



1997 SENATE BILL 203

May 13, 1997 - Introduced by Senators CHVALA, WINEKE, DECKER, CLAUSING, MOEN and RISSER, cosponsored by Representatives COGGS, BALDWIN, VANDER LOOP, R. YOUNG, SCHNEIDER, L. YOUNG, CARPENTER, BOCK, RILEY, SPRINGER, BOYLE, BLACK, NOTESTEIN, TRAVIS and GRONEMUS. Referred to Committee on Labor, Transportation and Financial Institutions.

1 **AN ACT to renumber and amend** 104.045, 104.08 (1), 104.08 (2) and 104.08 (3);
2 **to amend** 49.141 (1) (g), 104.01 (intro.), 104.01 (3) (a), 104.01 (5), 104.01 (8),
3 104.01 (9), 104.02, 104.03, 104.04, 104.05, 104.06, 104.07 (1) and (2), 104.10,
4 104.11, 104.12, 234.94 (5), 234.94 (8), 800.09 (1) (b), 800.095 (4) (b) 3. and
5 895.035 (2m) (c); and **to create** 103.027, 104.01 (7m), 104.035, 104.045 (2) and
6 (3) and 104.08 (1) (b) of the statutes; **relating to:** a state minimum wage,
7 overtime pay for executive, administrative and professional employees, granting
8 rule-making authority and providing a penalty.

Analysis by the Legislative Reference Bureau

Currently, the state minimum wage law requires that employers pay a living wage to their employes. Under that law, the department of industry, labor and job development (DILJD) has established, by rule, minimum hourly wages for various classes of employment as follows:

Employes Generally

Opportunity Wage
\$4.25

Regular Wage
\$4.25

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\$2.13Regular Wage
\$2.33Agricultural EmployeesMinors
\$4.20Adults
\$4.55

(An opportunity wage is the minimum wage payable to an employee under 20 years of age for the first 90 days of any job).

Also under current law, DILJD has established, by rule, separate minimum wage rates for counselors at seasonal recreational or educational camps for minors, employees who perform less than 15 hours a week of casual employment in and around an employer's home, employees hired as personal companions for disabled individuals, golf caddies, student learners and individuals who because of a handicap are unable to earn the standard minimum wage.

Under this bill, DILJD will continue to establish, by rule, separate minimum wage rates for camp counselors, persons in casual employment, personal companions, golf caddies, student learners and those who are unable to earn the standard minimum wage. For other employees, however, including agricultural employees, employees under 18 years of age and employees who receive tips, the bill sets a new minimum wage by statute.

Under the bill, the minimum wage, beginning on January 1, 1998, or on the first day of the first month beginning after publication of the bill, whichever is later, for an employee, including an agricultural employee and an employee under 18 years of age, who is not a tipped employee (and who is neither a camp counselor, a casual employee, a personal companion, a caddy, a student learner nor an employee unable to earn the standard minimum wage) is \$5.50 per hour or the federal minimum hourly wage, whichever is greater. In 1999, the minimum wage is \$6 per hour or the federal minimum hourly wage, whichever is greater. After December 31, 1999, the minimum wage is 50% of the national average hourly wage earned by nonsupervisory employees employed by private, nonagricultural employers, as determined by the bureau of labor statistics in the federal department of labor for November of the previous year, rounded to the nearest multiple of 5 cents or the federal minimum hourly wage, whichever is greater.

Under the bill, the minimum wage, beginning on January 1, 1998, or on the first day of the first month beginning after publication of the bill, whichever is later, for a tipped employee, including a tipped employee under 18 years of age, is \$2.75 per hour or the federal minimum hourly wage, if any, for a tipped employee, whichever is greater. In 1999 the minimum wage for a tipped employee is \$3 per hour or the federal minimum hourly wage, if any, for a tipped employee, whichever is greater. After December 31, 1999, the minimum wage for a tipped employee is 50% of the minimum wage for a nontipped employee, as determined under the bill, or the federal minimum hourly wage, if any, for a tipped employee, whichever is greater. The bill provides, however, that an employer may pay the minimum wage for tipped employees instead

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of the minimum wage for employes generally only if the employer establishes by his or her payroll records that, when adding the tips received by an employe to the minimum wage for tipped employes, the employe receives not less than the minimum wage for employes generally.

The bill authorizes DILJD to raise the minimum wages specified in this bill. Also, the bill requires DILJD to promulgate rules concerning the counting of tips toward the minimum wage, the deduction from the minimum wage of meals and lodging provided by the employer and the determination of hours worked during which the employe is entitled to the minimum wage.

