

1999 SENATE BILL 193

June 15, 1999 – Introduced by Senators CHVALA, MOEN, BAUMGART, GEORGE, RISSER and JAUCH, cosponsored by Representatives BALOW, HASENOHRL, CARPENTER, BLACK, BOYLE, KRUG, BOCK, LA FAVE, MILLER, YOUNG, J. LEHMAN, RYBA, POCAN, KREUSER, MORRIS-TATUM, PLOUFF and RICHARDS. Referred to Committee on Labor.

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), 104.07 (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 workforce development (DWD) has provided, by rule, minimum hourly wages for various classes of employment as follows:

SENATE BILL 193Employees Generally

Opportunity employees (employees under 20 years of age in their first 90 days of employment with a particular employer)	\$4.25
Nonopportunity employees	\$5.15

Tipped Employees

Opportunity employees	\$2.13
Nonopportunity employees	\$2.33

Agricultural Employees

Adults	\$4.05
Minors	\$3.70

Also under current law, DWD has provided, by rule, separate minimum wage rates for counselors at recreational or educational camps, employees who perform less than 15 hours a week of casual employment, such as baby sitting or lawn mowing, in and around an employer's home, employees hired as personal companions for elderly or disabled individuals, golf caddies, students employed at independent colleges and universities, student learners employed in bona fide school training programs and individuals who are unable to earn the standard minimum wage because of a disability.

Under this bill, DWD will continue to provide, by rule, separate minimum wage rates for camp counselors, persons in casual employment, personal companions, golf caddies, independent college and university students, student learners and those who are unable to earn the standard minimum wage because of a disability. For other employees, however, including agricultural employees and tipped employees, the bill provides the method by which DWD must calculate the minimum wage.

Specifically, for employees generally, that is, employees who are not agricultural employees, tipped employees, opportunity employees (defined in the bill as employees under 20 years of age who have been employed for a cumulative total of 30 calendar days or less within the preceding three-year period) or employees for whom DWD provides a separate minimum wage, the bill directs DWD to calculate the minimum hourly wage by dividing the federal poverty line for a family of three persons (federal poverty line) (currently \$13,650 per year), by 2,080 (52 weeks in a year times 40 hours per week), and rounding the quotient to the nearest multiple of five cents. Accordingly, at the current federal poverty line, this bill raises the minimum wage for employees generally to \$6.55 per hour.

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

1. For opportunity employees, by 92.9% and rounding the product to the nearest multiple of five cents, resulting in a minimum wage of \$6.10 per hour when calculated based on the current federal poverty line.

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2. For tipped employes who are not opportunity employes, by 54.8% and rounding the product to the nearest multiple of five cents, resulting in a minimum wage of \$3.55 per hour when calculated based on the current poverty line.

3. For tipped employes who are opportunity employes, by 51.7% and rounding the product to the nearest multiple of five cents, resulting in a minimum wage of \$3.40 per hour when calculated based on the current poverty line.

4. For agricultural employes 18 years of age or over, by 95.3% and rounding the product to the nearest multiple of five cents, resulting in a minimum wage of \$6.25 per hour when calculated based on the current poverty line.

5. For agricultural employes under 18 years of age, by 87.0% and rounding the product to the nearest multiple of five cents, resulting in a minimum wage of \$5.70 per hour when calculated based on the current poverty line.

The bill further requires DWD to revise the minimum wages specified above annually within 30 days after the federal department of health and human services publishes its annual revision of the poverty line.

Finally, current law requires DWD, 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:

6 **104.01 Definitions.** (intro.) ~~The following terms as used in ss. 104.01 to~~
7 ~~104.12 shall be construed as follows~~ In this chapter:

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

9 104.01 (5) ~~The term “living wage” shall mean~~ “Living wage” means
10 compensation for labor paid, whether by time, piecework or otherwise, sufficient to

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1 enable the employe receiving it to maintain himself or herself under conditions
2 consistent with his or her welfare.

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

4 104.01 **(5m)** “Opportunity employe” means a person under 20 years of age who
5 has been employed for a cumulative total of 30 calendar days or less within the
6 preceding 3-year period.

