

2003 SENATE BILL 307

November 6, 2003 – Introduced by Senators CHVALA, RISSER, DECKER and WIRCH, cosponsored by Representatives POPE-ROBERTS, TAYLOR, BOYLE, BLACK, MILLER, BERCEAU and COGGS. Referred to Committee on Labor, Small Business Development and Consumer Affairs.

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 (5), 104.01 (8), 104.02, 104.03,
3 104.04, 104.05, 104.06, 104.07 (1), 104.07 (2), 104.10, 104.11, 104.12, 234.94 (5),
4 234.94 (8), 800.09 (1) (b), 800.095 (4) (b) 3. and 895.035 (2m) (c); and *to create*
5 104.01 (5m), 104.01 (5p), 104.01 (7m), 104.035, 104.045 (2) and (3), 104.08 (1m)
6 (b) and 104.08 (3) (a) 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:

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<i>Employees generally</i>	
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
<i>Tipped employees</i>	
Opportunity employees	\$2.13
Nonopportunity employees	\$2.33
<i>Agricultural employees</i>	
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, golf caddies, students employed at independent colleges and universities for less than 20 hours per week, student learners employed in bona fide school training programs, and individuals who are unable to earn the standard minimum wage because of a disability; and DWD has exempted, by rule, from the minimum wage law employees who perform less than 15 hours per week of casual employment, such as baby-sitting or lawn mowing, in and around an employer's home, employees who provide companionship services to elderly or infirm individuals, and elementary and secondary school students performing work-like activities in their schools. Under this bill, DWD will continue to provide those separate minimum wage rates and exemptions. 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 four persons (federal poverty line) (currently \$18,400 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 \$8.85 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 percent and rounding the product to the nearest multiple of five cents, resulting in a minimum wage of \$8.20 per hour when calculated based on the current federal poverty line.

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2. For tipped employees who are not opportunity employees, by 54.8 percent and rounding the product to the nearest multiple of five cents, resulting in a minimum wage of \$4.85 per hour when calculated based on the current poverty line.

3. For tipped employees who are opportunity employees, by 51.7 percent and rounding the product to the nearest multiple of five cents, resulting in a minimum wage of \$4.60 per hour when calculated based on the current poverty line.

4. For agricultural employees 18 years of age or over, by 95.3 percent and rounding the product to the nearest multiple of five cents, resulting in a minimum wage of \$8.45 per hour when calculated based on the current poverty line.

5. For agricultural employees under 18 years of age, by 87 percent and rounding the product to the nearest multiple of five cents, resulting in a minimum wage of \$7.70 per hour when calculated based on the current poverty line.

The bill further requires DWD to revise annually the minimum wages specified above within 30 days after the federal Department of Health and Human Services publishes its annual revision of the poverty line.

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
11 enable the employee receiving it to maintain himself or herself under conditions
12 consistent with his or her welfare.

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

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1 104.01 (5m) “Opportunity employee” means a person under 20 years of age who
2 has been employed for a cumulative total of 30 calendar days or less within the
3 preceding 3-year period.

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

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

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

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

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

13 104.01 (8) ~~The term “wage” and the term “wages” shall each mean “Wage”~~
14 means any compensation for labor measured by time, piece, or otherwise.

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

16 ~~104.02 Living wage prescribed~~ **Living wage required.** Every wage paid
17 or agreed to be paid by any employer to any employee, except as otherwise provided
18 in s. 104.07, shall be not less than a ~~living-wage~~ living wage.

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

20 **104.03 Unlawful wages.** Any employer paying, offering to pay, or agreeing
21 to pay any employee a wage lower or less in value than a ~~living-wage~~ living wage is
22 guilty of a violation of ~~ss. 104.01 to 104.12~~ this chapter.