Current law requires DILJD, in determining the living wage, to consider the effect that an increase in the living wage might have on the economy of the state, including the effect of such an increase on job creation, retention and expansion, on the availability of entry level jobs and on regional economic conditions within this state. This bill eliminates that requirement.

Finally, under current law, DILJD has classified, by rule, certain employes as executive, administrative or professional employes and has exempted employers of those employes from the administrative rule that requires overtime pay. Under current rules, an employe may not be classified as an executive or administrative employe unless the employe earns, on a salary basis, not less than \$700 per month and an employe may not be classified as a professional employe unless the employe earns, on a salary basis, not less than \$750 per month. This bill provides that DILJD may not classify an employe as an executive or administrative employe unless that employe earns, on a salary basis, not less than \$1,000 per month, beginning on January 1, 1998, or on the first day of the first month beginning after publication of the bill, whichever is later; and it may not classify an employe as a professional employe unless that employe earns, in salary or fees, not less than \$1,075 per month, beginning on January 1, 1998, or on the first day of the first month beginning after publication of the bill, whichever is later. After December 31, 1998, an employe must earn not less than \$1,125 per month to be classified as an executive or administrative employe and not less than \$1,200 per month to be classified as a professional employe.

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.** 49.141 (1) (g) of the statutes is amended to read:
- 2 49.141 (1) (g) "Minimum wage" means the state minimum hourly wage under
- 3 ch. 104 s. 104.035 (1) or the federal minimum hourly wage under 29 USC 206 (a) (1),
- 4 whichever is applicable.

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1 **SECTION 2.** 103.027 of the statutes is created to read:

2 **103.027 Hours of labor; executive, administrative and professional**

3 **employes.** (1) Subject to sub. (2), the department may, by rule, classify employes
4 as executive, administrative or professional employes and exempt employers of those
5 employes from the rules promulgated under s. 103.02 that require certain periods of
6 work to be paid for at the rate of at least 1.5 times the employe's regular rate of pay.

7 (2) If the department promulgates rules under sub. (1), the department may
8 not classify an employe as an executive or administrative employe unless that
9 employe is compensated for his or her services on a salary basis at a rate of not less
10 than \$1,000 per month, after the day before the effective date of this subsection ...
11 [revisor inserts date], and before January 1, 1999, and not less than \$1,125 per
12 month after December 31, 1998. If the department promulgates rules under sub. (1),
13 the department may not classify an employe as a professional employe unless that
14 employe is compensated for his or her services on a salary or fee basis at a rate of not
15 less than \$1,075 per month, after the day before the effective date of this subsection
16 [revisor inserts date], and before January 1, 1999, and not less than \$1,200 per
17 month after December 31, 1998.

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

19 **104.01 Definitions.** (intro.) ~~The following terms as used in ss. 104.01 to~~
20 ~~104.12 shall be construed as follows~~ In this chapter:

21 **SECTION 4.** 104.01 (3) (a) of the statutes is amended to read:

22 104.01 (3) (a) ~~The term "employer" shall mean and include~~ "Employer" means
23 every person, firm or corporation, agent, manager, representative, contractor,
24 subcontractor or principal, or other person having control or direction of any person
25 employed at any labor or responsible directly or indirectly for the wages of another.

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1 **SECTION 5.** 104.01 (5) of the statutes is amended to read:

2 104.01 (5) ~~The term “living-wage” shall mean~~ “Living wage” means
3 compensation for labor paid, whether by time, piecework or otherwise, sufficient to
4 enable the employe receiving it to maintain himself or herself under conditions
5 consistent with his or her welfare.

6 **SECTION 6.** 104.01 (7m) of the statutes is created to read:

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

10 **SECTION 7.** 104.01 (8) of the statutes is amended to read:

11 104.01 (8) ~~The term “wage” and the term “wages” shall each mean~~ “Wage”
12 means any compensation for labor measured by time, piece or otherwise.

13 **SECTION 8.** 104.01 (9) of the statutes is amended to read:

14 104.01 (9) ~~The term “welfare” shall mean and include~~ “Welfare” means
15 reasonable comfort, reasonable physical well-being, decency, and moral well-being.

16 **SECTION 9.** 104.02 of the statutes is amended to read:

17 **104.02** (title) ~~Living-wage prescribed~~ Living wage required. Every wage
18 paid or agreed to be paid by any employer to any employe, except as otherwise
19 provided in s. 104.07, shall be not less than a ~~living-wage~~ living wage.

