2011 SENATE BILL 187


AN ACT to repeal 104.001; to renumber 104.01 (1); to renumber and amend 104.045; to amend 49.141 (1) (g), 103.67 (2) (fm) 3., 103.70 (2) (b) 3., 104.01 (intro.), 104.01 (8), 104.05, 104.07 (1), 104.07 (2), 104.10, 104.11, 234.94 (5), 234.94 (8), 800.09 (1j), 800.095 (1) (d) and 895.035 (2m) (c); and to create 104.01 (1d), 104.01 (1g), 104.01 (5g), 104.01 (5m), 104.01 (7m), 104.035 and 104.045 (2) and (3) of the statutes; relating to: a state minimum wage, permitting the enactment of local living wage ordinances, extending the time limit for emergency rule procedures, providing an exemption from emergency rule procedures, providing an exemption from rule-making procedures, and requiring the exercise of rule-making authority.

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 wages for various types of employees, including employees, generally; minor employees; opportunity employees, which are defined as employees under 20 years of age in their first 90 days of employment with
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A particular employer; tipped employees; agricultural employees; camp counselors; 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. 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. DWD has also promulgated rules providing allowances against the minimum wage for employers that provide meals or lodging for their employees.

Under this bill, DWD will continue to provide the exemptions listed above and separate minimum wages for 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 wages because of a disability. For other employees, however, the bill sets the minimum wages as follows:

<table>
<thead>
<tr>
<th>Employees generally</th>
</tr>
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<tbody>
<tr>
<td>Current minimum wage</td>
</tr>
<tr>
<td>Minimum wage on effective date</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Minor employees</th>
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<tbody>
<tr>
<td>Current minimum wage</td>
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<tr>
<td>Minimum wage on effective date</td>
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<table>
<thead>
<tr>
<th>Opportunity employees</th>
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<tbody>
<tr>
<td>Current minimum wage</td>
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<tr>
<td>Minimum wage on effective date</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Tipped employees</th>
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</thead>
<tbody>
<tr>
<td>Current minimum wage</td>
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<tr>
<td></td>
</tr>
</tbody>
</table>
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Minimum wage on effective date

$2.75 per hour for nonopportunity employees
$2.50 per hour for opportunity employees

Agricultural employees

Current minimum wage

$7.25 per hour

Minimum wage on effective date

$7.25 per hour

Camp counselors

Current minimum wage

$350 per week if meals and lodging not furnished
$265 per week if meals, but not lodging, furnished
$210 per week if meals and lodging furnished

Minimum wage on effective date

$350 per week if meals and lodging not furnished
$265 per week if meals, but not lodging, furnished
$210 per week if meals and lodging furnished

Golf caddies

Current minimum wage

$10.50 for 18 holes
$5.90 for 9 holes

Minimum wage on effective date

$12.30 for 18 holes
$6.90 for 9 holes

The bill also increases the allowance against the minimum wage that an employer who provides room and board for an employee may take, as follows:

Employees generally

Lodging

Current allowance

$58 per week or $8.30 per day
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<table>
<thead>
<tr>
<th>Category</th>
<th>Current Allowance</th>
<th>Effective Date Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Allowance</strong></td>
<td>$61 per week or $8.65 per day</td>
<td>$91 per week or $4.35 per meal</td>
</tr>
<tr>
<td><strong>Meals</strong></td>
<td>$87 per week or $4.15 per meal</td>
<td>$87 per week or $4.15 per meal</td>
</tr>
<tr>
<td><strong>Lodging</strong></td>
<td>$58 per week or $8.30 per day</td>
<td>$58 per week or $8.30 per day</td>
</tr>
<tr>
<td><strong>Meals</strong></td>
<td>$87 per week or $4.15 per meal</td>
<td>$87 per week or $4.15 per meal</td>
</tr>
<tr>
<td><strong>Opportunity</strong></td>
<td>$47.20 per week or $6.75 per day</td>
<td>$55.20 per week or $7.90 per day</td>
</tr>
<tr>
<td><strong>Meals</strong></td>
<td>$70.80 per week or $3.35 per meal</td>
<td>$82.85 per week or $3.90 per meal</td>
</tr>
</tbody>
</table>

*Minor employees*

*Opportunity employees*
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Agricultural employees

Lodging

Current allowance $58 per week or $8.30 per day

Allowance on effective date $58 per week or $8.30 per day

Meals

Current allowance $87 per week or $4.15 per meal

Allowance on effective date $87 per week or $4.15 per meal

Beginning on May 1, 2012, the bill requires DWD annually to promulgate rules revising the minimum wages and allowances for meals and lodging established under the bill by determining the percentage difference between the consumer price index for the preceding year and the consumer price index for the current year, adjusting the minimum wages and allowances in effect on April 30 of the current year by that percentage difference, and rounding that result to the nearest multiple of five cents or, in the case of a camp counselor, the nearest dollar. This requirement does not apply, however, if the consumer price index for the current year has not increased over the consumer price index for the preceding year.