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

24 **104.035 Minimum wage. (1)** DEPARTMENT TO PROMULGATE RULES. The
25 department shall promulgate rules providing minimum hourly wages for the

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1 employees specified in subs. (2) to (5). The department shall calculate those
2 minimum hourly wages according to the methods specified in subs. (2) to (5).
3 Annually, within 30 days after the federal department of health and human services
4 publishes its annual revision of the poverty line, the department, using the
5 procedure under s. 227.24 and the methods specified in subs. (2) to (5), shall
6 promulgate rules revising the minimum hourly wages provided under subs. (2) to (5).
7 Notwithstanding s. 227.24 (1) (a), (2) (b) and (3), the department may promulgate an
8 emergency rule under s. 227.24 revising the minimum wages provided under subs.
9 (2) to (5) without providing evidence that the emergency rule is necessary to preserve
10 the public peace, health, safety, or welfare and without a finding of emergency. A
11 revised minimum wage provided under subs. (2) to (5) shall first apply to wages
12 earned beginning on the first day of the first month beginning after the date on which
13 that minimum wage is revised.

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

18 **(3) OPPORTUNITY EMPLOYEES.** Notwithstanding the minimum wage provided
19 under sub. (2), but subject to the minimum wages provided under subs. (4) to (6) and
20 (8), the department shall calculate the minimum wage for opportunity employees by
21 multiplying the result obtained under sub. (2) by 92.9 percent and rounding the
22 product to the nearest multiple of 5 cents.

23 **(4) TIPPED EMPLOYEES.** (a) Notwithstanding the minimum wages provided
24 under subs. (2) and (3), but subject to the minimum wages provided under subs. (5),

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1 (6), and (8), the department shall calculate the minimum wage for tipped employees
2 as follows:

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

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

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

14 (5) AGRICULTURAL EMPLOYEES. Notwithstanding the minimum wages provided
15 under subs. (2) to (4), but subject to the minimum wages provided under subs. (6) and
16 (8), the department shall calculate the minimum wage for persons 18 years of age or
17 over who are agricultural employees by multiplying the result obtained under sub.
18 (2) by 95.3 percent and rounding the product to the nearest multiple of 5 cents and
19 shall calculate the minimum wage for persons under 18 years of age who are
20 agricultural employees by multiplying the result obtained under sub. (2) by 87
21 percent and rounding the product to the nearest multiple of 5 cents.

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

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

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1 (b) A caddy on a golf course.

2 (c) An employee or worker with a disability covered under a license under s.
3 104.07.

4 (d) A student learner.

5 (e) A student employed by an independent college or university for less than
6 20 hours per week.

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

10 (a) 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 (b) A person who resides with and who provides companionship and care, not
13 including practical or professional nursing, as defined in s. 441.001 (3) and (4), and
14 not more than 15 hours per week of general household work for an employer who, due
15 to advanced age or physical or mental disability, cannot care for his or her own needs.

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

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

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

21 **104.04 Classifications; department's authority.** The department shall
22 investigate, ascertain, determine, and fix such reasonable classifications, and shall
23 impose general or special orders, determining the ~~living-wage~~ living wage, and shall
24 carry out the purposes of ~~ss. 104.01 to 104.12~~ this chapter. Such investigations,
25 classifications, and orders shall be made as provided under s. 103.005, and the

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

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

11 **104.045 ~~Tipped employees~~ Tips, meals, lodging, and hours worked.**

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

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

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

17 104.045 **(2)** The deduction of meals or lodging provided by an employer to an
18 employee from the employer's obligations under this chapter.

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

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

22 **104.05 Complaints; investigation.** The department shall, within 20 days
23 after the filing of a verified complaint of any person ~~setting forth~~ alleging that the
24 wages paid to any employee ~~in any occupation~~ are not sufficient to enable the
25 employee to maintain himself or herself under conditions consistent with his or her

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1 welfare, investigate and determine whether there is reasonable cause to believe that
2 the wage paid to any ~~the~~ employee is not a ~~living-wage~~ living wage.

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

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

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

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

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

22 104.07 (2) The department shall ~~make~~ promulgate rules and, except as
23 provided under subs. (5) and (6), grant licenses to sheltered workshops to permit the
24 employment of workers with disabilities who are unable to earn the ~~living-wage~~ at
25 a living wage so that those workers may work for a wage that is commensurate with

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1 their ~~ability~~ abilities and productivity. A license granted to a sheltered workshop
2 under this section may be issued for the entire workshop or a department of the
3 workshop.

