Worsens

Most of the seniors served by the companionship business in my district have dementia and require 24/7 supervision. Therefore under the DWD ruling, overtime pay would kick in on day two. Requiring payment of overtime to companions would substantially increase the cost of these services well beyond what seniors can afford to pay. Many seniors will go without care and eventually be institutionalized in costly nursing homes. This hurts seniors.

If we were to limit companions to a 40 hour work week, clients who require a companion 24/7 would require a different companion every other day. Having a different companion every day is more like having a babysitter instead of a friend. Seniors don't like this because they develop a rapport with their companion and want the same person every day. Furthermore, clients with dementia need consistency and routine. They would be highly confused and distressed by having four different companions every week. This hurts seniors.

To avoid the overtime requirement, some seniors may hire a companion on their own without the expertise that agencies have at finding well-qualified and reputable companions who have undergone thorough screening and background checks. Seniors who hire companions directly are at risk of hiring an unscrupulous person who may take advantage of them. This hurts seniors.

Counties contract for these services under the Community Options Program, which is designed to keep seniors and the disabled in their homes. In these tight economic times, COP funds are shrinking. Waiting lists to receive COP funds are staggeringly long. Requiring overtime pay for companionship services will increase costs to the counties, and reduce the number of seniors being served with COP funds, and make the waiting lists even longer. This hurts seniors and it hurts the disabled who are also on the COP waiting list with seniors.

Limiting companions to 40 hours per week gives the perception that more jobs will be created. However, this is not true for two reasons. First, where are you going to find the workers? There is already a shortage of available caregivers, and this shortage will only increase when the Baby Boomers need care. Creating a need for more companions when there is already a staffing

shortage, does not employ more people. It only creates vacancies that cannot be filled and puts seniors on waiting lists to receive services. Second, since most seniors will not be able to afford to pay overtime, fewer seniors will seek a companion. Companions will actually lose jobs. Overtime pay not only hurts seniors but it also hurts companions. You will hear from others today about more ways in which DWD's rule hurts workers who provide companion services.

It is my firm belief that as a society, we have an obligation to look after, care for, and protect our seniors in their twilight years. Sadly, the ruling by the Department of Workforce Development does the exact opposite. Our seniors have done and given much for this country, and they deserve better treatment than this. Senate Bill 508 is 100% about helping seniors. It serves to provide seniors with an affordable option that allows them to stay in their homes with independence and a better quality of life in the community for as long as possible.

Thank you for listening, and I would be happy to address any questions at this time.

Halbur, Jennifer

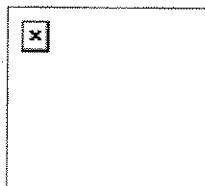
From: Kurtz, Hunter
Sent: Monday, March 08, 2004 1:40 PM
To: Halbur, Jennifer; Asbjornson, Karen
Subject: FW: SEIU Urges Rejection of SB 508
Importance: High

SB 508

I am not sure who gets this

-----Original Message-----

From: Robert Kraig [mailto:r-kraig@seiu-wisconsin.org]
Sent: Monday, March 08, 2004 12:50 PM
To: 'Steward Ewy'; 'Jennifer Halbur'; 'Kathy Soderbloom'; 'Sen. Brown'; 'Sen. Carpenter'; 'Sen. Chvala'; 'Sen. Jauch'; 'Sen. Kanavas'; 'Sen. Robson'; 'Sen. Roessler'; 'Sen. Schultz'; 'Sen. Welch'
Subject: SEIU Urges Rejection of SB 508
Importance: High



To: Members, Senate Committee on Health, Children, Families, Aging and Long Term Care

From: Robert Kraig, Political Director, SEIU Wisconsin State Council

RE: SB 508

We urge rejection of SB 508, as amended. We believe the bill has serious ramifications for the delivery of long term care in Wisconsin which should be very carefully considered before such a change is enacted. The exemption also has a disparate impact on women. Rushing an exemption from a basic labor standard through at the eleventh hour of a legislative session is irresponsible public policy.

