

**[COMMITTEE PRINT]**

MARCH 6, 1998

**[Showing the Amendment Adopted by the Subcommittee on  
Workforce Protections on March 5, 1998]**

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

**H. R. 2888**

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

[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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Sales Incentive Com-  
3 pensation Act”.

4 **SEC. 2. EXEMPTION.**

5 Section 13(a) of the Fair Labor Standards Act of  
6 1938 (29 U.S.C. 213(a)) is amended by striking the pe-  
7 riod at the end of paragraph (17) and inserting a semi-  
8 colon and by adding at the end the following:

9 “(18) any employee employed in a sales position  
10 if—

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

14 “(B) the employee’s sales are predomi-  
15 nantly to persons or entities to whom the em-  
16 ployee has made previous sales or the employ-  
17 ee’s position does not involve initiating sales  
18 contacts;

19 “(C) the employee receives—

20 “(i) base compensation, determined  
21 without regard to the number of hours  
22 worked by the employee, of not less than  
23 an amount equal to 1½ times the mini-  
24 mum wage multiplied by 2,080; and

25 “(ii) in addition to the employee’s  
26 base compensation, compensation based

1           upon each sale attributable to the em-  
2           ployee;

3           “(D) the employee’s aggregate compensa-  
4           tion based upon sales attributable to the em-  
5           ployee is not less than 40 percent of the  
6           amount specified in subparagraph (C)(i);

7           “(E) the employee receives a rate of com-  
8           pensation based upon each sale attributable to  
9           the employee which is beyond sales required to  
10          reach the compensation required by subpara-  
11          graph (D) which rate is not less than the rate  
12          on which the compensation required by sub-  
13          paragraph (D) is determined; and

14          “(F) the rate of annual compensation or  
15          base compensation for any employee who did  
16          not work for an employer for an entire calendar  
17          year is prorated to reflect annual compensation  
18          which would have been earned if the employee  
19          had been compensated at the same rate for the  
20          entire calendar year.”.

21   **SECTION 1. SHORT TITLE.**

22           *This Act may be cited as the “Sales Incentive Com-*  
23           *penetration Act”.*

1 **SEC. 2. EXEMPTION.**

2 *Section 13(a) of the Fair Labor Standards Act of 1938*  
3 *(29 U.S.C. 213(a)) is amended by striking the period at*  
4 *the end of paragraph (17) and inserting a semicolon and*  
5 *by adding at the end the following:*

6 *“(18) any employee employed in a sales position*  
7 *if—*

8 *“(A) the employee’s position requires spe-*  
9 *cialized or technical knowledge related to prod-*  
10 *ucts or services being sold;*

11 *“(B) the employee’s position—*

12 *“(i) consists of making sales predomi-*  
13 *nantly to persons or entities to whom the*  
14 *employee’s position has made previous sales;*  
15 *or*

16 *“(ii) does not involve initiating sales*  
17 *contacts;*

18 *“(C) the employee receives—*

19 *“(i) base compensation, determined*  
20 *without regard to the number of hours*  
21 *worked by the employee, of not less than an*  
22 *amount equal to one and one-half times the*  
23 *minimum wage in effect under section*  
24 *6(a)(1) multiplied by 2,080; and*

1                   “(ii) in addition to the employee’s base  
2                   compensation, compensation based upon  
3                   each sale attributable to the employee;

4                   “(D) the employee’s aggregate compensation  
5                   based upon sales attributable to the employee is  
6                   not less than 40 percent of one and one-half  
7                   times the minimum wage multiplied by 2,080;

8                   “(E) the employee receives a rate of com-  
9                   pensation based upon each sale attributable to  
10                  the employee which is beyond sales required to  
11                  reach the compensation required by subpara-  
12                  graph (D) which rate is not less than the rate on  
13                  which the compensation required by subpara-  
14                  graph (D) is determined; and

15                  “(F) the rate of annual compensation or  
16                  base compensation for any employee who did not  
17                  work for an employer for an entire calendar year  
18                  is prorated to reflect annual compensation which  
19                  would have been earned if the employee had been  
20                  compensated at the same rate for the entire cal-  
21                  endar year.”.