



**ASSEMBLY AMENDMENT 1,  
TO 2005 ASSEMBLY BILL 38**

March 8, 2005 – Offered by Representative SHILLING.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 3: after “vehicles” insert “, a state minimum wage, granting  
3 rule-making authority,”.

4 **2.** Page 2, line 1: before that line insert:

5 “**SECTION 1a.** 49.141 (1) (g) of the statutes is amended to read:

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

9 **SECTION 1b.** 104.01 (intro.) of the statutes is amended to read:

10 **104.01 Definitions.** (intro.) ~~The following terms as used in ss. 104.01 to~~  
11 ~~104.12 shall be construed as follows~~ In this chapter:

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

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

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

3           **SECTION 1e.** 104.01 (5) of the statutes is amended to read:

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

8           **SECTION 1f.** 104.01 (5g) of the statutes is created to read:

9           104.01 (5g) “Minor employee” means a minor who is paid at the applicable  
10 minimum wage rate for minors.

11           **SECTION 1g.** 104.01 (5m) of the statutes is created to read:

12           104.01 (5m) “Opportunity employee” means a person under 20 years of age who  
13 is in the first 90 consecutive days of employment with his or her employer.

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

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

18           **SECTION 1i.** 104.01 (8) of the statutes is amended to read:

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

21           **SECTION 1j.** 104.02 of the statutes is amended to read:

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

25           **SECTION 1k.** 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 1L.** 104.035 of the statutes is created to read:

5           **104.035 Minimum wage. (1) EMPLOYEES GENERALLY.** (a) *Minimum rates.*

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

7           1. For wages earned before October 1, 2005, \$5.70 per hour.

8           2. For wages earned beginning on October 1, 2005, \$6.50 per hour.

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

13           1. For lodging furnished before October 1, 2005, \$45.60 per week or \$6.50 per  
14 day and for meals furnished before October 1, 2005, \$68.40 per week or \$3.25 per  
15 meal.

16           2. For lodging furnished beginning on October 1, 2005, \$52 per week or \$7.40  
17 per day and for meals furnished beginning on October 1, 2005, \$78 per week or \$3.70  
18 per meal.

19           **(2) MINOR AND OPPORTUNITY EMPLOYEES.** (a) *Minimum rates.* Except as provided  
20 in subs. (3) to (8), the minimum wage for a minor employee or an opportunity  
21 employee is as follows:

22           1. For wages earned before October 1, 2005, \$5.30 per hour.

23           2. For wages earned beginning on October 1, 2005, \$5.90 per hour.

24           (b) *Allowances for meals and lodging.* Except as provided in sub. (4) (b), if an  
25 employer furnishes a minor employee or an opportunity employee with meals or

1 lodging in accordance with rules promulgated by the department under s. 104.045  
2 (2), the employer may deduct the following amounts from the wages of the employee:

3 1. For lodging furnished before October 1, 2005, \$42.40 per week or \$6.05 per  
4 day and for meals furnished before October 1, 2005, \$63.60 per week or \$3 per meal.

5 2. For lodging furnished beginning on October 1, 2005, \$47.20 per week or \$6.75  
6 per day and for meals furnished beginning on October 1, 2005, \$70.80 per week or  
7 \$3.35 per meal.

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

14 1. For wages earned by a tipped employee who is not an opportunity employee,  
15 \$2.33 per hour.

16 2. For wages earned by a tipped employee who is an opportunity employee,  
17 \$2.13 per hour.

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

22 **(4) AGRICULTURAL EMPLOYEES.** (a) *Minimum rates.* Except as provided in subs.  
23 (7) and (8), the minimum wage for an agricultural employee is as follows:

24 1. For wages earned by an adult agricultural employee, \$5.15 per hour.

25 2. For wages earned by a minor agricultural employee, \$4.25 per hour.

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

5           1. For lodging furnished to an adult agricultural employee, \$41.20 per week or  
6 \$5.90 per day and for meals furnished to an adult agricultural employee, \$61.80 per  
7 week or \$2.95 per meal.

8           2. For lodging furnished to a minor agricultural employee, \$34 per week or  
9 \$4.85 per day and for meals furnished to a minor agricultural employee, \$51 per week  
10 or \$2.40 per meal.

