



State of Wisconsin
2015 - 2016 LEGISLATURE

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**SENATE AMENDMENT 4,
TO SENATE BILL 44**

February 25, 2015 - Offered by Senators WIRCH, SHILLING, RISSER, ERPENBACH,
MILLER, VINEHOUT, RINGHAND, HARRIS DODD, C. LARSON, L. TAYLOR, CARPENTER,
HANSEN and LASSA.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 5: after “to a labor organization” insert “, a state minimum wage,
3 extending the time limit for emergency rule procedures, providing an exemption
4 from emergency rule procedures, providing an exemption from rule-making
5 procedures, requiring the exercise of rule-making authority,”.

6 **2.** Page 1, line 7: before that line insert:

7 “**SECTION 1ag.** 49.141 (1) (g) of the statutes is amended to read:

8 49.141 (1) (g) “Minimum wage” means the state minimum hourly wage under
9 ~~ch. 104 s. 104.035 (1)~~ or the federal minimum hourly wage under 29 USC 206 (a) (1),
10 whichever is applicable.

11 **SECTION 1am.** 103.06 (1) (b) 5. of the statutes is amended to read:

1 103.06 (1) (b) 5. For purposes of maintaining records under sub. (3) (a) 4. as
2 required under rules promulgated under s. ~~104.04~~ 104.035, an employee, as defined
3 in s. 104.01 (2).

4 **SECTION 1b.** 103.06 (1) (c) 5. of the statutes is amended to read:

5 103.06 (1) (c) 5. For purposes of maintaining records under sub. (3) (a) 4. as
6 required under rules promulgated under s. ~~104.04~~ 104.035, an employer, as defined
7 in s. 104.01 (3).

8 **SECTION 1bm.** 103.06 (3) (a) 4. of the statutes is amended to read:

9 103.06 (3) (a) 4. That the employer is maintaining records of the hours worked
10 by its employees, the wages paid to those employees, any deductions from those
11 wages, and any other information that the employer is required to keep under rules
12 promulgated under s. 103.02 or ~~104.04~~ 104.035, and is listing deductions from wages
13 as required under s. 103.457.

14 **SECTION 1c.** 103.06 (4) (a) 1. of the statutes is amended to read:

15 103.06 (4) (a) 1. Enter and inspect any place of business or place of employment
16 and examine and copy any records that the employer is required to keep under rules
17 promulgated under s. 103.02 or ~~104.04~~ 104.035; any books, registers, payroll records,
18 records of wage withholdings, records of work activity and hours of work, and records
19 or indicia of the employment status of persons performing work for the employer; and
20 any other records relating to compliance with the requirements specified in sub. (3)
21 (a).

22 **SECTION 1cm.** 103.67 (2) (fm) 3. of the statutes is amended to read:

23 103.67 (2) (fm) 3. The minor is paid the applicable minimum wage under ~~ch.~~
24 ~~104~~ s. 104.035 or under federal law, whichever is greater, for the work.

25 **SECTION 1d.** 103.70 (2) (b) 3. of the statutes is amended to read:

1 103.70 (2) (b) 3. The minor is paid the applicable minimum wage under
2 ~~ch. 104 s. 104.035~~ or under federal law, whichever is greater, for the work.

3 **SECTION 1dm.** 104.001 (1) of the statutes is amended to read:

4 104.001 (1) The legislature finds that the provision of a living minimum wage
5 that is uniform throughout the state is a matter of statewide concern and that the
6 enactment of a living minimum wage ordinance by a city, village, town, or county
7 would be logically inconsistent with, would defeat the purpose of, and would go
8 against the spirit of this chapter. Therefore, this chapter shall be construed as an
9 enactment of statewide concern for the purpose of providing a living minimum wage
10 that is uniform throughout the state.

11 **SECTION 1e.** 104.001 (2) of the statutes is amended to read:

12 104.001 (2) A city, village, town, or county may not enact and administer an
13 ordinance establishing a living minimum wage. Any city, village, town, or county
14 living minimum wage ordinance that is in effect on June 16, 2005, is void.