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

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

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

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

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

16 **104.08 (1m) (intro.)** A ~~“trade” or a “trade industry” within the meaning of ss.~~
17 ~~104.01 to 104.12 shall be a trade or~~ In this section:

18 (a) “Trade” means an industry occupation involving physical labor and
19 characterized by mechanical skill and training such as render a period of instruction
20 reasonably necessary. ~~The department shall investigate, determine and declare~~
21 ~~what 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 (2) (1m) and (2m)~~ where conditions make their application unreasonable.

3 **SECTION 22.** 104.08 (3) (a) of the statutes is created to read:

4 104.08 (3) (a) The department shall investigate, determine, and declare what
5 occupations and industries are included within a trade or a trade industry.

6 **SECTION 23.** 104.10 of the statutes is amended to read:

7 **104.10 Penalty for intimidating witness.** Any employer who discharges or
8 threatens to discharge, or who in any way discriminates, or threatens to discriminate
9 against, any employee because the employee has testified or is about to testify, or
10 because the employer believes that the employee may testify, in any investigation or
11 proceeding relative to the enforcement of ~~ss. 104.01 to 104.12~~, is guilty of a
12 misdemeanor, and ~~upon conviction thereof shall be punished by a fine of \$25~~ this
13 chapter may be fined \$500 for each offense.

14 **SECTION 24.** 104.11 of the statutes is amended to read:

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

19 **SECTION 25.** 104.12 of the statutes is amended to read:

20 **104.12 Complaints.** Any person may register with the department a
21 complaint that the wages paid to employees for whom a ~~living-wage~~ living wage has
22 been established are less than that rate, and the department shall investigate the
23 matter and take all proceedings necessary to enforce the payment of a wage not less
24 than ~~the living-wage~~ a living wage. Section 111.322 (2m) applies to discharge and

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1 other discriminatory acts arising in connection with any proceeding under this
2 section.

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

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

8 **SECTION 27.** 234.94 (8) of the statutes is amended to read:

9 234.94 (8) “Target group” means a population group for which the
10 unemployment level is at least 25% higher than the statewide unemployment level,
11 or a population group for which the average wage received is less than 1.2 times the
12 minimum wage as established under ~~ch. 104 s. 104.035 (2)~~ or under federal law,
13 whichever is greater. No population group is required to be located within a
14 contiguous geographic area to be considered a target group.

15 **SECTION 28.** 800.09 (1) (b) of the statutes is amended to read:

16 800.09 (1) (b) If the defendant agrees to perform community service work in
17 lieu of making restitution or paying the forfeiture, assessments, and costs, or both,
18 the court may order that the defendant perform community service work for a public
19 agency or a nonprofit charitable organization that is designated by the court.
20 Community service work may be in lieu of restitution only if also agreed to by the
21 public agency or nonprofit charitable organization and by the person to whom
22 restitution is owed. The court may utilize any available resources, including any
23 community service work program, in ordering the defendant to perform community
24 service work. The number of hours of community service work required may not
25 exceed the number determined by dividing the amount owed on the forfeiture by the

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

5 **SECTION 29.** 800.095 (4) (b) 3. of the statutes is amended to read:

6 800.095 **(4)** (b) 3. That the defendant perform community service work for a
7 public agency or a nonprofit charitable organization designated by the court, except
8 that the court may not order the defendant to perform community service work
9 unless the defendant agrees to perform community service work and, if the
10 community service work is in lieu of restitution, unless the person to whom the
11 restitution is owed agrees. The court may utilize any available resources, including
12 any community service work program, in ordering the defendant to perform
13 community service work. The number of hours of community service work required
14 may not exceed the number determined by dividing the amount owed on the
15 forfeiture, or restitution, or both, by the minimum wage established under ~~ch. 104~~
16 ~~for adults in nonagriculture, nontipped employment s. 104.035 (2)~~. The court shall
17 ensure that the defendant is provided a written statement of the terms of the
18 community service order and that the community service order is monitored.

19 **SECTION 30.** 895.035 (2m) (c) of the statutes is amended to read:

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

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

12

(END)