11           **(5) CAMP COUNSELORS.** (a) *Minimum rates for adult counselors.* The minimum  
12 wage for a counselor at a seasonal recreational or educational camp, including a day  
13 camp, who is an adult is as follows:

14           1. For wages earned before October 1, 2005, \$215 per week if meals and lodging  
15 are not furnished, \$164 per week if only meals are furnished, and \$129 per week if  
16 both meals and lodging are furnished.

17           2. For wages earned beginning on October 1, 2005, \$270 per week if meals and  
18 lodging are not furnished, \$217 per week if only meals are furnished, and \$171 per  
19 week if both meals and lodging are furnished.

20           3. For wages earned beginning on October 1, 2006, \$315 per week if meals and  
21 lodging are not furnished, \$240 per week if only meals are furnished, and \$189 per  
22 week if both meals and lodging are furnished.

23           (b) *Minimum rates for minor counselors.* The minimum wage for a counselor  
24 at a seasonal recreational or educational camp, including a day camp, who is a minor  
25 is as follows:

1           1. For wages earned before October 1, 2005, \$175 per week if meals and lodging  
2 are not furnished, \$133 per week if only meals are furnished, and \$105 per week if  
3 both meals and lodging are furnished.

4           2. For wages earned beginning on October 1, 2005, \$225 per week if meals and  
5 lodging are not furnished, \$171 per week if only meals are furnished, and \$135 per  
6 week if both meals and lodging are furnished.

7           3. For wages earned beginning on October 1, 2006, \$275 per week if meals and  
8 lodging are not furnished, \$209 per week if only meals are furnished, and \$165 per  
9 week if both meals and lodging are furnished.

10           **(6) GOLF CADDIES.** The minimum wage for a golf caddy is as follows:

11           (a) For 18 holes, \$10.50.

12           (b) For 9 holes, \$5.90.

13           **(7) MINIMUM WAGE ESTABLISHED BY DEPARTMENT.** The department shall  
14 promulgate rules providing the minimum wage for all of the following:

15           (a) An employee or worker with a disability covered under a license under s.  
16 104.07.

17           (b) A student learner.

18           (c) A student employed by an independent college or university for less than  
19 20 hours per week.

20           **(8) EMPLOYMENT EXEMPTED BY DEPARTMENT.** The department shall promulgate  
21 rules exempting from the minimum wage requirements under subs. (1) to (7) all of  
22 the following:

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

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

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

7 **(9) DEPARTMENT MAY REVISE.** The department may promulgate rules to increase  
8 a minimum wage or an allowance for meals and lodging provided under subs. (1) to  
9 (7).

10 **SECTION 1m.** 104.04 of the statutes is amended to read:

11 **104.04 Classifications; department's authority.** The department shall  
12 investigate, ascertain, determine, and fix such reasonable classifications, and shall  
13 impose general or special orders, determining the ~~living-wage~~ living wage, and shall  
14 carry out the purposes of ~~ss. 104.01 to 104.12.~~ Such this chapter. ~~Those~~  
15 investigations, classifications, and orders shall be made as provided under s.  
16 103.005, and the penalties specified in s. 103.005 (12) shall apply to and be imposed  
17 for any violation of ~~ss. 104.01 to 104.12~~ this chapter. In determining the ~~living-wage~~  
18 living wage, the department may consider the effect that an increase in the  
19 ~~living-wage~~ living wage might have on the economy of the state, including the effect  
20 of a ~~living-wage~~ living wage increase on job creation, retention, and expansion, on  
21 the availability of entry-level jobs, and on regional economic conditions within the  
22 state. The department may not establish a different minimum wage for men and  
23 women. ~~Said~~ Those orders shall be subject to review in the manner provided in ch.  
24 227.

1           **SECTION 1n.** 104.045 of the statutes is renumbered 104.045 (intro.) and  
2 amended to read:

3           **104.045 ~~Tipped employees~~ Tips, meals, lodging, and hours worked.**  
4 (intro.) The department shall ~~by rule determine what amount of~~ promulgate rules  
5 governing all of the following:

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

8           **SECTION 1o.** 104.045 (2) and (3) of the statutes are created to read:

9           104.045 **(2)** The deduction of meals or lodging provided by an employer to an  
10 employee from the employer's obligation under this chapter.

