



2013 SENATE BILL 505

January 21, 2014 – Introduced by Senators WIRCH, HARRIS, CARPENTER, T. CULLEN, ERPENBACH, HANSEN, C. LARSON, LEHMAN, MILLER, RISSER, L. TAYLOR and VINEHOUT, cosponsored by Representatives MASON, GENRICH, BARCA, BARNES, BERCEAU, BILLINGS, CLARK, DANOU, GOYKE, HEBL, HESSELBEIN, HINTZ, HULSEY, JOHNSON, JORGENSEN, KAHL, KESSLER, KOLSTE, MILROY, OHNSTAD, PASCH, POPE, RICHARDS, RIEMER, RINGHAND, SARGENT, SHANKLAND, SINICKI, C. TAYLOR, WACHS, WRIGHT, YOUNG, ZAMARRIPA and ZEPNICK. Referred to Committee on Judiciary and Labor.

1 **AN ACT to renumber** 104.01 (1); **to renumber and amend** 104.045; **to amend**
2 49.141 (1) (g), 103.67 (2) (fm) 3., 103.70 (2) (b) 3., 104.01 (intro.), 104.01 (8),
3 104.05, 104.07 (1), 104.07 (2), 104.10, 104.11, 234.94 (5), 234.94 (8), 800.09 (1j),
4 800.095 (1) (d) and 895.035 (2m) (c); and **to create** 104.01 (1d), 104.01 (1g),
5 104.01 (5m), 104.01 (7m), 104.035 and 104.045 (2) and (3) of the statutes;
6 **relating to:** a state minimum wage, extending the time limit for emergency
7 rule procedures, providing an exemption from emergency rule procedures,
8 providing an exemption from rule-making procedures, and requiring the
9 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, who are defined as employees under 20 years of age in their first 90 days of employment with a particular employer; tipped employees; agricultural employees; camp counselors; golf caddies; students employed at independent colleges and universities for less

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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 as well as separate minimum wages for opportunity 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 wages because of a disability. For employees generally and for tipped employees, however, the bill sets the minimum wages as follows:

Employees generally

| | |
|---|------------------|
| Current minimum wage | \$7.25 per hour |
| Minimum wage on effective date | \$8.20 per hour |
| Minimum wage one year after effective date | \$9.15 per hour |
| Minimum wage two years after effective date | \$10.10 per hour |

Tipped employees

| | |
|--------------------------------|-----------------|
| Current minimum wage | \$2.33 per hour |
| Minimum wage on effective date | \$3 per hour |

Beginning three years after the bill's effective date for employees generally and one year after the bill's effective date for tipped employees, the bill requires DWD annually to promulgate rules revising the minimum wages established under the bill by determining the percentage difference between the consumer price index for the preceding 12-month period (year) and the consumer price index for the year before the preceding year, adjusting the minimum wages then in effect by that percentage difference, and rounding that result to the nearest multiple of five cents. For tipped employees, the bill requires DWD to increase the minimum wage by 95 cents each year until the minimum wage for tipped employees equals 70 percent of the minimum wage for employees generally and then in subsequent years to revise the minimum wage for tipped employees so that the minimum wage for tipped employees remains equal to 70 percent of the minimum wage for employees generally, rounded to the nearest multiple of five cents. DWD, however, is not required to revise the

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minimum wage if the consumer price index for the preceding year has not increased over the consumer price index for the year before the preceding year.

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 (1)~~ or the federal minimum hourly wage under 29 USC 206 (a) (1),
4 whichever is applicable.

5 **SECTION 2.** 103.67 (2) (fm) 3. of the statutes is amended to read:

6 103.67 (2) (fm) 3. The minor is paid the applicable minimum wage under ~~ch.~~
7 ~~104 s. 104.035~~ or under federal law, whichever is greater, for the work.

