

114TH CONGRESS
1ST SESSION

S. 2221

To preserve the companionship services exemption for minimum wage and overtime pay, and the live-in domestic services exemption for overtime pay, under the Fair Labor Standards Act of 1938.

IN THE SENATE OF THE UNITED STATES

OCTOBER 29, 2015

Mr. ROBERTS (for himself, Mr. ALEXANDER, Mr. ISAKSON, Mr. ENZI, Mr. CORNYN, Mr. RISCH, Mr. HATCH, Mrs. FISCHER, Mr. FLAKE, Mr. MCCAIN, Mr. VITTER, Mr. COATS, and Mr. MORAN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To preserve the companionship services exemption for minimum wage and overtime pay, and the live-in domestic services exemption for overtime pay, under the Fair Labor Standards Act of 1938.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ensuring Access to
5 Affordable and Quality Home Care for Seniors and People
6 with Disabilities Act”.

1 **SEC. 2. DEFINITIONS.**

2 Section 3 of the Fair Labor Standards Act of 1938
3 (29 U.S.C. 203) is amended by adding at the end the fol-
4 lowing:

5 “(z)(1)(A) Except as provided in subparagraph (B),
6 ‘companionship services’ as used in section 13(a)(15),
7 means services that provide fellowship, care, and protec-
8 tion for individuals who, because of advanced age or phys-
9 ical or mental infirmity, are unable to care for themselves,
10 including non-medical in-home personal care (which in-
11 cludes assistance with activities of daily living and instru-
12 mental activities of daily living) and household work re-
13 lated to the care of the aged or infirm individuals (such
14 as meal preparation, bed making, washing of clothes, er-
15 rands, assistance to appointments, laundry, medication re-
16 minders, bathing, assistance with incontinence and groom-
17 ing, and other similar services). Such term may include
18 the performance of general household work, provided that
19 such work does not exceed 20 percent of the total weekly
20 hours worked.

21 “(B) ‘Companionship services’ does not include serv-
22 ices relating to the care and protection of the aged or in-
23 firm that require and are performed by trained medical
24 personnel, such as a registered or practical nurse.

25 “(2) ‘Domestic service’ as used in subsections (a)(15)
26 and (b)(21) of section 13, means services of a household

1 nature performed by an employee in or about a private
 2 home (permanent or temporary), including employees such
 3 as cooks, waiters, butlers, valets, maids, housekeepers,
 4 nannies, nurses, janitors, laundresses, caretakers, handy-
 5 men, gardeners, certified nursing assistants, home care
 6 aides, home health aides, personal care aides, chauffeurs
 7 of automobiles for family use, and babysitters employed
 8 on other than a casual basis.

9 “(3) ‘Third-party employment’ as used in subsections
 10 (a)(15) and (b)(21) of section 13, means the employment
 11 of any employee who is engaged in providing companion-
 12 ship services or live-in domestic services and who is em-
 13 ployed by an employer other than the family or household
 14 using the services of the employee, whether or not such
 15 employee provides services to more than one family or
 16 household in the same workweek.”.

17 **SEC. 3. PRESERVATION OF THE COMPANIONSHIP SERVICES**
 18 **EXEMPTION.**

19 Paragraph (15) of section 13(a) of the Fair Labor
 20 Standards Act of 1938 (29 U.S.C. 213(a)(15)) is amend-
 21 ed—

- 22 (1) by inserting “(including through third-party
- 23 employment)” after “companionship services”; and
- 24 (2) by striking “(as such terms are defined and
- 25 delimited by regulations of the Secretary)”.

1 **SEC. 4. PRESERVATION OF THE LIVE-IN DOMESTIC SERV-**
2 **ICES EXEMPTION.**

3 Paragraph (21) of section 13(b) of the Fair Labor
4 Standards Act of 1938 (29 U.S.C. 213(b)(21)) is amended
5 by inserting “(including through third-party employ-
6 ment)” after “domestic service”.

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