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

8 104.01 **(5p)** “Poverty line” means the poverty guidelines for the continental
9 United States, as revised annually by the federal department of health and human
10 services under 42 USC 9902 (2).

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

12 104.01 **(7m)** “Tipped employe” means an employe who in the course of
13 employment customarily and regularly receives money or other gratuities from
14 persons other than the employe’s employer.

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

16 104.01 **(8)** ~~The term “wage” and the term “wages” shall each mean “Wage”~~
17 means any compensation for labor measured by time, piece or otherwise.

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

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

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

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

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

2 **104.035 Minimum wage. (1)** DEPARTMENT TO PROMULGATE RULES. The
3 department shall promulgate rules providing minimum hourly wages for the
4 employes specified in subs. (2) to (5). The department shall calculate those minimum
5 hourly wages according to the methods specified in subs. (2) to (5). Annually, within
6 30 days after the federal department of health and human services publishes its
7 annual revision of the poverty line, the department, using the procedure under s.
8 227.24 and the methods specified in subs. (2) to (5), shall promulgate rules revising
9 the minimum hourly wages provided under subs. (2) to (5). Notwithstanding s.
10 227.24 (1) (a) and (2) (b), the department is not required to provide evidence of the
11 necessity of preserving the public peace, health, safety or welfare in promulgating
12 rules revising the minimum wages provided under subs. (2) to (5). A revised
13 minimum wage provided under subs. (2) to (5) shall first apply to wages earned
14 beginning on the first day of the first month beginning after the date on which that
15 minimum wage is revised.

16 **(2)** EMPLOYES GENERALLY. Subject to the minimum wages provided under subs.
17 (3) to (6), the department shall calculate the minimum hourly wage for employes
18 generally by dividing the poverty line for a family of 3 persons by 2,080 and rounding
19 the quotient to the nearest multiple of 5 cents.

20 **(3)** OPPORTUNITY EMPLOYES. Notwithstanding the minimum wage provided
21 under sub. (2), but subject to the minimum wages provided under subs. (4) to (7), the
22 department shall calculate the minimum wage for opportunity employes by
23 multiplying the result obtained under sub. (2) by 92.9% and rounding the product to
24 the nearest multiple of 5 cents.

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1 **(4) TIPPED EMPLOYES.** (a) Notwithstanding the minimum wages provided under
2 subs. (2) and (3), but subject to the minimum wages provided under subs. (5) to (7),
3 the department shall calculate the minimum wage for tipped employes as follows:

4 1. For persons who are not opportunity employes, by multiplying the result
5 obtained under sub. (2) by 54.8% and rounding the product to the nearest multiple
6 of 5 cents.

7 2. For persons who are opportunity employes, by multiplying the result
8 obtained under sub. (2) by 51.7% and rounding the product to the nearest multiple
9 of 5 cents.

10 (b) An employer may pay the minimum wages specified in par. (a) only if the
11 employer establishes by the employer's payroll records that, when adding the tips
12 received by an employe to the wages under par. (a) paid to that employe, the employe
13 receives not less than the minimum wage specified in sub. (2) or (3), whichever is
14 applicable.

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

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

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1 (a) A counselor employed at a seasonal recreational or educational camp,
2 including a day camp, for campers under 18 years of age.

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

5 (c) A person who resides with and who provides companionship, care, not
6 including practical or professional nursing, as defined in s. 441.11 (3) and (4), and not
7 more than 15 hours per week of general household work for an employer who, due
8 to advanced age or physical or mental disability, cannot care for his or her own needs.

9 (d) A caddy on a golf course.

10 (e) An employe or worker with a disability covered under a license under s.
11 104.07.

12 (f) A student learner.

13 (g) A student employed by an independent college or university.

14 (7) DEPARTMENT MAY REVISE. The department may promulgate rules to increase
15 a minimum wage provided under subs. (2) to (5).