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

13           **SECTION 1p.** 104.05 of the statutes is amended to read:

14           **104.05 Complaints; investigation.** The department shall, within 20 days  
15 after the filing of a verified complaint of any person ~~setting forth~~ alleging that the  
16 wages paid to any employee ~~in any occupation~~ are not sufficient to enable the  
17 employee to maintain himself or herself under conditions consistent with his or her  
18 welfare, investigate and determine whether there is reasonable cause to believe that  
19 the wage paid to ~~any~~ the employee is not a ~~living-wage~~ living wage.

20           **SECTION 1q.** 104.06 of the statutes is amended to read:

21           **104.06 Wage council; determination.** If, upon investigation, the  
22 department finds that there is reasonable cause to believe that the wages paid to any  
23 employee are not a ~~living-wage~~, it living wage, the department shall appoint a wage  
24 council, selected so as fairly to represent employers, employees, and the public, to  
25 assist in its investigations and determinations. The ~~living-wage~~ department may



1 use the results of an investigation under this section to establish a living wage. A  
2 living wage so determined upon shall be the ~~living-wage~~ living wage for all  
3 employees within the same class as established by the ~~classification of the~~  
4 department under s. 104.04.

5 **SECTION 1r.** 104.07 (1) of the statutes is amended to read:

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

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

14 104.07 (2) The department shall ~~make~~ promulgate rules and, except as  
15 provided under subs. (5) and (6), grant licenses to sheltered workshops to permit the  
16 employment of workers with disabilities who are unable to earn the ~~living-wage at~~  
17 a living wage so that those workers may work for a wage that is commensurate with  
18 their ~~ability~~ abilities and productivity. A license granted to a sheltered workshop  
19 under this section may be issued for the entire workshop or a department of the  
20 workshop.

21 **SECTION 1t.** 104.08 (1) of the statutes is renumbered 104.08 (2m) and amended  
22 to read:

23 104.08 (2m) ~~All persons~~ Any person working in an ~~occupation a trade industry~~  
24 for which a ~~living-wage~~ living wage has been established for minors, and who ~~shall~~

1 have has no trade, shall, ~~if employed in an occupation which is a trade industry,~~ be  
2 indentured under ~~the provisions of s. 106.01.~~

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

4 104.08 **(1m)** (b) “Trade industry” means an industry involving physical labor  
5 and characterized by mechanical skill and training such as render a period of  
6 instruction reasonably necessary.

7 **SECTION 1v.** 104.08 (2) of the statutes is renumbered 104.08 (1m) (intro.) and  
8 amended to read:

9 104.08 **(1m)** (intro.) A ~~“trade” or a “trade industry” within the meaning of ss.~~  
10 ~~104.01 to 104.12 shall be a trade or~~ In this section:

11 (a) “Trade” means an industry occupation involving physical labor and  
12 characterized by mechanical skill and training such as render a period of instruction  
13 reasonably necessary. ~~The department shall investigate, determine and declare~~  
14 ~~what occupations and industries are included within the phrase a “trade” or a “trade~~  
15 ~~industry”.~~

16 **SECTION 1w.** 104.08 (3) of the statutes is renumbered 104.08 (3) (b) and  
17 amended to read:

18 104.08 **(3)** (b) The department may make exceptions to the operation of subs.  
19 ~~(1) and (2)~~ (1m) and (2m) where conditions make their application unreasonable.

20 **SECTION 1x.** 104.08 (3) (a) of the statutes is created to read:

21 104.08 **(3)** (a) The department shall investigate, determine, and declare what  
22 occupations and industries are included within a trade or a trade industry.

23 **SECTION 1y.** 104.10 of the statutes is amended to read:

24 **104.10 Penalty for intimidating witness.** Any employer who discharges or  
25 threatens to discharge, or who in any way discriminates, or threatens to

1 discriminate, against any employee because the employee has testified or is about  
2 to testify, or because the employer believes that the employee may testify, in any  
3 investigation or proceeding relative to the enforcement of ~~ss. 104.01 to 104.12~~, is  
4 guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of  
5 ~~\$25~~ this chapter may be fined \$500 for each offense.

