



2013 ASSEMBLY BILL 720

February 3, 2014 - Introduced by Representative SINICKI. Referred to Committee on Labor.

1 **AN ACT** *to renumber* 104.01 (1); *to renumber and amend* 104.045; *to amend*
2 49.141 (1) (g), 103.67 (2) (fm) 3., 103.70 (2) (b) 3., 104.01 (intro.), 104.01 (8),
3 104.04, 104.05, 104.07 (1), 104.07 (2), 104.10, 104.11, 234.94 (5), 234.94 (8),
4 800.09 (1j), 800.095 (1) (d) and 895.035 (2m) (c); *to repeal and recreate*
5 104.06; and *to create* 15.227 (1), 19.85 (1) (ej), 104.01 (1d), 104.01 (1g), 104.01
6 (5m), 104.01 (7m), 104.035 and 104.045 (2) and (3) of the statutes; **relating to:**
7 creation of a wage council to study and make recommendations concerning
8 increases in the living wage, increasing the state minimum wage, and granting
9 rule-making authority.

Analysis by the Legislative Reference Bureau

Under the current state minimum wage law, employers are required to pay to their employees a living wage, which is defined as compensation that is sufficient to enable an employee to maintain himself or herself under conditions consistent with his or her welfare. Under that law, the Department of Workforce Development (DWD) is required to investigate and determine the living wage. If, upon investigation, DWD finds that there is reasonable cause to believe that the wages paid to any employee are not a living wage, DWD must appoint a wage council,

ASSEMBLY BILL 720

selected so as fairly to represent employers, employees, and the public, to assist DWD in its investigations and determinations. In determining the living wage, DWD may consider the effect that an increase in the living wage might have on the economy of the state, including the effect of a living wage increase on job creation, retention, and expansion; on the availability of entry-level jobs; and on regional economic conditions within the state.

This bill creates a permanent wage council in DWD and requires the wage council, early in each regular session of the legislature, to convene for the purpose of studying the need for an increase in the living wage and making recommendations to DWD for any changes in the living wage that may be necessary to ensure that the wages paid to any employee are a living wage. The wage council, in conducting that study and making those recommendations, and DWD, in revising the living wage, must consider: 1) any changes in the consumer price index; 2) the effect of those changes on the real income of employees in this state; and 3) the effect that an increase in the living wage might have on the economy of the state, including the effect of a living wage increase on job creation, retention, and expansion; on the availability of entry-level jobs; and on regional economic conditions within the state. If DWD approves the findings and recommendations of the wage council, DWD may promulgate rules to revise the living wage.

In addition, the bill specifies that the biennial living wage revision procedure created under the bill does not preclude DWD from convening the wage council at other times during the regular session of the legislature if, upon investigation, DWD finds that there is reasonable cause to believe that the wages paid to any employee are not a living wage. If DWD so convenes the wage council, the wage council so convened must study the need for an increase in the living wage and report its recommendations as provided in the bill.

Finally, the bill increases the minimum wage for employees generally, beginning on January 1, 2015, from \$7.25 per hour to \$8 per hour or an amount determined by DWD by rule, whichever is greater.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 15.227 (1) of the statutes is created to read:
- 2 15.227 (1) WAGE COUNCIL. There is created in the department of workforce
- 3 development a wage council consisting of all of the following members:

ASSEMBLY BILL 720

1 (a) Five representatives of employers, including a representative of an
2 association that is primarily composed of small businesses, appointed by the
3 secretary of workforce development for 3-year terms.

4 (b) Five representatives of employees appointed by the secretary of workforce
5 development for 3-year terms.

6 (c) The chairpersons and ranking minority party members of one senate
7 standing committee and one assembly standing committee concerned with labor
8 issues, appointed as are the members of standing committees in their respective
9 houses.

10 (d) Five representatives of the public interest who do not have the
11 qualifications of the members described in pars. (a) to (c) appointed by the secretary
12 of workforce development for 3-year terms.

