



1997 SENATE BILL 95

February 25, 1997 - Introduced by Senators WINEKE, DECKER and CLAUSING, cosponsored by Representatives RILEY, BLACK, R. YOUNG, NOTESTEIN, BALDWIN, VANDER LOOP, CARPENTER, WILLIAMS, L. YOUNG, BOYLE, SPRINGER and KREUSER. Referred to Committee on Labor, Transportation and Financial Institutions.

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

Analysis by the Legislative Reference Bureau

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

Employees Generally

Probation

After Probation

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Adults 18 years of age and over	\$3.95	\$4.25
Minors under 18 years of age	\$3.60	\$3.90

Tipped Employes

	<u><i>Probation</i></u>	<u><i>After Probation</i></u>
Adults 18 years of age and over	\$2.20	\$2.33
Minors under 18 years of age	\$2	\$2.13

Agricultural Employes

	<u><i>Minimum Wage</i></u>
Adults 18 years of age and over	\$4.05
Minors under 18 years of age	\$3.70

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

Under this bill, DILJD will continue to provide, 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 employes, however, including agricultural employes, employes under 18 years of age and employes who receive tips, the bill provides the method by which DILJD must calculate the minimum wage.

Specifically, for employes generally, that is, employes who are not agricultural employes, who are not under 18 years of age, who are not tipped employes, who are not probationary employes or who are not employes for whom DILJD provides a separate minimum wage, the bill directs DILJD to calculate the minimum hourly wage by dividing the federal poverty line for a family of 3 persons (federal poverty line) (currently \$12,980 per year), by 2,080 (52 weeks in a year times 40 hours per week), and rounding the quotient to the nearest multiple of 5 cents. Accordingly, at the current federal poverty line, this bill raises the minimum wage for employes generally to \$6.25 per hour.

For other employes, the bill directs DILJD to calculate the minimum hourly wage by multiplying the result obtained under the previous paragraph as follows:

1. For probationary employes 18 years of age or over, by 92.9% and rounding the product to the nearest multiple of 5 cents, resulting in a minimum wage of \$5.80 per hour when calculated based on the current federal poverty line.

2. For employes under 18 years of age who are not probationary employes, by 91.7% and rounding the product to the nearest multiple of 5 cents, resulting in a minimum wage of \$5.75 per hour when calculated based on the current poverty line.

3. For employes under 18 years of age who are probationary employes, by 84.7% and rounding the product to the nearest multiple of 5 cents, resulting in a minimum wage of \$5.30 per hour when calculated based on the current poverty line.

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4. For tipped employes 18 years of age or over who are not probationary employes, by 54.8% and rounding the product to the nearest multiple of 5 cents, resulting in a minimum wage of \$3.45 per hour when calculated based on the current poverty line.

5. For tipped employes 18 years of age or over who are probationary employes, by 51.7% and rounding the product to the nearest multiple of 5 cents, resulting in a minimum wage of \$3.25 per hour when calculated based on the current poverty line.

6. For tipped employes under 18 years of age who are not probationary employes, by 50.1% and rounding the product to the nearest multiple of 5 cents, resulting in a minimum wage of \$3.15 per hour when calculated based on the current poverty line.

7. For tipped employes under 18 years of age who are probationary employes, by 47.0% and rounding the product to the nearest multiple of 5 cents, resulting in a minimum wage of \$2.95 per hour when calculated based on the current poverty line.

8. For agricultural employes 18 years of age or over, by 95.3% and rounding the product to the nearest multiple of 5 cents, resulting in a minimum wage of \$5.95 per hour when calculated based on the current poverty line.

9. For agricultural employes under 18 years of age, by 87.0% and rounding the product to the nearest multiple of 5 cents, resulting in a minimum wage of \$5.45 per hour when calculated based on the current poverty line.

The bill further requires DILJD to revise the minimum wages specified above annually within 30 days after the federal department of labor publishes its annual revision of the poverty line.

Finally, 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 this 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.

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 (2)~~ or the federal minimum hourly wage under 29 USC 206 (a) (1),
4 whichever is applicable.

5 **SECTION 2.** 104.01 (intro.) of the statutes is amended to read:

SENATE BILL 95**SECTION 2**

1 **104.01 Definitions.** (intro.) ~~The following terms as used in ss. 104.01 to~~
2 ~~104.12 shall be construed as follows~~ In this chapter:

3 **SECTION 3.** 104.01 (5) of the statutes is amended to read:

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

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

9 104.01 (5m) “Poverty line” means the nonfarm federal poverty line for the
10 continental United States, as defined and revised annually by the federal
11 department of labor under 42 USC 9902 (2).

12 **SECTION 5.** 104.01 (5p) of the statutes is created to read:

13 104.01 (5p) “Probationary employe” means a person who has been employed
14 for a cumulative total of 30 calendar days or less within the preceding 3-year period.