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

17 **104.04 Classifications; department's authority.** The department shall
18 investigate, ascertain, determine and fix such reasonable classifications, and shall
19 impose general or special orders, determining the ~~living-wage~~ living wage, and shall
20 carry out the purposes of ~~ss. 104.01 to 104.12~~ this chapter. Such investigations,
21 classifications and orders shall be made as provided under s. 103.005, and the
22 penalties specified in s. 103.005 (12) shall apply to and be imposed for any violation
23 of ~~ss. 104.01 to 104.12~~. ~~In determining the living-wage, the department may~~
24 ~~consider the effect that an increase in the living-wage might have on the economy~~
25 ~~of the state, including the effect of a living-wage increase on job creation, retention~~

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1 ~~and expansion, on the availability of entry-level jobs and on regional economic~~
2 ~~conditions within the state~~ this chapter. The department may not establish a
3 different minimum wage for men and women. Said orders shall be subject to review
4 in the manner provided in ch. 227.

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

7 **104.045 Tipped employes Tips, meals and lodging, and hours worked.**
8 (intro.) The department shall ~~by rule determine what amount of~~ promulgate rules
9 governing all of the following:

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

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

13 104.045 **(2)** The deduction of meals or lodging provided by an employer to an
14 employe from the employer's obligations under this chapter.

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

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

18 **104.05 Complaints; investigation.** The department shall, within 20 days
19 after the filing of a verified complaint of any person ~~setting forth~~ alleging that the
20 wages paid to any employe ~~in any occupation~~ are not sufficient to enable the employe
21 to maintain himself or herself under conditions consistent with his or her welfare,
22 investigate and determine whether there is reasonable cause to believe that the wage
23 paid to any the employe is not a ~~living wage~~ living wage.

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

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1 **104.06 Wage council; determination.** If, upon investigation, the
2 department finds that there is reasonable cause to believe that the wages paid to any
3 employe are not a ~~living wage~~, it living wage, the department shall appoint a wage
4 council, selected so as fairly to represent employers, employes and the public, to
5 assist in its investigations and determinations. The ~~living wage~~ department may
6 use the results of an investigation under this section to establish a living wage. A
7 living wage so determined ~~upon~~ shall be the ~~living wage~~ living wage for all employes
8 within the same class as established by the ~~classification of the department~~ under
9 s. 104.04.

10 **SECTION 16.** 104.07 (1) of the statutes is amended to read:

11 104.07 (1) The department shall ~~make~~ promulgate rules and, except as
12 provided under subs. (5) and (6), grant licenses, to any employer who employs any
13 employe who is unable to earn the ~~living wage theretofore determined upon~~,
14 permitting such person to a living wage so that the employe may work for a wage
15 which shall be that is commensurate with the employe's ability and ~~each.~~ Each
16 license so granted shall establish a wage for the licensee employes of the licensee who
17 are unable to earn a living wage.

18 **SECTION 17.** 104.07 (2) of the statutes is amended to read:

19 104.07 (2) The department shall ~~make~~ promulgate rules and, except as
20 provided under subs. (5) and (6), grant licenses to sheltered workshops to permit the
21 employment of workers with disabilities who are unable to earn the ~~living wage at~~
22 a living wage so that those workers may work for a wage that is commensurate with
23 their ability and productivity. A license granted to a sheltered workshop under this
24 section may be issued for the entire workshop or a department of the workshop.

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

3 104.08 (2) ~~All persons~~ Any person working in an ~~occupation~~ trade industry
4 for which a ~~living-wage~~ living wage has been established for minors, and who ~~shall~~
5 have ~~has~~ no trade, ~~shall, if employed in an occupation which is a trade industry,~~ be
6 indentured under ~~the provisions of s. 106.01.~~

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

8 104.08 (1) (b) “Trade industry” means an industry involving physical labor and
9 characterized by mechanical skill and training such as render a period of instruction
10 reasonably necessary.

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

13 104.08 (1) (intro.) ~~A “trade” or a “trade industry” within the meaning of ss.~~
14 ~~104.01 to 104.12 shall be a trade or~~ In this section:

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

18 (3) (a) The department shall investigate, determine and declare what
19 occupations and industries are included within ~~the phrase~~ a “trade” or a “trade
20 industry”.