- (1) The bill exempts a growing industry, which employs primarily women, from overtime rules. We believe the legislature should be very careful about perpetuating the traditional devaluation of care giving work done primarily by women. The case made for this change has to this point been entirely anecdotal.
- (2) The effect of this change on the growing field of community based long term care service has not been sufficiently analyzed. Poor compensation and working conditions have produced a workforce crisis in this field, where Wisconsin will need tens of thousands of new care givers in order to accommodate the aging population. The line between companionship services and the other in-home services provided under COP and CIP is not nearly as clear as has been claimed by the backers of this bill.
- (3) Even if one believes that the case has been made that so-called companionship services should be exempted from fundamental labor standards, which we do not, there is no reporting requirement or other mechanism to assure that this exemption is not abused. As this exemption is being requested by a commercial for-profit enterprise, there should be much better safeguards

built in. Absent these, workers providing large amounts of personal care and supportive home care services may also be denied over time pay.

- (4) This bill has been introduced too late in the legislative session to be carefully considered. The fact that the bill included a number of provisions that have been rapidly stricken suggests that the proposal has been thrown together hastily, without time for sober consideration and analysis.

Robert Kraig, Ph.D
Political Director
SEIU Wisconsin State Council
250 E. Wisconsin Ave., Suite 1275
Milwaukee, WI 53202
www.seiuwi.org
(414) 223-0095, ext. 120
(414) 223-0099 (fax)
(414) 322-5324 (cell)

Senate Bill 508...relating to: minimum wage and overtime pay exemptions for providers of companionship services.

<p>BILL SPONSORS</p>	<p>Introduced by Cowles, Ellis, A. Lasee, Roessler, Darling and Lazich.</p> <p>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.</p>
<p>BILL HISTORY</p>	<p>Senate Bill 508 was introduced and referred to the Committee on Health, Children, Families, Aging and Long Term Care on February 27, 2004. A public hearing on March 2, 2004. An executive session was held on March 8, 2004. The committee recommended adoption of Senate Substitute Amendment 1 on a vote of 7-2 (Robson and Carpenter).</p> <p>The Committee recommended SB 508 for passage, as amended, on a vote of 5-4 (Carpenter, Robson, Chvala, and Jauch).</p>
<p>LRB ANALYSIS</p>	<p>Current Law:</p> <p>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.</p> <p>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.</p> <p>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 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.</p> <p>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.</p>

	<p><u>Proposed Changes:</u> 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.</p> <p><u>Major Impact:</u> This bill adopts the federal definition of "companionship services," thereby exempting persons who provide companionship services from the state minimum wage (SSA1 removed) and overtime pay laws.</p>
<p>AMENDMENT</p>	<p><u>Senate Substitute Amendment 1</u></p> <ul style="list-style-type: none"> • Removes the exemption of providers of companionship services from the minimum wage law. As such, the substitute amendment will exempt those providers only from the overtime pay law. • 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. • Incorporates the language recommended by DWD to state more clearly and precisely that companionship services providers are exempt from the overtime pay law.
<p>FISCAL EFFECT</p>	<p>Department of Workforce Development</p> <ul style="list-style-type: none"> • No state fiscal effect. • No local government costs.
<p>SUPPORT</p>	<p>The following people appeared in favor of this bill: (1) Jolene Plautz, Home Instead, Madison; (2) Steve Nooyen, Home Instead Senior Care, Green Bay; (3) Caroline Nooyen, Home Instead Senior Care, Green Bay; (4) Sharon King, Home Instead Senior Care, Green Bay; (5) Representative Glenn Grothman; and (6) Representative Karl Van Roy.</p> <p>The following person registered in favor of this bill: (1) Senator Robert Cowles, 2nd Senate District; (2) Jean Rumachik, WI. Personal Services Association, Racine; (3) Mary Czerwinski, Self, Salem; (4) Chris Czerwinski, Self, Salem; (5) Richard Berling, Community Alliance of Providers of Wisconsin; (6) Jodi Bloch, Wisconsin Hospital Association, Madison; (7) David Kyhn, Aubby Inc, Greenfield; and (8) Stephen Rayl, S and J Rayl Corp., Wauwatosa.</p>
<p>OPPOSITION</p>	<p>The following person appeared in opposition to this bill: (1) Robert Kraig, SEIU, Milwaukee.</p> <p>The following person registered against this bill: (1) Joanne Ricca, WI State AFL-CIO, Milwaukee.</p>
<p>CONTACT</p>	<p>Jennifer Halbur, Carol Roessler, 266-5300</p>
<p>DATE</p>	<p>March 9, 2004</p>