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”.


SEC. 2. DEFINITIONS.

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

“(z)(1)(A) Except as provided in subparagraph (B), ‘companionship services’ as used in section 13(a)(15), means services that provide fellowship, care, and protection for individuals who, because of advanced age or physical or mental infirmity, are unable to care for themselves, including non-medical in-home personal care (which includes assistance with activities of daily living and instrumental activities of daily living) and household work related to the care of the aged or infirm individuals (such as meal preparation, bed making, washing of clothes, errands, assistance to appointments, laundry, medication reminders, bathing, assistance with incontinence and grooming, and other similar services). Such term may include the performance of general household work, provided that such work does not exceed 20 percent of the total weekly hours worked.

“(B) ‘Companionship services’ does not include services relating to the care and protection of the aged or infirm that require and are performed by trained medical personnel, such as a registered or practical nurse.

“(2) ‘Domestic service’ as used in subsections (a)(15) and (b)(21) of section 13, means services of a household
nature performed by an employee in or about a private home (permanent or temporary), including employees such as cooks, waiters, butlers, valets, maids, housekeepers, nannies, nurses, janitors, laundresses, caretakers, handymen, gardeners, certified nursing assistants, home care aides, home health aides, personal care aides, chauffeurs of automobiles for family use, and babysitters employed on other than a casual basis.

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

SEC. 3. PRESERVATION OF THE COMPANIONSHIP SERVICES EXEMPTION.

Paragraph (15) of section 13(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(15)) is amended—

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

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

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SEC. 4. PRESERVATION OF THE LIVE-IN DOMESTIC SERVICES EXEMPTION.

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

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