15 **SECTION 1em.** 104.01 (intro.) of the statutes is amended to read:

16 **104.01 Definitions.** (intro.) ~~The following terms as used in~~ In this chapter
17 ~~shall be construed as follows:~~

18 **SECTION 1f.** 104.01 (1) of the statutes is renumbered 104.01 (1m).

19 **SECTION 1fm.** 104.01 (1d) of the statutes is created to read:

20 104.01 (1d) “Agricultural employee” means an employee who is employed in
21 the operation of farm premises, as described in s. 102.04 (3).

22 **SECTION 1g.** 104.01 (1g) of the statutes is created to read:

23 104.01 (1g) “Consumer price index” means the average of the consumer price
24 index over each 12-month period for all urban consumers, U.S. city average, all

1 items, not seasonally adjusted, as determined by the bureau of labor statistics of the
2 U.S. department of labor.

3 **SECTION 1gm.** 104.01 (5) of the statutes is repealed.

4 **SECTION 1h.** 104.01 (5m) of the statutes is created to read:

5 104.01 (5m) "Opportunity employee" means a person under 20 years of age who
6 is in the first 90 consecutive days of employment with his or her employer.

7 **SECTION 1hm.** 104.01 (7m) of the statutes is created to read:

8 104.01 (7m) "Tipped employee" means an employee who in the course of
9 employment customarily and regularly receives money or other gratuities from
10 persons other than the employee's employer.

11 **SECTION 1i.** 104.01 (8) of the statutes is amended to read:

12 104.01 (8) ~~The term "wage" and the term "wages" shall each mean "Wage"~~
13 means any compensation for labor measured by time, piece, or otherwise.

14 **SECTION 1im.** 104.02 and 104.03 of the statutes are consolidated, renumbered
15 104.02 and amended to read:

16 **104.02 Living Minimum wage prescribed: requirement to pay.** Every
17 wage paid or agreed to be paid by any employer to any employee, except as otherwise
18 provided in s. 104.07, shall be not less than ~~a living~~ the applicable minimum wage
19 established under s. 104.035. ~~104.03 Unlawful wages.~~ Any employer paying,
20 offering to pay, or agreeing to pay any employee a wage lower or less in value than
21 ~~a living~~ the applicable minimum wage established under s. 104.035 is guilty of a
22 violation of this chapter.

23 **SECTION 1k.** 104.035 of the statutes is created to read:

24 **104.035 Minimum wage; established. (1) EMPLOYEES GENERALLY.** Except
25 as provided in subs. (2) to (4), the minimum wage is as follows:

1 (a) For wages earned before the first day of the 15th month beginning after
2 publication [LRB inserts date], \$8.20 per hour.

3 (b) For wages earned beginning on the first day of the 15th month beginning
4 after publication [LRB inserts date], and ending on the last day of the 26th month
5 beginning after publication [LRB inserts date], \$9.15 per hour.

6 (c) For wages earned beginning on the first day of the 27th month beginning
7 after publication [LRB inserts date], and ending on the last day of the 38th month
8 beginning after publication [LRB inserts date], \$10.10 per hour.

9 (d) For wages earned beginning on the first day of the 39th month beginning
10 after publication [LRB inserts date], the amount determined by the department
11 by rule promulgated under sub. (5).

12 **(2) TIPPED EMPLOYEES.** Except as provided in subs. (3) and (4), if an employer
13 of a tipped employee establishes by the employer's payroll records that, when adding
14 the tips received by the tipped employee in a week to the wages paid to the tipped
15 employee in that week, the tipped employee receives not less than the applicable
16 minimum wage specified in sub. (1), the minimum wage for the tipped employee is
17 as follows:

18 (a) For wages earned before the first day of the 15th month beginning after
19 publication [LRB inserts date], \$3 per hour.

20 (b) For wages earned beginning on the first day of the 15th month beginning
21 after publication [LRB inserts date], the amounts determined by the department
22 by rule promulgated under sub. (5).

