

110TH CONGRESS
1ST SESSION

S. 371

To amend the Fair Labor Standards Act of 1938 to clarify the house parent exemption to certain wage and hour requirements.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2007

Mr. MARTINEZ (for himself and Mr. SESSIONS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Fair Labor Standards Act of 1938 to clarify the house parent exemption to certain wage and hour requirements.

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 “Appropriate and Con-
5 sistent Care for Youth Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Private, nonprofit organizations dedicated
9 to providing residential care and treatment for chil-

1 dren have long been a vital part of the social service
2 networks serving America’s communities.

3 (2) No longer just serving orphans, these insti-
4 tutions tend to the needs of the “orphans of the liv-
5 ing”, children and youth who are unable to remain
6 in their natural homes due to emotional conflicts,
7 life adjustment problems, relationship disturbances,
8 and spiritual and psychological scarring associated
9 with sexual, physical, and emotional abuse.

10 (3) The effectiveness of these institutions in
11 caring for these troubled and abused children has
12 long been due to the love, care, and supervision pro-
13 vided by residential houseparents.

14 (4) These houseparents volunteer to perma-
15 nently reside at the group home in which they work
16 in order to create a family environment for those
17 without a true sense of home, one that offers a
18 structured atmosphere where these vulnerable youth
19 can heal, grow, and become productive members of
20 society.

21 (5) Traditionally, these houseparents have re-
22 ceived food, lodging, insurance, and transportation
23 free of charge, in addition to a fixed salary.

24 (6) Congress recognized the unique role
25 houseparents serve, and passed the Hershey Exemp-

1 tion (section 13(b)(24) of the Fair Labor Standards
2 Act of 1938 (29 U.S.C. 212(b)(24))) in 1974 to as-
3 sist with the provision of houseparents for orphaned
4 and disadvantaged youth by allowing for lodging and
5 food provided free of cost to be considered when de-
6 termining an appropriate salary for married
7 houseparents serving with their spouse at nonprofit
8 educational institutions.

9 (7) Since the addition of the Hershey Exemp-
10 tion, research shows that due to the negative experi-
11 ences some troubled youth have faced, they find a
12 better environment for growth in having a single
13 houseparent of the same sex.

14 (8) Because the wage provision under the Her-
15 shey Exemption was extended only to married
16 houseparents serving with their spouse, the Depart-
17 ment of Labor has enforced a rule that single
18 houseparents need to be reimbursed on a 24-hour-
19 a-day basis, even for time they are sleeping or other-
20 wise not directly caring for residents of the home,
21 and regardless of the provision of free lodging, food,
22 and other services.

23 (9) This has placed an undue financial burden
24 on these nonprofit institutions who wish to provide
25 the best possible care for their residents, forcing

1 some homes to close and others to adopt an employ-
 2 ment model where “teams” of houseparents work 8-
 3 hour shifts to care for residents. This “team” model
 4 drives up the cost and destroys the family-like ar-
 5 rangement of the home.

6 (10) In order to provide for more appropriate
 7 and consistent care for these foster children and
 8 troubled youth, this Act seeks to extend the Hershey
 9 Exemption to single houseparents residing in edu-
 10 cational institutions where they receive lodging and
 11 board free of charge.

12 **SEC. 3. AMENDMENT TO THE FAIR LABOR STANDARDS ACT**
 13 **OF 1938.**

14 Section 13(b)(24) of the Fair Labor Standards Act
 15 of 1938 (29 U.S.C. 212(b)(24)) is amended—

16 (1) in the matter preceding subparagraph (A),
 17 by striking “and his spouse”; and

18 (2) in the matter following subparagraph (B)—

19 (A) by striking “and his spouse reside”
 20 and inserting “resides”;

21 (B) by striking “receive” and inserting
 22 “receives”; and

23 (C) by striking “are together” and insert-
 24 ing “is”.

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