

**ASSEMBLY AMENDMENT 74,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2001 SENATE BILL 55**

June 29, 2001 – Offered by Representatives POCAN, MILLER, TURNER and BERCEAU.

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 593, line 19: after that line insert:

3 “**SECTION 1657d.** 49.141 (1) (g) of the statutes is amended to read:

4 49.141 (1) (g) “Minimum wage” means the state minimum hourly wage under
5 ~~ch. 104 s. 104.035 (2)~~ or the federal minimum hourly wage under 29 USC 206 (a) (1),
6 whichever is applicable.”.

7 **2.** Page 908, line 15: after that line insert:

8 “**SECTION 2560mb.** 104.01 (intro.) of the statutes is amended to read:

9 **104.01 Definitions.** (intro.) ~~The following terms as used in ss. 104.01 to~~
10 ~~104.12 shall be construed as follows~~ In this chapter:

11 **SECTION 2560mc.** 104.01 (5) of the statutes is amended to read:

1 104.01 (5) ~~The term “living wage” shall mean~~ “Living wage” means
2 compensation for labor paid, whether by time, piecework, or otherwise, sufficient to
3 enable the employee receiving it to maintain himself or herself under conditions
4 consistent with his or her welfare.

5 **SECTION 2560md.** 104.01 (5m) of the statutes is created to read:

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

9 **SECTION 2560me.** 104.01 (5p) of the statutes is created to read:

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

13 **SECTION 2560mf.** 104.01 (7m) of the statutes is created to read:

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

17 **SECTION 2560mg.** 104.01 (8) of the statutes is amended to read:

18 104.01 (8) ~~The term “wage” and the term “wages” shall each mean~~ “Wage”
19 means any compensation for labor measured by time, piece, or otherwise.

20 **SECTION 2560mh.** 104.02 of the statutes is amended to read:

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

24 **SECTION 2560mi.** 104.03 of the statutes is amended to read:

1 **104.03 Unlawful wages.** Any employer paying, offering to pay, or agreeing
2 to pay any employee a wage lower or less in value than a ~~living-wage~~ living wage is
3 guilty of a violation of ~~ss. 104.01 to 104.12~~ this chapter.

4 **SECTION 2560mj.** 104.035 of the statutes is created to read:

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

19 **(2) EMPLOYEES GENERALLY.** Subject to the minimum wages provided under subs.
20 (3) to (6) and (8), the department shall calculate the minimum hourly wage for
21 employees generally by dividing the poverty line for a family of 3 persons by 2,080
22 and rounding the quotient to the nearest multiple of 5 cents.

23 **(3) OPPORTUNITY EMPLOYEES.** Notwithstanding the minimum wage provided
24 under sub. (2), but subject to the minimum wages provided under subs. (4) to (6) and
25 (8), the department shall calculate the minimum wage for opportunity employees by

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

3 **(4) TIPPED EMPLOYEES.** (a) Notwithstanding the minimum wages provided
4 under subs. (2) and (3), but subject to the minimum wages provided under subs. (5),
5 (6), and (8), the department shall calculate the minimum wage for tipped employees
6 as follows:

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

10 2. For persons who are opportunity employees, by multiplying the result
11 obtained under sub. (2) by 51.7% and rounding the product to the nearest multiple
12 of 5 cents.

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

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

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

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

5 (b) A caddy on a golf course.

6 (c) An employee or worker with a disability covered under a license under s.
7 104.07.

8 (d) A student learner.

9 (e) A student employed by an independent college or university for less than
10 20 hours per week.

11 **(7)** EMPLOYMENT EXEMPTED BY DEPARTMENT. The department shall promulgate
12 rules exempting from the minimum wage requirements under subs. (2) to (5) all of
13 the following:

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

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

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

22 **(8)** DEPARTMENT MAY REVISE. The department may promulgate rules to increase
23 a minimum wage provided under subs. (2) to (5).

24 **SECTION 2560mk.** 104.04 of the statutes is amended to read:

1 **104.04 Classifications; department’s authority.** The department shall
2 investigate, ascertain, determine, and fix such reasonable classifications, and shall
3 impose general or special orders, determining the ~~living-wage~~ living wage, and shall
4 carry out the purposes of ~~ss. 104.01 to 104.12~~ this chapter. Such investigations,
5 classifications, and orders shall be made as provided under s. 103.005, and the
6 penalties specified in s. 103.005 (12) shall apply to and be imposed for any violation
7 of ~~ss. 104.01 to 104.12~~ this chapter. In determining the ~~living-wage~~ living wage, the
8 department may consider the effect that an increase in the ~~living-wage~~ living wage
9 might have on the economy of the state, including the effect of a ~~living-wage~~ living
10 wage increase on job creation, retention, and expansion, on the availability of
11 entry-level jobs, and on regional economic conditions within the state. The
12 department may not establish a different minimum wage for men and women. Said
13 orders shall be subject to review in the manner provided in ch. 227.

14 **SECTION 2560mL.** 104.045 of the statutes is renumbered 104.045 (intro.) and
15 amended to read:

16 **104.045 ~~Tipped employees~~ Tips, meals, lodging, and hours worked.**
17 (intro.) The department shall ~~by rule determine what amount of~~ promulgate rules
18 governing all of the following:

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

21 **SECTION 2560mm.** 104.045 (2) and (3) of the statutes are created to read:

22 **104.045 (2)** The deduction of meals or lodging provided by an employer to an
23 employee from the employer’s obligations under this chapter.