Finally, current law prohibits a city, village, town, or county from enacting and administering an ordinance establishing a living wage. This bill eliminates that prohibition.

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:

Section 1. 49.141 (1) (g) of the statutes is amended to read:

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

Section 2. 103.67 (2) (fm) 3. of the statutes is amended to read:
103.67 (2) (fm) 3. The minor is paid the applicable minimum wage under ch.
104 s. 104.035 or under federal law, whichever is greater, for the work.

**SECTION 3.** 103.70 (2) (b) 3. of the statutes is amended to read:

103.70 (2) (b) 3. The minor is paid the applicable minimum wage under ch. 104
s. 104.035 or under federal law, whichever is greater, for the work.

**SECTION 4.** 104.001 of the statutes, as affected by 2011 Wisconsin Act 32, is
repealed.

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

104.01 **Definitions.** (intro.) The following terms as used in this chapter
shall be construed as follows:

**SECTION 6.** 104.01 (1) of the statutes is renumbered 104.01 (1m).

**SECTION 7.** 104.01 (1d) of the statutes is created to read:

104.01 (1d) “Agricultural employee” means an employee who is employed in
farming, as defined in s. 102.04 (3).

**SECTION 8.** 104.01 (1g) of the statutes is created to read:

104.01 (1g) “Consumer price index” means the average of the consumer price
index over each 12-month period for all urban consumers, U.S. city average, as
determined by the bureau of labor statistics of the U.S. department of labor.

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

104.01 (5g) “Minor employee” means a minor who is paid at the applicable
minimum wage rate for minors.

**SECTION 10.** 104.01 (5m) of the statutes is created to read:

104.01 (5m) “Opportunity employee” means a person under 20 years of age who
is in the first 90 consecutive days of employment with his or her employer.

**SECTION 11.** 104.01 (7m) of the statutes is created to read:
“Tipped employee” means an employee who in the course of employment customarily and regularly receives money or other gratuities from persons other than the employee’s employer.

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

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

**SECTION 13.** 104.035 of the statutes is created to read:

104.035 Minimum wage. (1) Employees generally. (a) Minimum rates.

Except as provided in subs. (2) to (8), the minimum wage is as follows:

1. For wages earned before May 1, 2012, $7.60 per hour.
2. For wages earned beginning on May 1, 2012, the amount determined by the department by rule promulgated under sub. (9).

(b) Allowances for meals and lodging. Except as provided in subs. (2) (b) and (4) (b), if an employer furnishes an employee with meals or lodging in accordance with rules promulgated by the department under s. 104.045 (2), the employer may deduct the following amounts from the wages of the employee:

1. For lodging furnished before May 1, 2012, $61 per week or $8.65 per day and for meals furnished before May 1, 2012, $91 per week or $4.35 per meal.
2. For meals and lodging furnished beginning on May 1, 2012, the amounts determined by the department by rule promulgated under sub. (9).

(2) Minor employees. (a) Minimum rates. Except as provided in subs. (2m) to (8), the minimum wage for a minor employee is as follows:

1. For wages earned before May 1, 2012, $7.25 per hour.
2. For wages earned beginning on May 1, 2012, the amount determined by the department by rule promulgated under sub. (9).
(b) **Allowances for meals and lodging.** Except as provided in sub. (4) (b), if an employer furnishes a minor employee or an opportunity employee with meals or lodging in accordance with rules promulgated by the department under s. 104.045 (2), the employer may deduct the following amounts from the wages of the employee:

1. For lodging furnished before May 1, 2012, $58 per week or $8.30 per day and for meals furnished before May 1, 2012, $87 per week or $4.15 per meal.
2. For meals and lodging furnished beginning on May 1, 2012, the amounts determined by the department by rule promulgated under sub. (9).

(2m) **OPPORTUNITY EMPLOYEES. (a) Minimum rates.** Except as provided in subs. (3) to (8), the minimum wage for an opportunity employee is as follows:

1. For wages earned before May 1, 2012, $6.90 per hour.
2. For wages earned beginning on May 1, 2012, the amount determined by the department by rule promulgated under sub. (9).