6 **SECTION 1z.** 104.11 of the statutes is amended to read:

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

11 **SECTION 1aa.** 104.12 of the statutes is amended to read:

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

19 **SECTION 1ab.** 234.94 (5) of the statutes is amended to read:

20 234.94 (5) "Primary employment" means work ~~which~~ that pays at least the  
21 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,  
22 whichever is greater, offers adequate fringe benefits, including health insurance,  
23 and is not seasonal or part time.

24 **SECTION 1ac.** 234.94 (8) of the statutes is amended to read:

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

7           **3.** Page 2, line 1: delete “SECTION 1” and substitute “SECTION 1ad”.

8           **4.** Page 3, line 10: after that line insert:

9           “SECTION 2e. 800.09 (1) (b) of the statutes is amended to read:

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

24           **SECTION 2m.** 800.095 (4) (b) 3. of the statutes is amended to read:

1           800.095 (4) (b) 3. That the defendant perform community service work for a  
2 public agency or a nonprofit charitable organization designated by the court, except  
3 that the court may not order the defendant to perform community service work  
4 unless the defendant agrees to perform community service work and, if the  
5 community service work is in lieu of restitution, unless the person to whom the  
6 restitution is owed agrees. The court may utilize any available resources, including  
7 any community service work program, in ordering the defendant to perform  
8 community service work. The number of hours of community service work required  
9 may not exceed the number determined by dividing the amount owed on the  
10 forfeiture, or restitution, or both, by the minimum wage established under ~~ch. 104~~  
11 ~~for adults in nonagriculture, nontipped employment~~ s. 104.035 (1). The court shall  
12 ensure that the defendant is provided a written statement of the terms of the  
13 community service order and that the community service order is monitored.

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

15           895.035 (2m) (c) The court assigned to exercise jurisdiction under chs. 48 and  
16 938 may order that the juvenile perform community service work for a public agency  
17 or nonprofit charitable organization that is designated by the court in lieu of making  
18 restitution or paying the forfeiture or surcharge. If the parent agrees to perform  
19 community service work in lieu of making restitution or paying the forfeiture or  
20 surcharge, the court may order that the parent perform community service work for  
21 a public agency or a nonprofit charitable organization that is designated by the court.  
22 Community service work may be in lieu of restitution only if also agreed to by the  
23 public agency or nonprofit charitable organization and by the person to whom  
24 restitution is owed. The court may utilize any available resources, including any  
25 community service work program, in ordering the juvenile or parent to perform

1 community service work. The number of hours of community service work required  
2 may not exceed the number determined by dividing the amount owed on the  
3 restitution, forfeiture, or surcharge by the minimum wage established under ~~ch. 104~~  
4 ~~for adults in nonagriculture, nontipped employment s. 104.035 (1)~~. The court shall  
5 ensure that the juvenile or parent is provided with a written statement of the terms  
6 of the community service order and that the community service order is monitored.”.

7 **5.** Page 3, line 15: delete lines 15 to 17 and substitute:

8 “**SECTION 4m. Effective dates.** This act takes effect on the day after  
9 publication, except as follows:

10 (1) **MINIMUM WAGE.** The treatment of sections 49.141 (1) (g), 104.01 (intro.), (1),  
11 (1d), (5), (5g), (5m), (7m), and (8), 104.02, 104.03, 104.035, 104.04, 104.05, 104.06,  
12 104.07 (1) and (2), 104.08 (1), (1m) (b), and (2), 104.10, 104.11, 104.12, 234.94 (5) and  
13 (8), 800.09 (1) (b), 800.095 (4) (b) 3., and 895.035 (2m) (c) of the statutes, the  
14 renumbering and amendment of sections 104.045 and 104.08 (3) of the statutes, and  
15 the creation of sections 104.045 (2) and (3) and 104.08 (3) (a) of the statutes take effect  
16 on the first day of the 3rd month beginning after publication.”.

17 (END)