

112TH CONGRESS
2D SESSION

H. R. 5969

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2012

Mr. WALBERG (for himself, Mr. TERRY, Mr. GOODLATTE, Mr. ROKITA, Mr. GOWDY, and Mrs. SCHMIDT) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To preserve the companionship services exemption for minimum wage and 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 Companion Care Act”.

6 **SEC. 2. DEFINITIONS.**

7 Section 3 of the Fair Labor Standards Act of 1938
8 (29 U.S.C. 203) is amended by adding at the end the fol-
9 lowing:

1 “(z)(1) Except as provided in paragraph (2), ‘com-
2 panionship services’ as used in section 13(a)(15), means
3 those services which provide fellowship, care, and protec-
4 tion for individuals who, because of advanced age or phys-
5 ical or mental infirmity, are unable to care for themselves,
6 including but not limited to, non-medical in-home personal
7 care or household work related to the care of the aged
8 or infirm individuals (such as meal preparation, bed mak-
9 ing, washing of clothes, errands, assistance to appoint-
10 ments, laundry, medication reminders, bathing, assistance
11 with incontinence and grooming, and other similar serv-
12 ices). Such term may also include the performance of gen-
13 eral household work, provided that such work is incidental.

14 “(2) ‘Companionship services’ shall not include serv-
15 ices relating to the care and protection of the aged or in-
16 firm which require and are performed by trained medical
17 personnel, such as a registered or practical nurse.

18 “(aa) ‘Domestic service employment’ as used in sec-
19 tion 13(a)(15), means services of a household nature per-
20 formed by an employee in or about a private home (perma-
21 nent or temporary), including but not limited to, employ-
22 ees such as cooks, waiters, butlers, valets, maids, house-
23 keepers, nannies, nurses, janitors, laundresses, caretakers,
24 handymen, gardeners, home care aides, home health aides,
25 personal care aides, chauffeurs of automobiles for family

1 use, and babysitters employed on other than a casual
2 basis.

3 “(bb) ‘Third-party employment’ as used in section
4 13(a)(15), means employees who are engaged in providing
5 companionship services and who are employed by an em-
6 ployer or agency other than the family or household using
7 their services, whether or not such an employee is assigned
8 to more than one household or family in the same work-
9 week to provide companionship services.”.

10 **SEC. 3. PRESERVATION OF THE COMPANIONSHIP SERVICES**

11 **EXEMPTION.**

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

15 (1) by inserting “(including through third-party
16 employment)” after “companionship services”; and

17 (2) by striking “(as such terms are defined and
18 delimited by regulations of the Secretary)”.

19 **SEC. 4. PRESERVATION OF THE LIVE-IN DOMESTIC SERV-**

20 **ICES EXEMPTION.**

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

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