13 **SECTION 2.** 19.85 (1) (ej) of the statutes is created to read:

14 19.85 (1) (ej) Deliberating by the wage council in a meeting at which all
15 employer members of the council or all employee members of the council are
16 excluded.

17 **SECTION 3.** 49.141 (1) (g) of the statutes is amended to read:

18 49.141 (1) (g) "Minimum wage" means the state minimum hourly wage under
19 ~~ch. 104 s. 104.035 (1)~~ or the federal minimum hourly wage under 29 USC 206 (a) (1),
20 whichever is applicable.

21 **SECTION 4.** 103.67 (2) (fm) 3. of the statutes is amended to read:

22 103.67 (2) (fm) 3. The minor is paid the applicable minimum wage under ~~ch.~~
23 ~~104 s. 104.035~~ or under federal law, whichever is greater, for the work.

24 **SECTION 5.** 103.70 (2) (b) 3. of the statutes is amended to read:

ASSEMBLY BILL 720

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

3 **SECTION 6.** 104.01 (intro.) of the statutes is amended to read:

4 **104.01 Definitions.** (intro.) ~~The following terms as used in In~~ this chapter
5 ~~shall be construed as follows:~~

6 **SECTION 7.** 104.01 (1) of the statutes is renumbered 104.01 (1m).

7 **SECTION 8.** 104.01 (1d) of the statutes is created to read:

8 104.01 (1d) “Agricultural employee” means an employee who is employed in
9 the operation of farm premises, as described in s. 102.04 (3).

10 **SECTION 9.** 104.01 (1g) of the statutes is created to read:

11 104.01 (1g) “Consumer price index” means the average of the consumer price
12 index over each 12-month period for all urban consumers, U.S. city average, all
13 items, not seasonally adjusted, as determined by the bureau of labor statistics of the
14 federal department of labor.

15 **SECTION 10.** 104.01 (5m) of the statutes is created to read:

16 104.01 (5m) “Opportunity employee” means a person under 20 years of age who
17 is in the first 90 consecutive days of employment with his or her employer.

18 **SECTION 11.** 104.01 (7m) of the statutes is created to read:

19 104.01 (7m) “Tipped employee” means an employee who in the course of
20 employment customarily and regularly receives money or other gratuities from
21 persons other than the employee’s employer.

22 **SECTION 12.** 104.01 (8) of the statutes is amended to read:

23 104.01 (8) ~~The term “wage” and the term “wages” shall each mean “Wage”~~
24 ~~means~~ any compensation for labor measured by time, piece, or otherwise.

25 **SECTION 13.** 104.035 of the statutes is created to read:

ASSEMBLY BILL 720

1 **104.035 Minimum wage. (1)** EMPLOYEES GENERALLY. Except as provided in
2 subs. (2) and (3), the minimum wage for wages earned beginning on January 1, 2015,
3 is \$8 per hour or the amount determined by the department by rule promulgated
4 under s. 106.04, whichever is greater.

5 **(2)** MINIMUM WAGE ESTABLISHED BY DEPARTMENT. The department shall
6 promulgate rules providing the minimum wage for all of the following:

7 (a) Tipped employees.

8 (b) Opportunity employees.

9 (c) Agricultural employees.

10 (d) Camp counselors.

11 (e) Golf caddies.

12 (f) An employee or worker with a disability covered under a license under s.
13 104.07.

14 (g) A student learner.

15 (h) A student employed by an independent college or university for less than
16 20 hours per week.

17 **(3)** EMPLOYMENT EXEMPTED BY DEPARTMENT. The department shall promulgate
18 rules exempting from the minimum wage requirements under subs. (1) to (3) all of
19 the following:

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

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

ASSEMBLY BILL 720

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

3 **SECTION 14.** 104.04 of the statutes is amended to read:

4 **104.04 Classifications; department's authority.** The department, with the
5 assistance of the wage council as provided in s. 104.06, shall investigate, ascertain,
6 determine, and fix such reasonable classifications, and shall impose general or
7 special orders, determining the living wage, and shall carry out the purposes of this
8 chapter. Such investigations, classifications, and orders shall be made as provided
9 under s. 103.005, and the penalties specified in s. 103.005 (12) shall apply to and be
10 imposed for any violation of this chapter. In determining the living wage, the
11 department ~~may consider the effect that an increase in the living wage might have~~
12 ~~on the economy of the state, including the effect of a living wage increase on job~~
13 ~~creation, retention, and expansion, on the availability of entry-level jobs, and on~~
14 ~~regional economic conditions within the state~~ and the wage council shall use the
15 procedures specified in s. 104.06. A living wage determined under this section shall
16 be the living wage for all employees within the same class as established by the
17 classification of the department. The department may not establish a different
18 minimum wage for men and women. Said orders shall be subject to review in the
19 manner provided in ch. 227.

20 **SECTION 15.** 104.045 of the statutes is renumbered 104.045 (intro.) and
21 amended to read:

22 **104.045 ~~Tipped employees~~ Tips, meals, lodging, and hours worked.**

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

ASSEMBLY BILL 720

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

3 **SECTION 16.** 104.045 (2) and (3) of the statutes are created to read:

4 104.045 (2) The deduction of meals or lodging provided by an employer to an
5 employee from the employer's obligation under this chapter.

6 (3) The determination of hours worked by an employee during which the
7 employee is entitled to a living wage under this chapter.

8 **SECTION 17.** 104.05 of the statutes is amended to read:

9 **104.05 Complaints; investigation.** ~~The department shall, within~~ Within 20
10 days after the filing of a verified complaint of any person ~~setting forth~~ alleging that
11 the wages paid to any employee in any occupation are not sufficient to enable the
12 employee to maintain himself or herself under conditions consistent with his or her
13 welfare, the department shall investigate and determine whether there is
14 reasonable cause to believe that the wage paid to any employee is not a living wage.

15 **SECTION 18.** 104.06 of the statutes is repealed and recreated to read:

16 **104.06 Wage council; determination of living wage.** (1) LIVING WAGE
17 STUDY AND RECOMMENDATIONS. (a) Early in each regular session of the legislature, the
18 wage council shall convene for the purpose of studying the need for an increase in the
19 living wage and making recommendations to the department for any changes in the
20 living wage that may be necessary to ensure that the wages paid to any employee are
21 a living wage.

22 (b) The wage council, in conducting the study and making the
23 recommendations under par. (a), and the department, in revising the living wage
24 under sub. (3), shall consider all of the following:

ASSEMBLY BILL 720**SECTION 18**

1 1. The percentage difference between the consumer price index, as defined in
2 s. 49.455 (1) (b), for the 12-month period ending on December 31 of the preceding
3 year and the consumer price index for the 12-month period ending on December 31
4 of the most recent even-numbered year before the preceding year, except that the
5 wage council may not consider that percentage difference if the consumer price index
6 for the 12-month period ending on December 31 of the preceding year did not
7 increase over the consumer price index for the 12-month period ending on December
8 31 of the most recent even-numbered year before the preceding year.

9 2. The effect that any change in the consumer price index might have on the
10 real incomes of employees in this state, unless the department is precluded from
11 considering such a change under subd. 1.

12 3. The effect that an increase in the living wage might have on the economy of
13 the state, including the effect of a living wage increase on job creation, retention, and
14 expansion; on the availability of entry-level jobs; and on regional economic
15 conditions within the state.

16 (c) If the wage council recommends an increase in the living wage for a class
17 of employees for whom the living wage is determined on an hourly basis, the wage
18 council shall recommend the same increase for all classes of employees for whom the
19 living wage is determined on an hourly basis.

20 **(2) REPORT OF FINDINGS AND RECOMMENDATIONS.** The wage council shall submit
21 a report of its findings and recommendations, together with an explanation for those
22 findings and recommendations, to the secretary, the governor, the speaker of the
23 assembly, the senate majority leader, and the minority leaders of each house of the
24 legislature and to the standing committee of each house of the legislature that is
25 concerned with labor issues under s. 13.172 (3).