20 **SECTION 10.** 104.03 of the statutes is amended to read:

21 **104.03 Unlawful wages.** Any employer paying, offering to pay, or agreeing
22 to pay any employe a wage lower or less in value than a ~~living-wage~~ living wage is
23 guilty of a violation of ~~ss. 104.01 to 104.12~~ this chapter.

24 **SECTION 11.** 104.035 of the statutes is created to read:

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1 **104.035 Minimum wage. (1) EMPLOYEES GENERALLY.** Except as provided in
2 subs. (2) and (3) and s. 104.07, and subject to sub. (4), the minimum wage is
3 whichever of the following applies:

4 (a) For wages earned beginning on the effective date of this paragraph
5 [revisor inserts date], \$5.50 per hour or the federal minimum hourly wage, whichever
6 is greater.

7 (b) For wages earned in 1999, \$6 per hour or the federal minimum hourly wage,
8 whichever is greater.

9 (c) For wages earned after December 31, 1999, 50% of the national average
10 hourly wage earned by nonsupervisory employees employed by private,
11 nonagricultural employers, as determined by the bureau of labor statistics in the
12 federal department of labor for November of the previous year, rounded to the
13 nearest multiple of 5 cents or the federal minimum hourly wage, whichever is
14 greater.

15 **(2) TIPPED EMPLOYEES.** (a) Except as provided in sub. (3) and s. 104.07, and
16 subject to par. (b) and sub. (4), for wages earned beginning on the effective date of this
17 paragraph [revisor inserts date], the minimum wage for a tipped employe is \$2.75
18 per hour or the federal minimum hourly wage, if any, for a tipped employe, whichever
19 is greater; for wages earned in 1999 the minimum wage for a tipped employe is \$3
20 per hour or the federal minimum hourly wage, if any, for a tipped employe, whichever
21 is greater; and for wages earned after December 31, 1999, the minimum wage for a
22 tipped employe is 50% of the minimum wage determined under sub. (1) (c) rounded
23 to the nearest multiple of 5 cents or the federal minimum hourly wage, if any, for a
24 tipped employe, whichever is greater.

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1 (b) An employer may pay the minimum wage specified in par. (a) instead of the
2 minimum wage specified in sub. (1) only if the employer establishes by his or her
3 payroll records that, when adding the tips received by an employe to the wages under
4 par. (a) paid to that employe, the employe receives not less than the applicable
5 minimum wage specified in sub. (1).

6 **(3) MINIMUM WAGE ESTABLISHED BY DEPARTMENT.** The department shall
7 promulgate rules establishing the minimum wage for all of the following:

8 (a) A counselor employed at a seasonal recreational or educational camp,
9 including a day camp, for campers under the age of 18.

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

12 (c) A person who lives with someone who has a physical or mental disability and
13 who provides companionship, general household work and care, not including
14 practical or professional nursing as defined in s. 441.11 (3) and (4), for that disabled
15 person.

16 (d) A caddy on a golf course.

17 (e) An employe or handicapped worker covered under a license under s. 104.07.

18 (f) A student learner.

19 **(4) DEPARTMENT MAY REVISE.** The department may promulgate rules to increase
20 a minimum wage established under sub. (1) or (2).

21 **SECTION 12.** 104.04 of the statutes is amended to read:

22 **104.04 Classifications; department's authority.** The department shall
23 investigate, ascertain, determine and fix such reasonable classifications, and shall
24 impose general or special orders, determining the ~~living-wage~~ living wage, and shall
25 carry out the purposes of ~~ss. 104.01 to 104.12~~ this chapter. Such investigations,

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1 classifications and orders shall be made as provided under s. 103.005, and the
2 penalties specified in s. 103.005 (12) shall apply to and be imposed for any violation
3 of ~~ss. 104.01 to 104.12.~~ ~~In determining the living wage, the department may~~
4 ~~consider the effect that an increase in the living wage might have on the economy~~
5 ~~of the state, including the effect of a living wage increase on job creation, retention~~
6 ~~and expansion, on the availability of entry-level jobs and on regional economic~~
7 ~~conditions within the state~~ this chapter. The department may not establish a
8 different minimum wage for men and women. Said orders shall be subject to review
9 in the manner provided in ch. 227.