(b) **Allowances for meals and lodging.** Except as provided in sub. (4) (b), if an employer furnishes an opportunity employee with meals or lodging in accordance with rules promulgated by the department under s. 104.045 (2), the employer may deduct the following amounts from the wages of the employee:

1. For lodging furnished before May 1, 2012, $55.20 per week or $7.90 per day and for meals furnished before May 1, 2012, $82.85 per week or $3.90 per meal.
2. For meals and lodging furnished beginning on May 1, 2012, the amounts determined by the department by rule promulgated under sub. (9).

(3) **TIPPED EMPLOYEES. (a) Minimum rates.** Except as provided in subs. (4) to (8), if an employer of a tipped employee establishes by the employer’s payroll records that, when adding the tips received by the tipped employee in a week to the wages paid to the tipped employee in that week, the tipped employee receives not less than
the applicable minimum wage specified in sub. (1) or (2), the minimum wage for the
tipped employee is as follows:

1. For wages earned before May 1, 2012, by a tipped employee who is not an
   opportunity employee, $2.75 per hour.

2. For wages earned before May 1, 2012, by a tipped employee who is an
   opportunity employee, $2.50 per hour.

3. For wages earned beginning on May 1, 2012, the amounts determined by the
department by rule promulgated under sub. (9).

(b) Allowances for meals and lodging. If an employer furnishes a tipped
employee with meals or lodging in accordance with rules promulgated by the
department under s. 104.045 (2), the employer may deduct the applicable amounts
specified in sub. (1) (b) or (2) (b) from the wages of the tipped employee.

(4) Agricultural employees. (a) Minimum rates. Except as provided in subs.
(7) and (8), the minimum wage for an agricultural employee is as follows:

1. For wages earned before May 1, 2012, $7.25 per hour.

2. For wages earned beginning on May 1, 2012, the amounts determined by the
department by rule promulgated under sub. (9).

(b) Allowances for meals and lodging. If an employer furnishes an agricultural
employee with meals or lodging in accordance with rules promulgated by the
department under s. 104.045 (2), the employer may deduct the following amounts
from the wages of the employee:

1. For lodging furnished before May 1, 2012, $58 per week or $8.30 per day and
   for meals furnished before May 1, 2012, $87 per week or $4.15 per meal.

2. For meals and lodging furnished beginning on May 1, 2012, the amounts
determined by the department by rule promulgated under sub. (9).
(5) Camp Counselors. The minimum wage for a counselor at a seasonal recreational or educational camp, including a day camp, is as follows:

(a) For wages earned before May 1, 2012, $350 per week if meals and lodging are not furnished, $265 per week if only meals are furnished, and $210 per week if both meals and lodging are furnished.

(b) For wages earned beginning on May 1, 2012, the amounts determined by the department by rule promulgated under sub. (9).

(6) Golf Caddies. The minimum wage for a golf caddy is as follows:

(a) For wages earned before May 1, 2012, $12.30 for caddying 18 holes.

(b) For wages earned before May 1, 2012, $6.90 for caddying 9 holes.

(c) For wages earned beginning on May 1, 2012, the amounts determined by the department by rule promulgated under sub. (9).

(7) Minimum Wage Established by Department. The department shall promulgate rules providing the minimum wage for all of the following:

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

(b) A student learner.

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

(8) Employment Exempted by Department. The department shall promulgate rules exempting from the minimum wage requirements under subs. (1) to (7) all of the following:

(a) A person engaged in casual employment in and around an employer’s home on an irregular or intermittent basis for not more than 15 hours per week.
(b) A person who resides in the home of an employer who, due to advanced age or physical or mental disability, cannot care for his or her own needs, for the purpose of companionship and who spends not more than 15 hours per week on general household work for the employer.

(c) An elementary or secondary school student performing student work–like activities in the student’s school.