ASSEMBLY BILL 720

1 **(3) RULES REVISING LIVING WAGE.** The department shall consider the findings
2 and recommendations of the wage council and, if the department approves those
3 findings and recommendations, the department may promulgate rules under s.
4 104.04 to revise the living wage.

5 **(4) OTHER LIVING WAGE INCREASES NOT PRECLUDED.** The biennial living wage
6 revision procedure specified in subs. (1) to (3) does not preclude the department from
7 convening the wage council at other times during the regular session of the
8 legislature if, upon investigation, the department finds that there is reasonable
9 cause to believe that the wages paid to any employee are not a living wage. If the
10 department so convenes the wage council, the wage council so convened shall study
11 the need for an increase in the living wage as provided in sub. (1) and report its
12 findings and recommendations as provided in sub. (2).

13 **SECTION 19.** 104.07 (1) of the statutes, as affected by 2013 Wisconsin Act 36,
14 is amended to read:

15 104.07 **(1)** The department shall make promulgate rules, and, except as
16 provided under subs. (5), (6), and (7), grant ~~licenses~~ a license to any employer who
17 employs any employee who is unable to earn the living wage determined by the
18 department, permitting the employee to work for a wage that is commensurate with
19 the employee's ability. Each license so granted shall establish a wage for the ~~licensee~~
20 employees of the licensee who are unable to earn a living wage.

21 **SECTION 20.** 104.07 (2) of the statutes, as affected by 2013 Wisconsin Act 36,
22 is amended to read:

23 104.07 **(2)** The department shall make promulgate rules, and, except as
24 provided under subs. (5), (6), and (7), grant licenses to sheltered workshops, to permit
25 the employment of workers with disabilities who are unable to earn the living wage

ASSEMBLY BILL 720

1 at a wage that is commensurate with their ability and productivity. A license granted
2 to a sheltered workshop under this subsection may be issued for the entire workshop
3 or a department of the workshop.

4 **SECTION 21.** 104.10 of the statutes is amended to read:

5 **104.10 Penalty for intimidating witness.** Any employer who discharges or
6 threatens to discharge, or who in any way discriminates, or threatens to discriminate
7 against, any employee because the employee has testified or is about to testify, or
8 because the employer believes that the employee may testify, in any investigation or
9 proceeding relative to the enforcement of this chapter, ~~is guilty of a misdemeanor,~~
10 ~~and upon conviction thereof shall be punished by a fine of~~ may be fined \$25 for each
11 offense.

12 **SECTION 22.** 104.11 of the statutes is amended to read:

13 **104.11 Definition of violation.** Each day during which any employer ~~shall~~
14 ~~employ~~ employs a person for whom a living wage has been fixed at a wage that is less
15 than the living wage fixed shall constitute a separate and distinct violation of this
16 chapter.

17 **SECTION 23.** 234.94 (5) of the statutes is amended to read:

18 234.94 (5) "Primary employment" means work which that pays at least the
19 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,
20 whichever is greater,; offers adequate fringe benefits, including health insurance,;
21 and is not seasonal or part time.

22 **SECTION 24.** 234.94 (8) of the statutes is amended to read:

23 234.94 (8) "Target group" means a population group for which the
24 unemployment level is at least ~~25%~~ 25 percent higher than the statewide
25 unemployment level, or a population group for which the average wage received is

ASSEMBLY BILL 720

1 less than 1.2 times the minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or
2 under federal law, whichever is greater. No population group is required to be located
3 within a contiguous geographic area to be considered a target group.

4 **SECTION 25.** 800.09 (1j) of the statutes is amended to read:

5 800.09 (1j) If the court orders the defendant to perform community service
6 work in lieu of making restitution or of paying the forfeiture, surcharges, fees and
7 costs, or both, the court may order that the defendant perform community service
8 work for a public agency or a nonprofit charitable organization that is approved by
9 the court and agreed to by the public agency or nonprofit charitable organization.
10 Community service work may be in lieu of restitution only if also agreed to by the
11 person to whom restitution is owed. The number of hours of community service work
12 required may not exceed the number determined by dividing the amount owed on the
13 forfeiture by the minimum wage established under ~~ch. 104 for adults in~~
14 ~~nonagriculture, nontipped employment~~ s. 104.035 (1). The court shall ensure that
15 the defendant is provided a written statement of the terms of the community service
16 order and that the community service order is monitored.

