2019 SENATE BILL 426


AN ACT to amend 104.035 (3) (a) (intro.); and to create 104.035 (3) (c) of the statutes; relating to: incentives for paying tipped employees the minimum wage, not including tips.

Analysis by the Legislative Reference Bureau

This bill allows the employer of a tipped employee to retain the state sales taxes that the employer collects during any sales tax reporting period if, during that period, the employer establishes by the employer’s payroll records that at least 5 percent of the wages that the employer pays to tipped employees is derived from tips and that the employer pays the tipped employees not less than the minimum wage of $7.25 per hour, not including tips. If the employer retains the taxes for any period for which the employer cannot establish the criteria for retaining the taxes, the employer must pay a penalty to the Department of Revenue equal to $500 for the first violation and 200 percent of the taxes for each subsequent violation. After the third violation, the employer is not eligible for retaining the taxes for 48 months following the date of the violation. The same penalties apply for any subsequent period of eligibility.

Under current law, generally, if an employer of a tipped employee establishes that, when adding the tips received by the tipped employee to the wages paid to the tipped employee, the tipped employee receives not less than the applicable minimum wage (generally $7.25 per hour), the minimum wage for the tipped employee is $2.33 per hour.
For further information see the state 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.** 104.035 (3) (a) (intro.) of the statutes is amended to read:

104.035 (3) (a) Minimum rates. (intro.) Except as provided in par. (c) and 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), (2), or (2m), the minimum wage for the tipped employee is as follows:

**SECTION 2.** 104.035 (3) (c) of the statutes is created to read:

104.035 (3) (c) Sales tax retention program. 1. An employer of a tipped employee may retain the sales tax that the employer collects under s. 77.52 for the applicable reporting period under s. 77.58 if the employer establishes by the employer’s payroll records that at least 5 percent of the wages that the employer pays to tipped employees during that period is derived from tips and that the employer pays the tipped employees not less than the minimum wage specified in sub. (1), not including tips.

2. If the employer retains the taxes described under subd. 1. for any reporting period for which the employer does not satisfy the conditions under subd. 1. for retaining the taxes, the employer shall pay a penalty to the department of revenue equal to $500 for the first violation of subd. 1. and an amount equal to 200 percent of the taxes retained for any subsequent violation. After the 3rd violation, the employer is not eligible for retaining the taxes as provided under subd. 1. for 48
months following the date of the violation. If the employer establishes eligibility after the period of ineligibility, the penalties for 1st, 2nd, and 3rd violations apply to subsequent violations.

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