23 **(3) MINIMUM WAGE ESTABLISHED BY DEPARTMENT.** The department shall
24 promulgate rules providing the minimum wage for all of the following:

25 (a) Opportunity employees.

1 (b) Agricultural employees.

2 (c) Camp counselors.

3 (d) Golf caddies.

4 (e) An employee or worker with a disability covered under a license under s.
5 104.07.

6 (f) A student learner.

7 (g) A student employed by an independent college or university for less than
8 20 hours per week.

9 (4) EMPLOYMENT EXEMPTED BY DEPARTMENT. The department shall promulgate
10 rules exempting from the minimum wage requirements under subs. (1) to (3) all of
11 the following:

12 (a) A person engaged in casual employment in and around an employer's home
13 on an irregular or intermittent basis for not more than 15 hours per week.

14 (b) A person who resides in the home of an employer who, due to advanced age
15 or physical or mental disability, cannot care for his or her own needs, for the purpose
16 of companionship and who spends not more than 15 hours per week on general
17 household work for the employer.

18 (c) An elementary or secondary school student performing student work-like
19 activities in the student's school.

20 (5) DEPARTMENT TO REVISE. (a) 1. Subject to par. (b), by the date specified in sub.
21 (1) (d) or (2) (b), whichever is applicable, and annually thereafter, the department
22 shall promulgate rules to revise the minimum wages established under subs. (1) and
23 (2). Subject to subd. 2., the department shall determine those revised minimum
24 wages by calculating the percentage difference between the consumer price index for
25 the 12-month period ending on the last day of the last month for which that

1 information is available and the consumer price index for the 12-month period
2 ending on the last day of the month 12 months prior to that month, adjusting the
3 minimum wages then in effect by that percentage difference, and rounding that
4 result to the nearest multiple of 5 cents.

5 2. In revising the minimum wage for tipped employees under sub. (2), each year
6 the department shall increase that minimum wage by 95 cents or by the amount that
7 is necessary for that minimum wage to equal 70 percent of the minimum wage under
8 sub. (1) as determined under subd. 1., rounded to the nearest multiple of 5 cents,
9 whichever is less. For years subsequent to the first year in which the minimum wage
10 under sub. (2) equals 70 percent of the minimum wage under sub. (1) as determined
11 under subd. 1., the department shall revise the minimum wage under sub. (2) by the
12 amount that is necessary for that minimum wage to remain equal to 70 percent of
13 the minimum wage under sub. (1) as determined under subd. 1., rounded to the
14 nearest multiple of 5 cents.

15 3. The department may use the emergency rule procedures under s. 227.24 to
16 promulgate the rules required under subds. 1. and 2. Notwithstanding s. 227.24 (1)
17 (a) and (3), the department may promulgate those rules as emergency rules without
18 providing evidence that promulgating those rules as emergency rules is necessary
19 to preserve the public peace, health, safety, or welfare and without a finding of
20 emergency. Notwithstanding s. 227.24 (1) (e) 1d. and 1g., the department is not
21 required to prepare a statement of the scope of those rules or to submit those rules
22 in final draft form to the governor for approval. A revised minimum wage
23 determined under subd. 1. or 2. shall first apply to wages earned on the first day of
24 the 3rd month beginning after the month of publication [LRB inserts date], of the

1 year in which the wage is revised and, notwithstanding s. 227.24 (1) (c) and (2), shall
2 remain in effect until that same date the following year.

3 (b) Paragraph (a) 1. does not apply if the consumer price index for the 12-month
4 period ending on the last day of the last month for which that information is available
5 has not increased over the consumer price index for the 12-month period ending on
6 the last day of the month 12 months prior to that month.

7 **(6) GENDER-SPECIFIC MINIMUM WAGE PROHIBITED.**

8 **SECTION 1km.** 104.04 (title) of the statutes is repealed.