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

9 103.70 (2) (b) 3. The minor is paid the applicable minimum wage under ~~ch. 104~~
10 ~~s. 104.035~~ or under federal law, whichever is greater, for the work.

11 **SECTION 4.** 104.01 (intro.) of the statutes is amended to read:

12 **104.01 Definitions.** (intro.) ~~The following terms as used in~~ In this chapter
13 ~~shall be construed as follows:~~

14 **SECTION 5.** 104.01 (1) of the statutes is renumbered 104.01 (1m).

15 **SECTION 6.** 104.01 (1d) of the statutes is created to read:

16 104.01 (1d) “Agricultural employee” means an employee who is employed in
17 the operation of farm premises, as described in s. 102.04 (3).

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

19 104.01 (1g) “Consumer price index” means the average of the consumer price
20 index over each 12-month period for all urban consumers, U.S. city average, all

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1 items, not seasonally adjusted, as determined by the bureau of labor statistics of the
2 U.S. department of labor.

3 **SECTION 8.** 104.01 (5m) of the statutes is created to read:

4 104.01 (5m) "Opportunity employee" means a person under 20 years of age who
5 is in the first 90 consecutive days of employment with his or her employer.

6 **SECTION 9.** 104.01 (7m) of the statutes is created to read:

7 104.01 (7m) "Tipped employee" means an employee who in the course of
8 employment customarily and regularly receives money or other gratuities from
9 persons other than the employee's employer.

10 **SECTION 10.** 104.01 (8) of the statutes is amended to read:

11 104.01 (8) ~~The term "wage" and the term "wages" shall each mean "Wage"~~
12 means any compensation for labor measured by time, piece, or otherwise.

13 **SECTION 11.** 104.035 of the statutes is created to read:

14 **104.035 Minimum wage. (1) EMPLOYEES GENERALLY.** Except as provided in
15 subs. (2) to (4), the minimum wage is as follows:

16 (a) For wages earned before the first day of the 15th month beginning after
17 publication [LRB inserts date], \$8.20 per hour.

18 (b) For wages earned beginning on the first day of the 15th month beginning
19 after publication [LRB inserts date], and ending on the last day of the 26th month
20 beginning after publication [LRB inserts date], \$9.15 per hour.

21 (c) For wages earned beginning on the first day of the 27th month beginning
22 after publication [LRB inserts date], and ending on the last day of the 38th month
23 beginning after publication [LRB inserts date], \$10.10 per hour.

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1 (d) For wages earned beginning on the first day of the 39th month beginning
2 after publication [LRB inserts date], the amount determined by the department
3 by rule promulgated under sub. (5).

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

10 (a) For wages earned before the first day of the 15th month beginning after
11 publication [LRB inserts date], \$3 per hour.

12 (b) For wages earned beginning on the first day of the 15th month beginning
13 after publication [LRB inserts date], the amounts determined by the department
14 by rule promulgated under sub. (5).

15 **(3) MINIMUM WAGE ESTABLISHED BY DEPARTMENT.** The department shall
16 promulgate rules providing the minimum wage for all of the following:

17 (a) Opportunity employees.

18 (b) Agricultural employees.

19 (c) Camp counselors.

20 (d) Golf caddies.

21 (e) An employee or worker with a disability covered under a license under s.
22 104.07.

23 (f) A student learner.

24 (g) A student employed by an independent college or university for less than
25 20 hours per week.

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1 **(4) EMPLOYMENT EXEMPTED BY DEPARTMENT.** The department shall promulgate
2 rules exempting from the minimum wage requirements under subs. (1) to (3) all of
3 the following:

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

6 (b) A person who resides in the home of an employer who, due to advanced age
7 or physical or mental disability, cannot care for his or her own needs, for the purpose
8 of companionship and who spends not more than 15 hours per week on general
9 household work for the employer.