10 **SECTION 13.** 104.045 of the statutes is renumbered 104.045 (intro.) and
11 amended to read:

12 **104.045** (title) **Tipped employes Tips, meals and lodging, and hours**
13 **worked.** (intro.) The department shall ~~by rule determine what amount of~~
14 promulgate rules governing all of the following:

15 (1) The counting of tips or similar gratuities may be counted toward fulfillment
16 of the employe's obligation under this chapter.

17 **SECTION 14.** 104.045 (2) and (3) of the statutes are created to read:

18 104.045 **(2)** The deduction of meals or lodging provided by an employer to an
19 employe from the employer's obligations under this chapter.

20 **(3)** The determination of hours worked by an employe during which the
21 employe is entitled to a living wage under this chapter.

22 **SECTION 15.** 104.05 of the statutes is amended to read:

23 **104.05 Complaints; investigation.** The department shall, within 20 days
24 after the filing of a verified complaint of any person ~~setting forth~~ alleging that the
25 wages paid to any employe ~~in any occupation~~ are not sufficient to enable the employe

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1 to maintain himself or herself under conditions consistent with his or her welfare,
2 investigate and determine whether there is reasonable cause to believe that the wage
3 paid to any ~~the~~ employe is not a ~~living-wage~~ living wage.

4 **SECTION 16.** 104.06 of the statutes is amended to read:

5 **104.06 Wage council; determination.** If, upon investigation, the
6 department finds that there is reasonable cause to believe that the wages paid to any
7 employe are not a ~~living-wage~~ living wage, it shall appoint a wage council, selected
8 so as fairly to represent employers, employes and the public, to assist in its
9 investigations and determinations. ~~The living-wage~~ department may use the
10 results of an investigation under this section to establish a living wage. A living wage
11 so determined upon shall be the ~~living-wage~~ living wage for all employes within the
12 same class as established by the ~~classification of the department~~ under s. 104.04.

13 **SECTION 17.** 104.07 (1) and (2) of the statutes are amended to read:

14 104.07 (1) The department shall ~~make~~ promulgate rules and grant licenses, to
15 any employer who employs any employe who is unable to earn the ~~living-wage~~
16 ~~theretofore determined upon, permitting such person to~~ a living wage so that the
17 employe may work for a wage which shall be that is commensurate with the
18 employe's ability, and each license so granted shall establish a wage for the licensee
19 employe.

20 (2) The department shall ~~make~~ promulgate rules and grant licenses to any
21 ~~sheltered workshops to permit the employment of~~ workshop that employs any
22 ~~handicapped workers~~ worker who is unable to earn the ~~living-wage~~ theretofore
23 ~~determined upon permitting such persons to~~ a living wage so that the handicapped
24 worker may work for a wage which shall be that is commensurate with his or her

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1 ability and productivity. A license granted to a sheltered workshop, under this
2 section, may be issued for the entire workshop or a department thereof.

3 **SECTION 18.** 104.08 (1) of the statutes is renumbered 104.08 (2) and amended
4 to read:

5 104.08 (2) ~~All persons~~ Any person working in an ~~occupation~~ trade industry
6 for which a ~~living-wage~~ living wage has been established for minors, and who shall
7 have has no trade, shall, ~~if employed in an occupation which is a trade industry,~~ be
8 indentured under ~~the provisions of s. 106.01.~~

9 **SECTION 19.** 104.08 (1) (b) of the statutes is created to read:

10 104.08 (1) (b) "Trade industry" means an industry involving physical labor and
11 characterized by mechanical skill and training such as render a period of instruction
12 reasonably necessary.

13 **SECTION 20.** 104.08 (2) of the statutes is renumbered 104.08 (1) (intro.) and
14 amended to read:

15 104.08 (1) (intro.) A ~~"trade" or a "trade industry" within the meaning of ss.~~
16 ~~104.01 to 104.12 shall be a trade or~~ In this section:

17 (a) "Trade" means an industry occupation involving physical labor and
18 characterized by mechanical skill and training such as render a period of instruction
19 reasonably necessary.

20 (3) (a) The department shall investigate, determine and declare what
21 occupations and industries are included within ~~the phrase~~ a "trade" or a "trade
22 industry".

23 **SECTION 21.** 104.08 (3) of the statutes is renumbered 104.08 (3) (b) and
24 amended to read:

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1 104.08 (3) (b) The department may make exceptions to the operation of subs.
2 ~~(1) and sub.~~ (2) where conditions make ~~their application~~ its application
3 unreasonable.