17 **SECTION 26.** 800.095 (1) (d) of the statutes is amended to read:

18 800.095 (1) (d) That the defendant perform community service work for a
19 public agency or nonprofit charitable organization approved by the court and agreed
20 to by the agency or nonprofit charitable organization. If the community service work
21 is in lieu of restitution, then the person to whom restitution is owed must agree; the
22 defendant shall be given credit at the rate of not less than the minimum wage
23 established under ~~ch. 104 for adults in nonagriculture, nontipped employment~~ s.
24 104.035 (1) for each one hour of community service completed. The defendant shall
25 be given a written statement of the community service order. Nothing in this

ASSEMBLY BILL 720

1 paragraph makes the defendant an employee or agent of the court or the
2 municipality. The defendant shall be responsible for providing the court with proof
3 that the community service hours have been completed.

4 **SECTION 27.** 895.035 (2m) (c) of the statutes is amended to read:

5 895.035 (2m) (c) The court assigned to exercise jurisdiction under chs. 48 and
6 938 may order that the juvenile perform community service work for a public agency
7 or nonprofit charitable organization that is designated by the court in lieu of making
8 restitution or paying the forfeiture or surcharge. If the parent agrees to perform
9 community service work in lieu of making restitution or paying the forfeiture or
10 surcharge, the court may order that the parent perform community service work for
11 a public agency or a nonprofit charitable organization that is designated by the court.
12 Community service work may be in lieu of restitution only if also agreed to by the
13 public agency or nonprofit charitable organization and by the person to whom
14 restitution is owed. The court may utilize any available resources, including any
15 community service work program, in ordering the juvenile or parent to perform
16 community service work. The number of hours of community service work required
17 may not exceed the number determined by dividing the amount owed on the
18 restitution, forfeiture, or surcharge by the minimum wage established under ~~ch. 104~~
19 ~~for adults in nonagriculture, nontipped employment s. 104.035 (1).~~ The court shall
20 ensure that the juvenile or parent is provided with a written statement of the terms
21 of the community service order and that the community service order is monitored.

22 **SECTION 28. Nonstatutory provisions.**

23 (1) WAGE COUNCIL; INITIAL TERMS. Notwithstanding the length of terms specified
24 for the members of the wage council specified under section 15.227 (1) (a), (b), and

ASSEMBLY BILL 720

1 (d) of the statutes, as created by this act, the initial members specified in those
2 paragraphs shall be appointed for the following terms:

3 (a) One of the initial members specified under section 15.227 (1) (a) of the
4 statutes, as created by this act, one of the initial members specified under section
5 15.227 (1) (b) of the statutes, as created by this act, and one of the initial members
6 specified under section 15.227 (1) (d) of the statutes, as created by this act, shall be
7 appointed for a term that expires on June 1, 2015.

8 (b) Two of the initial members specified under section 15.227 (1) (a) of the
9 statutes, as created by this act, 2 of the initial members specified under section
10 15.227 (1) (b) of the statutes, as created by this act, and 2 of the initial members
11 specified under section 15.227 (1) (d) of the statutes, as created by this act, shall be
12 appointed for a term that expires on June 1, 2016.

13 (c) Two of the initial members specified under section 15.227 (1) (a) of the
14 statutes, as created by this act, 2 of the initial members specified under section
15 15.227 (1) (b) of the statutes, as created by this act, and 2 of the initial members
16 specified under section 15.227 (1) (d) of the statutes, as created by this act, shall be
17 appointed for a term that expires on June 1, 2017.

18 **SECTION 29. Effective date.**

19 (1) WAGE COUNCIL AND MINIMUM WAGE INCREASE. This act takes effect on January
20 1, 2015.

21 (END)