21 **SECTION 21.** 104.08 (3) of the statutes is renumbered 104.08 (3) (b).

22 **SECTION 22.** 104.10 of the statutes is amended to read:

23 **104.10 Penalty for intimidating witness.** Any employer who discharges or
24 threatens to discharge, or who in any way discriminates, or threatens to
25 discriminate, against any employe because the employe has testified or is about to

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1 testify, or because the employer believes that the employe may testify, in any
2 investigation or proceeding relative to the enforcement of ~~ss. 104.01 to 104.12~~, is
3 ~~guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of~~
4 ~~\$25~~ this chapter may be fined \$500 for each offense.

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

6 **104.11 Definition of violation.** Each day during which any an employer
7 ~~shall employ~~ employs a person for whom a ~~living-wage~~ living wage has been ~~fixed~~
8 ~~established~~ at a wage less than the ~~living-wage fixed~~ established living wage shall
9 constitute a separate and distinct violation of ~~ss. 104.01 to 104.12~~ this chapter.

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

11 **104.12 Complaints.** Any person may register with the department a
12 complaint that the wages paid to employes for whom a ~~living-wage~~ living wage has
13 been established are less than that rate, and the department shall investigate the
14 matter and take all proceedings necessary to enforce the payment of a wage not less
15 than the ~~living-wage~~ a living wage. Section 111.322 (2m) applies to discharge and
16 other discriminatory acts arising in connection with any proceeding under this
17 section.

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

19 234.94 (5) “Primary employment” means work which pays at least the
20 minimum wage as established under ~~ch. 104 s. 104.035 (2)~~ or under federal law,
21 whichever is greater, offers adequate fringe benefits, including health insurance,
22 and is not seasonal or part time.

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

24 234.94 (8) “Target group” means a population group for which the
25 unemployment level is at least 25% higher than the statewide unemployment level,

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

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

6 800.09 (1) (b) If the defendant agrees to perform community service work in
7 lieu of making restitution or paying the forfeiture, assessments and costs, or both,
8 the court may order that the defendant perform community service work for a public
9 agency or a nonprofit charitable organization that is designated by the court.
10 Community service work may be in lieu of restitution only if also agreed to by the
11 public agency or nonprofit charitable organization and by the person to whom
12 restitution is owed. The court may utilize any available resources, including any
13 community service work program, in ordering the defendant to perform community
14 service work. The number of hours of community service work required may not
15 exceed the number determined by dividing the amount owed on the forfeiture by the
16 minimum wage established under ~~ch. 104 for adults in nonagriculture, nontipped~~
17 ~~employment s. 104.035 (2)~~. The court shall ensure that the defendant is provided a
18 written statement of the terms of the community service order and that the
19 community service order is monitored.

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

21 800.095 (4) (b) 3. That the defendant perform community service work for a
22 public agency or a nonprofit charitable organization designated by the court, except
23 that the court may not order the defendant to perform community service work
24 unless the defendant agrees to perform community service work and, if the
25 community service work is in lieu of restitution, unless the person to whom the

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

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

10 895.035 **(2m)** (c) The court assigned to exercise jurisdiction under chs. 48 and
11 938 may order that the juvenile perform community service work for a public agency
12 or nonprofit charitable organization that is designated by the court in lieu of making
13 restitution or paying the forfeiture or surcharge. If the parent agrees to perform
14 community service work in lieu of making restitution or paying the forfeiture or
15 surcharge, the court may order that the parent perform community service work for
16 a public 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 juvenile or parent to perform
21 community service work. The number of hours of community service work required
22 may not exceed the number determined by dividing the amount owed on the
23 restitution, forfeiture or surcharge by the minimum wage established under ~~ch. 104~~
24 ~~for adults in nonagriculture, nontipped employment~~ s. 104.035 (2). The court shall

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SECTION 29

1 ensure that the juvenile or parent is provided with a written statement of the terms
2 of the community service order and that the community service order is monitored.

3 (END)