

# Union Calendar No. 313

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 2888

[Report No. 105-558]

To amend the Fair Labor Standards Act of 1938 to exempt from the minimum wage recordkeeping and overtime compensation requirements certain specialized employees.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 7, 1997

Mr. FAWELL (for himself and Mr. ANDREWS) introduced the following bill; which was referred to the Committee on Education and the Workforce

JUNE 3, 1998

Additional sponsors: Mr. STENHOLM, Mr. BOEHNER, Mr. CANADY of Florida, Mr. PAUL, Mr. BLILEY, Mr. KNOLLENBERG, Mr. KIND, Mrs. MCCARTHY of New York, Mr. ROEMER, Mr. BOB SCHAFFER of Colorado, Mr. MANZULLO, Mr. COLLINS, Ms. RIVERS, Mrs. MYRICK, Mr. CASTLE, Mr. INGLES of South Carolina, Mr. BEREUTER, Mr. GOODE, Ms. STABENOW, Mrs. JOHNSON of Connecticut, Mr. PAPPAS, Mr. PETERSON of Pennsylvania, Mr. SAM JOHNSON of Texas, Mr. SANDLIN, Mr. MCHUGH, Mr. HALL of Texas, Mr. GRAHAM, Mr. HOEKSTRA, Mr. SHAW, Mr. TALENT, Mr. DAVIS of Florida, Mr. BOYD, Mr. MCINTOSH, Mr. LEWIS of California, Mr. UPTON, Mr. DOOLEY of California, Mr. MCKEON, Mr. SOLOMON, Mr. BURR of North Carolina, Mr. PITTS, Mr. HOLDEN, Mr. DOOLITTLE, Mr. WATTS of Oklahoma, Mrs. FOWLER, Mr. SESSIONS, Mr. CUNNINGHAM, Mr. NORWOOD, Mr. BARRETT of Nebraska, Mr. SAXTON, Mr. DEAL of Georgia, and Mr. CRAMER

JUNE 3, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

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## A BILL

To amend the Fair Labor Standards Act of 1938 to exempt from the minimum wage recordkeeping and overtime compensation requirements certain specialized employees.

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 “Sales Incentive Com-  
 5 pensation Act”.

6 **SEC. 2. EXEMPTION.**

7       Section 13(a) of the Fair Labor Standards Act of  
 8 1938 (29 U.S.C. 213(a)) is amended by striking the pe-  
 9 riod at the end of paragraph (17) and inserting a semi-  
 10 colon and by adding at the end the following:

11               “(18) any employee employed in a sales position  
 12       if—

13                       “(A) the employee’s position requires spe-  
 14                       cialized or technical knowledge related to prod-  
 15                       ucts or services being sold;

16                       “(B) the employee’s sales are predomi-  
 17                       nantly to persons or entities to whom the em-  
 18                       ployee has made previous sales or the employ-

1 ee's position does not involve initiating sales  
2 contacts;

3 ~~“(C) the employee receives—~~

4 ~~“(i) base compensation, determined~~  
5 ~~without regard to the number of hours~~  
6 ~~worked by the employee, of not less than~~  
7 ~~an amount equal to 1½ times the mini-~~  
8 ~~mum wage multiplied by 2,080; and~~

9 ~~“(ii) in addition to the employee's~~  
10 ~~base compensation, compensation based~~  
11 ~~upon each sale attributable to the em-~~  
12 ~~ployee;~~

13 ~~“(D) the employee's aggregate compensa-~~  
14 ~~tion based upon sales attributable to the em-~~  
15 ~~ployee is not less than 40 percent of the~~  
16 ~~amount specified in subparagraph (C)(i);~~

17 ~~“(E) the employee receives a rate of com-~~  
18 ~~penetration based upon each sale attributable to~~  
19 ~~the employee which is beyond sales required to~~  
20 ~~reach the compensation required by subpara-~~  
21 ~~graph (D) which rate is not less than the rate~~  
22 ~~on which the compensation required by sub-~~  
23 ~~paragraph (D) is determined; and~~

24 ~~“(F) the rate of annual compensation or~~  
25 ~~base compensation for any employee who did~~

1 not work for an employer for an entire calendar  
2 year is prorated to reflect annual compensation  
3 which would have been earned if the employee  
4 had been compensated at the same rate for the  
5 entire calendar year.”.

6 **SECTION 1. SHORT TITLE.**

7 *This Act may be cited as the “Sales Incentive Com-*  
8 *pensation Act”.*

9 **SEC. 2. EXEMPTION.**

10 *Section 13(a) of the Fair Labor Standards Act of 1938*  
11 *(29 U.S.C. 213(a)) is amended by striking the period at*  
12 *the end of paragraph (17) and inserting a semicolon and*  
13 *by adding at the end the following:*

14 *“(18) any employee employed in a sales position*  
15 *if—*

16 *“(A) the employee has specialized or tech-*  
17 *nical knowledge related to products or services*  
18 *being sold;*

19 *“(B) the employee’s—*

20 *“(i) sales are predominantly to persons*  
21 *who are entities to whom the employee’s po-*  
22 *sition has made previous sales; or*

23 *“(ii) position does not involve making*  
24 *sales contacts;*

1           “(C) the employee’s position requires a de-  
2           tailed understanding of the needs of those to  
3           whom the employee is selling;

4           “(D) the employee’s position requires the  
5           employee to exercise discretion in offering a vari-  
6           ety of products and services;

7           “(E) the employee receives—

8                   “(i) base compensation, determined  
9                   without regard to the number of hours  
10                  worked by the employee, of not less than an  
11                  amount equal to one and one-half times the  
12                  minimum wage in effect under section  
13                  6(a)(1) multiplied by 2,080; and

14                   “(ii) in addition to the employee’s base  
15                  compensation, compensation based upon  
16                  each sale attributable to the employee;

17           “(F) the employee’s aggregate compensation  
18           based upon sales attributable to the employee is  
19           not less than 40 percent of one and one-half  
20           times the minimum wage multiplied by 2,080;

21           “(G) the employee receives a rate of com-  
22           pensation based upon each sale attributable to  
23           the employee which is beyond sales required to  
24           reach the compensation required by subpara-  
25           graph (F) which rate is not less than the rate on

1           *which the compensation required by subpara-*  
2           *graph (F) is determined; and*

3           *“(H) the rate of annual compensation or*  
4           *base compensation for any employee who did not*  
5           *work for an employer for an entire calendar year*  
6           *is prorated to reflect annual compensation which*  
7           *would have been earned if the employee had been*  
8           *compensated at the same rate for the entire cal-*  
9           *endar year.”.*

10 **SEC. 3. CONSTRUCTION.**

11           *The amendment made by section 2 may not be con-*  
12           *strued to apply to individuals who are employed as route*  
13           *sales drivers.*



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