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

1 **SECTION 2560mn.** 104.05 of the statutes is amended to read:

2 **104.05 Complaints; investigation.** The department shall, within 20 days
3 after the filing of a verified complaint of any person ~~setting forth~~ alleging that the
4 wages paid to any employee ~~in any occupation~~ are not sufficient to enable the
5 employee to maintain himself or herself under conditions consistent with his or her
6 welfare, investigate and determine whether there is reasonable cause to believe that
7 the wage paid to ~~any~~ the employee is not a ~~living wage~~ living wage.

8 **SECTION 2560mp.** 104.06 of the statutes is amended to read:

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

18 **SECTION 2560mq.** 104.07 (1) of the statutes is amended to read:

19 104.07 (1) The department shall ~~make~~ promulgate rules and, except as
20 provided under subs. (5) and (6), grant licenses, to any employer who employs any
21 employee who is unable to earn the ~~living wage theretofore determined upon,~~
22 permitting such person to a living wage so that the employee may work for a wage
23 which shall be that is commensurate with the employee's ability and each. Each
24 license so granted shall establish a wage for the licensee employees of the licensee
25 who are unable to earn a living wage.

1 **SECTION 2560mr.** 104.07 (2) of the statutes is amended to read:

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

8 **SECTION 2560ms.** 104.08 (1) of the statutes is renumbered 104.08 (2m) and
9 amended to read:

10 104.08 **(2m)** ~~All persons~~ Any person working in ~~an occupation~~ a trade industry
11 for which a ~~living wage~~ living wage has been established for minors, and who ~~shall~~
12 have ~~has~~ no trade, ~~shall, if employed in an occupation which is a trade industry,~~ be
13 indentured under ~~the provisions of s. 106.01.~~

14 **SECTION 2560mt.** 104.08 (1m) (b) of the statutes is created to read:

15 104.08 **(1m)** (b) “Trade industry” means an industry involving physical labor
16 and characterized by mechanical skill and training such as render a period of
17 instruction reasonably necessary.

18 **SECTION 2560mu.** 104.08 (2) of the statutes is renumbered 104.08 (1m) (intro.)
19 and amended to read:

20 104.08 **(1m)** (intro.) ~~A “trade” or a “trade industry” within the meaning of ss.~~
21 ~~104.01 to 104.12 shall be a trade or~~ In this section:

22 (a) “Trade” means an industry occupation involving physical labor and
23 characterized by mechanical skill and training such as render a period of instruction
24 reasonably necessary. ~~The department shall investigate, determine and declare~~

1 what occupations and industries are included within the phrase a “trade” or a “trade
2 industry”.

3 **SECTION 2560mv.** 104.08 (3) of the statutes is renumbered 104.08 (3) (b) and
4 amended to read:

5 104.08 (3) (b) The department may make exceptions to the operation of subs.
6 ~~(1) and (2)~~ (1m) and (2m) where conditions make their application unreasonable.

7 **SECTION 2560mw.** 104.08 (3) (a) of the statutes is created to read:

8 104.08 (3) (a) The department shall investigate, determine, and declare what
9 occupations and industries are included within a trade or a trade industry.

10 **SECTION 2560mx.** 104.10 of the statutes is amended to read:

11 **104.10 Penalty for intimidating witness.** Any employer who discharges or
12 threatens to discharge, or who in any way discriminates, or threatens to
13 discriminate, against any employee because the employee has testified or is about
14 to testify, or because the employer believes that the employee may testify, in any
15 investigation or proceeding relative to the enforcement of ~~ss. 104.01 to 104.12~~, is
16 ~~guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of~~
17 \$25 this chapter may be fined \$500 for each offense.

18 **SECTION 2560my.** 104.11 of the statutes is amended to read:

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

23 **SECTION 2560mz.** 104.12 of the statutes is amended to read:

24 **104.12 Complaints.** Any person may register with the department a
25 complaint that the wages paid to employees for whom a ~~living-wage~~ living wage has

1 been established are less than that rate, and the department shall investigate the
2 matter and take all proceedings necessary to enforce the payment of a wage not less
3 than ~~the living wage~~ a living wage. Section 111.322 (2m) applies to discharge and
4 other discriminatory acts arising in connection with any proceeding under this
5 section.”.

6 **3.** Page 1018, line 11: after that line insert:

7 “**SECTION 3126m.** 234.94 (5) of the statutes is amended to read:

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

12 **SECTION 3126p.** 234.94 (8) of the statutes is amended to read:

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

19 **4.** Page 1203, line 23: after that line insert:

20 “**SECTION 3823k.** 800.09 (1) (b) of the statutes is amended to read:

21 800.09 (1) (b) If the defendant agrees to perform community service work in
22 lieu of making restitution or paying the forfeiture, assessments, and costs, or both,
23 the court may order that the defendant perform community service work for a public
24 agency or a nonprofit charitable organization that is designated by the court.

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

11 **5.** Page 1204, line 16: after that line insert:

12 “**SECTION 3824q.** 800.095 (4) (b) 3. of the statutes is amended to read:

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

1 ensure that the defendant is provided a written statement of the terms of the
2 community service order and that the community service order is monitored.”.

3 **6.** Page 1218, line 8: after that line insert:

4 “**SECTION 3862y.** 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 (2).~~ 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 (END)