9 **SECTION 1L.** 104.04 of the statutes is renumbered 104.035 (6) and amended to
10 read:

11 ~~104.035 (6) The department shall investigate, ascertain, determine, and fix~~
12 ~~such reasonable classifications, and shall impose general or special orders,~~
13 ~~determining the living wage, and shall carry out the purposes of this chapter. Such~~
14 ~~investigations, classifications, and orders shall be made as provided under s.~~
15 ~~103.005, and the penalties specified in s. 103.005 (12) shall apply to and be imposed~~
16 ~~for any violation of this chapter. In determining the living wage, the department may~~
17 ~~consider the effect that an increase in the living wage might have on the economy of~~
18 ~~the state, including the effect of a living wage increase on job creation, retention, and~~
19 ~~expansion, on the availability of entry-level jobs, and on regional economic~~
20 ~~conditions within the state. The department may not establish a different minimum~~
21 ~~wage for men and women. Said orders shall be subject to review in the manner~~
22 ~~provided in ch. 227.~~

23 **SECTION 1Lm.** 104.045 of the statutes is renumbered 104.045 (intro.) and
24 amended to read:

1 **104.045 ~~Tipped employees~~ Tips, meals, lodging, and hours worked.**

2 (intro.) The department shall ~~by rule determine what amount of~~ promulgate rules
3 governing all of the following:

4 **(1)** ~~The counting of tips or similar gratuities may be counted toward fulfillment~~
5 ~~of the employer's obligation under this chapter.~~

6 **SECTION 1m.** 104.045 (2) and (3) of the statutes are created to read:

7 104.045 **(2)** The deduction of meals or lodging provided by an employer to an
8 employee from the employer's obligation under this chapter.

9 **(3)** The determination of hours worked by an employee during which the
10 employee is entitled to the minimum wage established under s. 104.035.

11 **SECTION 1mm.** 104.05 of the statutes is repealed.

12 **SECTION 1n.** 104.06 of the statutes is repealed.

13 **SECTION 1nm.** 104.07 (1) and (2) of the statutes are amended to read:

14 104.07 **(1)** The department shall ~~make~~ promulgate rules, and, except as
15 provided under subs. (5), (6), and (7), ~~grant licenses~~ a license to any employer who
16 employs any employee ~~who is unable to earn the living wage determined by the~~
17 ~~department, permitting the employee to work for a wage that~~ for whom the minimum
18 wage established under s. 104.035 is not commensurate with the employee's ability.
19 Each license so granted shall establish a wage for ~~the licensee~~ any such employees
20 of the licensee.

21 **(2)** The department shall ~~make~~ promulgate rules, and, except as provided
22 under subs. (5), (6), and (7), ~~grant licenses~~ a license to a sheltered workshops
23 workshop, to permit the employment of workers with disabilities ~~who are unable to~~
24 ~~earn the living wage~~ at a wage that is commensurate with their ability and

1 productivity. A license granted to a sheltered workshop under this subsection may
2 be issued for the entire workshop or a department of the workshop.

3 **SECTION 1o.** 104.08 (2m) of the statutes is amended to read:

4 104.08 (2m) Any person working in a trade industry for which a living
5 minimum wage has been established for minors, and who has no trade, shall be
6 employed under an apprentice contract under s. 106.01.

7 **SECTION 1om.** 104.10 of the statutes is amended to read:

8 **104.10 Penalty for intimidating witness.** Any employer who discharges or
9 threatens to discharge, or who in any way discriminates, or threatens to discriminate
10 against, any employee because the employee has testified or is about to testify, or
11 because the employer believes that the employee may testify, in any investigation or
12 proceeding relative to the enforcement of this chapter, ~~is guilty of a misdemeanor,~~
13 ~~and upon conviction thereof shall be punished by a fine of~~ may be fined \$25 for each
14 offense.

15 **SECTION 1p.** 104.11 of the statutes is repealed.