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

16 104.01 (7m) “Tipped employe” means an employe who in the course of
17 employment customarily and regularly receives money or other gratuities from
18 persons other than the employe’s employer.

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

20 104.01 (8) ~~The term “wage” and the term “wages” shall each mean~~ “Wage”
21 means any compensation for labor measured by time, piece or otherwise.

22 **SECTION 8.** 104.02 of the statutes is amended to read:

23 **104.02** (title) ~~Living-wage prescribed~~ Living wage required. Every wage
24 paid or agreed to be paid by any employer to any employe, except as otherwise
25 provided in s. 104.07, shall be not less than a ~~living-wage~~ living wage.

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1 **SECTION 9.** 104.03 of the statutes is amended to read:

2 **104.03 Unlawful wages.** Any employer paying, offering to pay, or agreeing
3 to pay any employe a wage lower or less in value than a ~~living-wage~~ living wage is
4 guilty of a violation of ~~ss. 104.01 to 104.12~~ this chapter.

5 **SECTION 10.** 104.035 of the statutes is created to read:

6 **104.035 Minimum wage. (1)** DEPARTMENT TO PROMULGATE RULES. The
7 department shall promulgate rules providing minimum hourly wages for the
8 employes specified in subs. (2) to (7). The department shall calculate those minimum
9 hourly wages according to the methods specified in subs. (2) to (7). Annually, within
10 30 days after the federal department of labor publishes its annual revision of the
11 poverty line, the department, using the procedure under s. 227.24 and the methods
12 specified in subs. (2) to (7), shall promulgate rules revising the minimum hourly
13 wages provided under subs. (2) to (7). Notwithstanding s. 227.24 (1) (a) and (2) (b),
14 the department need not provide evidence of the necessity of preservation of the
15 public peace, health, safety or welfare in promulgating rules revising the minimum
16 wages provided under subs. (2) to (7). A revised minimum wage provided under subs.
17 (2) to (7) shall first apply to wages earned beginning on the first day of the first month
18 beginning after the date on which that minimum wage is revised.

19 **(2) EMPLOYES GENERALLY.** Subject to the minimum wages provided under subs.
20 (3) to (7), the department shall calculate the minimum hourly wage for employes
21 generally by dividing the poverty line for a family of 3 persons by 2,080 and rounding
22 the quotient to the nearest multiple of 5 cents.

23 **(3) PROBATIONARY EMPLOYES OVER 18.** Notwithstanding the minimum wage
24 provided under sub. (2), but subject to the minimum wages provided under subs. (5)
25 to (8), the department shall calculate the minimum wage for probationary employes

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1 18 years of age or over by multiplying the result obtained under sub. (2) by 92.9% and
2 rounding the product to the nearest multiple of 5 cents.

3 (4) EMPLOYES UNDER 18. Notwithstanding the minimum wage provided under
4 sub. (2), but subject to the minimum wages provided under subs. (5) to (8), the
5 department shall calculate the minimum wage for persons under 18 years of age who
6 are not probationary employes by multiplying the result obtained under sub. (2) by
7 91.7% and rounding the product to the nearest multiple of 5 cents and shall calculate
8 the minimum wage for persons under 18 years of age who are probationary employes
9 by multiplying the result obtained under sub. (2) by 84.7% and rounding the product
10 to the nearest multiple of 5 cents.

11 (5) TIPPED EMPLOYES. (a) Notwithstanding the minimum wages provided under
12 subs. (2) to (4), but subject to the minimum wages provided under subs. (6) to (8), the
13 department shall calculate the minimum wage for tipped employes as follows:

14 1. For persons 18 years of age or over who are not probationary employes, by
15 multiplying the result obtained under sub. (2) by 54.8% and rounding the product to
16 the nearest multiple of 5 cents, and for persons 18 years of age or over who are
17 probationary employes, by multiplying the result obtained under sub. (2) by 51.7%
18 and rounding the product to the nearest multiple of 5 cents.

19 2. For persons under 18 years of age who are not probationary employes, by
20 multiplying the result obtained under sub. (2) by 50.1% and rounding the product to
21 the nearest multiple of 5 cents, and for persons under 18 years of age who are
22 probationary employes, by multiplying the result obtained under sub. (2) by 47.0%
23 and rounding the product to the nearest multiple of 5 cents.

24 (b) An employer may pay the minimum wages specified in par. (a) only if the
25 employer establishes by his or her payroll records that, when adding the tips received

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1 by an employe to the wages under par. (a) paid to that employe, the employe receives
2 not less than the minimum wage specified in sub. (2), (3) or (4), whichever is
3 applicable.