4 **SECTION 22.** 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 in any way discriminates, or threatens to discriminate
7 against any employe because the employe has testified or is about to testify, or
8 because the employer believes that the employe may testify, in any investigation or
9 proceeding relative to the enforcement of ss. 104.01 to 104.12 this chapter, is guilty
10 of a misdemeanor, and upon conviction thereof shall be punished by a fine of \$25 \$500
11 for each offense.

12 **SECTION 23.** 104.11 of the statutes is amended to read:

13 **104.11 Definition of violation.** Each day during which ~~any an~~ employer
14 ~~shall employ~~ employs a person for whom a ~~living-wage~~ living wage has been fixed
15 established at a wage less than the ~~living-wage fixed~~ established living wage shall
16 constitute a separate and distinct violation of ss. 104.01 to 104.12 this chapter.

17 **SECTION 24.** 104.12 of the statutes is amended to read:

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

25 **SECTION 25.** 234.94 (5) of the statutes is amended to read:

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

5 **SECTION 26.** 234.94 (8) of the statutes is amended to read:

6 234.94 (8) "Target group" means a population group for which the
7 unemployment level is at least 25% higher than the statewide unemployment level,
8 or a population group for which the average wage received is less than 1.2 times the
9 minimum wage as established under ~~eh. 104 s. 104.035 (1)~~ or under federal law,
10 whichever is greater. No population group is required to be located within a
11 contiguous geographic area to be considered a target group.

12 **SECTION 27.** 800.09 (1) (b) of the statutes is amended to read:

13 800.09 (1) (b) If the defendant agrees to perform community service work in
14 lieu of making restitution or paying the forfeiture, assessments and costs, or both,
15 the court may order that the defendant perform community service work for a public
16 agency or a nonprofit charitable organization that is designated by the court.
17 Community service work may be in lieu of restitution only if also agreed to by the
18 public agency or nonprofit charitable organization and by the person to whom
19 restitution is owed. The court may utilize any available resources, including any
20 community service work program, in ordering the defendant to perform community
21 service work. The number of hours of community service work required may not
22 exceed the number determined by dividing the amount owed on the forfeiture by the
23 minimum wage established under ~~eh. 104 for adults in nonagriculture, nontipped~~
24 ~~employment~~ s. 104.035 (1). The court shall ensure that the defendant is provided a

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1 written statement of the terms of the community service order and that the
2 community service order is monitored.

3 **SECTION 28.** 800.095 (4) (b) 3. of the statutes is amended to read:

4 800.095 (4) (b) 3. That the defendant perform community service work for a
5 public agency or a nonprofit charitable organization designated by the court, except
6 that the court may not order the defendant to perform community service work
7 unless the defendant agrees to perform community service work and, if the
8 community service work is in lieu of restitution, unless the person to whom the
9 restitution is owed agrees. The court may utilize any available resources, including
10 any community service work program, in ordering the defendant to perform
11 community service work. The number of hours of community service work required
12 may not exceed the number determined by dividing the amount owed on the
13 forfeiture or restitution, or both, by the minimum wage established under ~~ch. 104 for~~
14 ~~adults in nonagriculture, nontipped employment~~ s. 104.035 (1). The court shall
15 ensure that the defendant is provided a written statement of the terms of the
16 community service order and that the community service order is monitored.

17 **SECTION 29.** 895.035 (2m) (c) of the statutes is amended to read:

18 895.035 (2m) (c) The court assigned to exercise jurisdiction under chs. 48 and
19 938 may order that the child perform community service work for a public agency or
20 nonprofit charitable organization that is designated by the court in lieu of making
21 restitution or paying the forfeiture. If the parent agrees to perform community
22 service work in lieu of making restitution or paying the forfeiture, the court may
23 order that the parent perform community service work for a public agency or a
24 nonprofit charitable organization that is designated by the court. Community
25 service work may be in lieu of restitution only if also agreed to by the public agency

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1 or nonprofit charitable organization and by the person to whom restitution is owed.
2 The court may utilize any available resources, including any community service
3 work program, in ordering the child or parent to perform community service work.
4 The number of hours of community service work required may not exceed the number
5 determined by dividing the amount owed on the restitution or forfeiture by the
6 minimum wage established under ~~ch. 104 for adults in nonagriculture, nontipped~~
7 ~~employment~~ s. 104.035 (1). The court shall ensure that the child or parent is provided
8 with a written statement of the terms of the community service order and that the
9 community service order is monitored.

SECTION 30. Effective date.

11 (1) This act takes effect on January 1, 1998, or on the first day of the first month
12 beginning after publication, whichever is later.

13 (END)