16 **SECTION 1pm.** 104.12 of the statutes is amended to read:

17 **104.12 Complaints.** Any person may register with the department a
18 complaint that the wages paid to an employee for whom a living minimum wage has
19 been established under s. 104.035 are less than that living minimum wage, and the
20 department shall investigate the matter and take all proceedings necessary to
21 enforce the payment of ~~a~~ that minimum wage ~~that is not less than the living wage.~~
22 Section 111.322 (2m) applies to discharge and other discriminatory acts arising in
23 connection with any proceeding under this section.”.

24 **3.** Page 5, line 5: after that line insert:

1 **“SECTION 11c.** 234.94 (5) of the statutes is amended to read:

2 234.94 (5) “Primary employment” means work ~~which~~ that pays at least the
3 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,
4 whichever is greater; offers adequate fringe benefits, including health insurance;
5 and is not seasonal or part time.

6 **SECTION 11g.** 234.94 (8) of the statutes is amended to read:

7 234.94 (8) “Target group” means a population group for which the
8 unemployment level is at least ~~25%~~ 25 percent higher than the statewide
9 unemployment level, or a population group for which the average wage received is
10 less than 1.2 times the minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or
11 under federal law, whichever is greater. No population group is required to be located
12 within a contiguous geographic area to be considered a target group.

13 **SECTION 11n.** 800.09 (1j) of the statutes is amended to read:

14 800.09 (1j) If the court orders the defendant to perform community service
15 work in lieu of making restitution or of paying the forfeiture, surcharges, fees and
16 costs, or both, the court may order that the defendant perform community service
17 work for a public agency or a nonprofit charitable organization that is approved by
18 the court and agreed to by the public agency or nonprofit charitable organization.
19 Community service work may be in lieu of restitution only if also agreed to by the
20 person to whom restitution is owed. The number of hours of community service work
21 required may not exceed the number determined by dividing the amount owed on the
22 forfeiture by the minimum wage established under ~~ch. 104 for adults in~~
23 ~~nonagriculture, nontipped employment~~ s. 104.035 (1). The court shall ensure that
24 the defendant is provided a written statement of the terms of the community service
25 order and that the community service order is monitored.

1 **SECTION 11r.** 800.095 (1) (d) of the statutes is amended to read:

2 800.095 (1) (d) That the defendant perform community service work for a
3 public agency or nonprofit charitable organization approved by the court and agreed
4 to by the agency or nonprofit charitable organization. If the community service work
5 is in lieu of restitution, then the person to whom restitution is owed must agree; the
6 defendant shall be given credit at the rate of not less than the minimum wage
7 established under ~~ch. 104 for adults in nonagriculture, nontipped employment s.~~
8 104.035 (1) for each one hour of community service completed. The defendant shall
9 be given a written statement of the community service order. Nothing in this
10 paragraph makes the defendant an employee or agent of the court or the
11 municipality. The defendant shall be responsible for providing the court with proof
12 that the community service hours have been completed.

13 **SECTION 11w.** 895.035 (2m) (c) of the statutes is amended to read:

14 895.035 (2m) (c) The court assigned to exercise jurisdiction under chs. 48 and
15 938 may order that the juvenile perform community service work for a public agency
16 or nonprofit charitable organization that is designated by the court in lieu of making
17 restitution or paying the forfeiture or surcharge. If the parent agrees to perform
18 community service work in lieu of making restitution or paying the forfeiture or
19 surcharge, the court may order that the parent perform community service work for
20 a public agency or a nonprofit charitable organization that is designated by the court.
21 Community service work may be in lieu of restitution only if also agreed to by the
22 public agency or nonprofit charitable organization and by the person to whom
23 restitution is owed. The court may utilize any available resources, including any
24 community service work program, in ordering the juvenile or parent to perform
25 community service work. The number of hours of community service work required

1 may not exceed the number determined by dividing the amount owed on the
2 restitution, forfeiture, or surcharge by the minimum wage established under ~~ch. 104~~
3 ~~for adults in nonagriculture, nontipped employment~~ s. 104.035 (1). The court shall
4 ensure that the juvenile or parent is provided with a written statement of the terms
5 of the community service order and that the community service order is monitored.”.

6

(END)