4 **(6) AGRICULTURAL EMPLOYES.** Notwithstanding the minimum wages provided
5 under subs. (2) to (5), but subject to the minimum wages provided under subs. (7) and
6 (8), the department shall calculate the minimum wage for persons 18 years of age or
7 over who are agricultural employes by multiplying the result obtained under sub. (2)
8 by 95.3% and rounding the product to the nearest multiple of 5 cents and shall
9 calculate the minimum wage for persons under 18 years of age who are agricultural
10 employes by multiplying the result obtained under sub. (2) by 87.0% and rounding
11 the product to the nearest multiple of 5 cents.

12 **(7) MINIMUM WAGE ESTABLISHED BY DEPARTMENT.** The department shall
13 promulgate rules providing the minimum wage for all of the following:

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

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

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

22 (d) A caddy on a golf course.

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

24 (f) A student who is enrolled in a bona fide vocational training program.

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1 (8) DEPARTMENT MAY REVISE. The department may promulgate rules to increase
2 a minimum wage provided under subs. (2) to (6).

3 **SECTION 11.** 104.04 of the statutes is amended to read:

4 **104.04 Classifications; department's authority.** The department shall
5 investigate, ascertain, determine and fix such reasonable classifications, and shall
6 impose general or special orders, determining the ~~living-wage~~ living wage, and shall
7 carry out the purposes of ~~ss. 104.01 to 104.12~~ this chapter. Such investigations,
8 classifications and orders shall be made as provided under s. 103.005, and the
9 penalties specified in s. 103.005 (12) shall apply to and be imposed for any violation
10 of ~~ss. 104.01 to 104.12~~. ~~In determining the living-wage, the department may~~
11 ~~consider the effect that an increase in the living-wage might have on the economy~~
12 ~~of the state, including the effect of a living-wage increase on job creation, retention~~
13 ~~and expansion, on the availability of entry-level jobs and on regional economic~~
14 ~~conditions within the state~~ this chapter. The department may not establish a
15 different minimum wage for men and women. Said orders shall be subject to review
16 in the manner provided in ch. 227.

17 **SECTION 12.** 104.045 of the statutes is renumbered 104.045 (intro.) and
18 amended to read:

19 **104.045** (title) **Tipped employes Tips, meals and lodging, and hours**
20 **worked.** (intro.) The department shall ~~by rule determine what amount of~~
21 promulgate rules governing all of the following:

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

24 **SECTION 13.** 104.045 (2) and (3) of the statutes are created to read:

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1 104.045 (2) The deduction of meals or lodging provided by an employer to an
2 employe from the employer's obligations under this chapter.

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

5 **SECTION 14.** 104.05 of the statutes is amended to read:

6 **104.05 Complaints; investigation.** The department shall, within 20 days
7 after the filing of a verified complaint of any person ~~setting forth~~ alleging that the
8 wages paid to any employe ~~in any occupation~~ are not sufficient to enable the employe
9 to maintain himself or herself under conditions consistent with his or her welfare,
10 investigate and determine whether there is reasonable cause to believe that the wage
11 paid to any the employe is not a ~~living-wage~~ living wage.

12 **SECTION 15.** 104.06 of the statutes is amended to read:

13 **104.06 Wage council; determination.** If, upon investigation, the
14 department finds that there is reasonable cause to believe that the wages paid to any
15 employe are not a ~~living-wage~~ living wage, it shall appoint a wage council, selected
16 so as fairly to represent employers, employes and the public, to assist in its
17 investigations and determinations. The living-wage department may use the
18 results of an investigation under this section to establish a living wage. A living wage
19 so determined upon shall be the living-wage living wage for all employes within the
20 same class as established by the classification of the department under s. 104.04.

21 **SECTION 16.** 104.07 (1) and (2) of the statutes are amended to read:

22 104.07 (1) The department shall ~~make~~ promulgate rules and grant licenses, to
23 any employer who employs any employe who is unable to earn the ~~living-wage~~
24 ~~theretofore determined upon, permitting such person to~~ a living wage so that the
25 employe may work for a wage ~~which shall be~~ that is commensurate with the

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1 employee's ability, and each license so granted shall establish a wage for the licensee
2 employee.

3 (2) The department shall ~~make~~ promulgate rules and grant licenses to any
4 ~~sheltered workshops to permit the employment of~~ workshop that employs any
5 ~~handicapped workers~~ worker who is unable to earn the ~~living wage~~ therefore
6 ~~determined upon permitting such persons to~~ a living wage so that the ~~handicapped~~
7 worker may work for a wage ~~which shall be~~ that is commensurate with his or her
8 ability and productivity. A license granted to a sheltered workshop, under this
9 section, may be issued for the entire workshop or a department thereof.