(9) Department to revise. (a) Subject to pars. (b) and (c), by May 1 of each year, the department, using the procedures under s. 227.24, shall promulgate rules to revise the minimum wages and allowances for meals and lodging established under subs. (1) to (7). The department shall determine those revised minimum wages and allowances by calculating the percentage difference between the consumer price index for the 12-month period ending on January 31 of the preceding year and the consumer price index for the 12-month period ending on January 31 of the current year, adjusting the minimum wages and allowances in effect on April 30 of the current year by that percentage difference, and rounding that result to the nearest multiple of 5 cents, except that, for a minimum wage under sub. (5), the department shall round the result to the nearest dollar. Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department may promulgate an emergency rule under s. 227.24 revising the minimum wages and allowances established under subs. (1) to (7) without providing evidence that the emergency rule is necessary to preserve the public peace, health, safety, or welfare and without a finding of emergency. A revised minimum wage or allowance determined under this paragraph shall first apply to wages earned or meals or lodging furnished on May 1 of the year in which the wage or allowance is revised.
(b) Paragraph (a) does not apply if the consumer price index for the 12-month period ending on January 31 of the current year has not increased over the consumer price index for the 12-month period ending on January 31 of the preceding year.

(c) Paragraph (a) does not preclude the department from promulgating rules to increase a minimum wage provided under subs. (1) to (7).

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

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

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

SECTION 15. 104.045 (2) and (3) of the statutes are created to read:

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

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

SECTION 16. 104.05 of the statutes is amended to read:

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

SECTION 17. 104.07 (1) of the statutes is amended to read:
104.07 (1) The department shall **make promulgate** rules, and, except as
provided under subs. (5) and (6), grant licenses to any employer who employs any
employee who is unable to earn the living wage determined by the department,
permitting the employee to work for a wage that is commensurate with the
employee’s ability. Each license so granted shall establish a wage for the licensee
employees of the licensee who are unable to earn a living wage.

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

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

**SECTION 19.** 104.10 of the statutes is amended to read:

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

**SECTION 20.** 104.11 of the statutes is amended to read:

**104.11 Definition of violation.** Each day during which any employer shall
employ employs a person for whom a living wage has been fixed at a wage that is less
than the living wage fixed shall constitute a separate and distinct violation of this chapter.

**SECTION 21.** 234.94 (5) of the statutes is amended to read:

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

**SECTION 22.** 234.94 (8) of the statutes is amended to read:

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

**SECTION 23.** 800.09 (1j) of the statutes is amended to read:

800.09 (1j) If the court orders the defendant to perform community service work in lieu of making restitution or of paying the forfeiture, surcharges, fees and costs, or both, the court may order that the defendant perform community service work for a public agency or a nonprofit charitable organization that is approved by the court and agreed to by the public agency or nonprofit charitable organization. Community service work may be in lieu of restitution only if also agreed to by the person to whom restitution is owed. The number of hours of community service work required may not exceed the number determined by dividing the amount owed on the forfeiture by the minimum wage established under ch. 104 for adults in nonagriculture, nontipped employment s. 104.035 (1). The court shall ensure that
the defendant is provided a written statement of the terms of the community service
order and that the community service order is monitored.

SECTION 24. 800.095 (1) (d) of the statutes is amended to read:

800.095 (1) (d) That the defendant perform community service work for a
public agency or nonprofit charitable organization approved by the court and agreed
to by the agency or nonprofit charitable organization. If the community service work
is in lieu of restitution, then the person to whom restitution is owed must agree; the
defendant shall be given credit at the rate of not less than the minimum wage
established under ch. 104 for adults in nonagriculture, nontipped employment s.
104.035 (1) for each one hour of community service completed. The defendant shall
be given a written statement of the community service order. Nothing in this
paragraph makes the defendant an employee or agent of the court or the
municipality. The defendant shall be responsible for providing the court with proof
that the community service hours have been completed.

SECTION 25. 895.035 (2m) (c) of the statutes is amended to read:

895.035 (2m) (c) The court assigned to exercise jurisdiction under chs. 48 and
938 may order that the juvenile perform community service work for a public agency
or nonprofit charitable organization that is designated by the court in lieu of making
restitution or paying the forfeiture or surcharge. If the parent agrees to perform
community service work in lieu of making restitution or paying the forfeiture or
surcharge, the court may order that the parent perform community service work for
a public agency or a nonprofit charitable organization that is designated by the court.
Community service work may be in lieu of restitution only if also agreed to by the
public agency or nonprofit charitable organization and by the person to whom
restitution is owed. The court may utilize any available resources, including any
community service work program, in ordering the juvenile or parent to perform community service work. The number of hours of community service work required may not exceed the number determined by dividing the amount owed on the restitution, forfeiture, or surcharge by the minimum wage established under ch. 104 for adults in nonagriculture, nontipped employment s. 104.035 (1). The court shall ensure that the juvenile or parent is provided with a written statement of the terms of the community service order and that the community service order is monitored.

SECTION 26. Effective date.

(1) Minimum wage. This act takes effect on the first day of the first month beginning after publication.