10 **SECTION 17.** 104.08 (1) of the statutes is renumbered 104.08 (2) and amended
11 to read:

12 104.08 (2) ~~All persons~~ Any person working in an ~~occupation~~ trade industry
13 for which a ~~living wage~~ living wage has been established for minors, and who ~~shall~~
14 ~~have~~ has no trade, shall, ~~if employed in an occupation which is a trade industry,~~ be
15 indentured under ~~the provisions of~~ s. 106.01.

16 **SECTION 18.** 104.08 (1) (b) of the statutes is created to read:

17 104.08 (1) (b) "Trade industry" means an industry involving physical labor and
18 characterized by mechanical skill and training such as render a period of instruction
19 reasonably necessary.

20 **SECTION 19.** 104.08 (2) of the statutes is renumbered 104.08 (1) (intro.) and
21 amended to read:

22 104.08 (1) (intro.) ~~A "trade" or a "trade industry" within the meaning of ss.~~
23 ~~104.01 to 104.12 shall be a trade or~~ In this section:

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1 (a) “Trade” means an industry occupation involving physical labor and
2 characterized by mechanical skill and training such as render a period of instruction
3 reasonably necessary.

4 **(3) (a)** The department shall investigate, determine and declare what
5 occupations and industries are included within the phrase a “trade” or a “trade
6 industry”.

7 **SECTION 20.** 104.08 (3) of the statutes is renumbered 104.08 (3) (b).

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

9 **104.10 Penalty for intimidating witness.** Any employer who discharges or
10 threatens to discharge, or in any way discriminates, or threatens to discriminate
11 against any employe because the employe has testified or is about to testify, or
12 because the employer believes that the employe may testify, in any investigation or
13 proceeding relative to the enforcement of ss. 104.01 to 104.12 this chapter, is guilty
14 of a misdemeanor, and upon conviction thereof shall be punished by a fine of \$25 \$500
15 for each offense.

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

17 **104.11 Definition of violation.** Each day during which any an employer
18 shall employ employs a person for whom a living-wage living wage has been fixed
19 established at a wage less than the living-wage fixed established living wage shall
20 constitute a separate and distinct violation of ss. 104.01 to 104.12 this chapter.

21 **SECTION 23.** 104.12 of the statutes is amended to read:

22 **104.12 Complaints.** Any person may register with the department a
23 complaint that the wages paid to employes for whom a living-wage living wage has
24 been established are less than that rate, and the department shall investigate the
25 matter and take all proceedings necessary to enforce the payment of a wage not less

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1 than ~~the living wage~~ a living wage. Section 111.322 (2m) applies to discharge and
2 other discriminatory acts arising in connection with any proceeding under this
3 section.

4 **SECTION 24.** 234.94 (5) of the statutes is amended to read:

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

9 **SECTION 25.** 234.94 (8) of the statutes is amended to read:

10 234.94 (8) "Target group" means a population group for which the
11 unemployment level is at least 25% higher than the statewide unemployment level,
12 or a population group for which the average wage received is less than 1.2 times the
13 minimum wage as established under ~~ch. 104 s. 104.035 (2)~~ or under federal law,
14 whichever is greater. No population group is required to be located within a
15 contiguous geographic area to be considered a target group.

16 **SECTION 26.** 800.09 (1) (b) of the statutes is amended to read:

17 800.09 (1) (b) If the defendant agrees to perform community service work in
18 lieu of making restitution or paying the forfeiture, assessments and costs, or both,
19 the court may order that the defendant perform community service work for a public
20 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 defendant to perform community
25 service work. The number of hours of community service work required may not

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1 exceed the number determined by dividing the amount owed on the forfeiture by the
2 minimum wage established under ~~ch. 104 for adults in nonagriculture, nontipped~~
3 ~~employment s. 104.035 (2)~~. The court shall ensure that the defendant is provided a
4 written statement of the terms of the community service order and that the
5 community service order is monitored.

6 **SECTION 27.** 800.095 (4) (b) 3. of the statutes is amended to read:

7 800.095 (4) (b) 3. That the defendant perform community service work for a
8 public agency or a nonprofit charitable organization designated by the court, except
9 that the court may not order the defendant to perform community service work
10 unless the defendant agrees to perform community service work and, if the
11 community service work is in lieu of restitution, unless the person to whom the
12 restitution is owed agrees. The court may utilize any available resources, including
13 any community service work program, in ordering the defendant to perform
14 community service work. The number of hours of community service work required
15 may not exceed the number determined by dividing the amount owed on the
16 forfeiture or restitution, or both, by the minimum wage established under ~~ch. 104 for~~
17 ~~adults in nonagriculture, nontipped employment s. 104.035 (2)~~. The court shall
18 ensure that the defendant is provided a written statement of the terms of the
19 community service order and that the community service order is monitored.

20 **SECTION 28.** 895.035 (2m) (c) of the statutes is amended to read:

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

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

13 (END)