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

12 **(5) DEPARTMENT TO REVISE.** (a) 1. Subject to pars. (b) and (c), by the date
13 specified in sub. (1) (d) or (2) (b), whichever is applicable, and annually thereafter,
14 the department shall promulgate rules to revise the minimum wages established
15 under subs. (1) and (2). Subject to subd. 2., the department shall determine those
16 revised minimum wages by calculating the percentage difference between the
17 consumer price index for the 12-month period ending on the last day of the last
18 month for which that information is available and the consumer price index for the
19 12-month period ending on the last day of the month 12 months prior to that month,
20 adjusting the minimum wages then in effect by that percentage difference, and
21 rounding that result to the nearest multiple of 5 cents.

22 2. In revising the minimum wage for tipped employees under sub. (2), each year
23 the department shall increase that minimum wage by 95 cents or by the amount that
24 is necessary for that minimum wage to equal 70 percent of the minimum wage under
25 sub. (1) as determined under subd. 1., rounded to the nearest multiple of 5 cents,

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1 whichever is less. For years subsequent to the first year in which the minimum wage
2 under sub. (2) equals 70 percent of the minimum wage under sub. (1) as determined
3 under subd. 1., the department shall revise the minimum wage under sub. (2) by the
4 amount that is necessary for that minimum wage to remain equal to 70 percent of
5 the minimum wage under sub. (1) as determined under subd. 1., rounded to the
6 nearest multiple of 5 cents.

7 3. The department may use the emergency rule procedures under s. 227.24 to
8 promulgate the rules required under subds. 1. and 2. Notwithstanding s. 227.24 (1)
9 (a) and (3), the department may promulgate those rules as emergency rules without
10 providing evidence that promulgating those rules as emergency rules is necessary
11 to preserve the public peace, health, safety, or welfare and without a finding of
12 emergency. Notwithstanding s. 227.24 (1) (e) 1d. and 1g., the department is not
13 required to prepare a statement of the scope of those rules or to submit those rules
14 in final draft form to the governor for approval. A revised minimum wage
15 determined under subd. 1. or 2. shall first apply to wages earned on the first day of
16 the 3rd month beginning after the month of publication [LRB inserts date], of the
17 year in which the wage is revised and, notwithstanding s. 227.24 (1) (c) and (2), shall
18 remain in effect until that same date the following year.

19 (b) Paragraph (a) does not apply if the consumer price index for the 12-month
20 period ending on the last day of the last month for which that information is available
21 has not increased over the consumer price index for the 12-month period ending on
22 the last day of the month 12 months prior to that month.

23 (c) Paragraph (a) does not preclude the department from promulgating rules
24 to increase a minimum wage provided under subs. (1) to (3).

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1 **SECTION 12.** 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 13.** 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 14.** 104.05 of the statutes is amended to read:

14 **104.05 Complaints; investigation.** ~~The department shall, within~~ Within 20
15 days after the filing of a verified complaint of any person ~~setting forth~~ alleging that
16 the 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, the department shall investigate and determine whether there is
19 reasonable cause to believe that the wage paid to any employee is not a living wage.

20 **SECTION 15.** 104.07 (1) of the statutes, as affected by 2013 Wisconsin Act 36,
21 is amended to read:

22 104.07 **(1)** The department shall ~~make~~ promulgate rules, and, except as
23 provided under subs. (5), (6), and (7), ~~grant licenses~~ a license to any employer who
24 employs any employee who is unable to earn the living wage determined by the
25 department, permitting the employee to work for a wage that is commensurate with

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1 the employee's ability. Each license so granted shall establish a wage for the licensee
2 employees of the licensee who are unable to earn a living wage.

3 **SECTION 16.** 104.07 (2) of the statutes, as affected by 2013 Wisconsin Act 36,
4 is amended to read:

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

11 **SECTION 17.** 104.10 of the statutes is amended to read:

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

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

20 **104.11 Definition of violation.** Each day during which any employer ~~shall~~
21 ~~employ~~ employs a person for whom a living wage has been fixed at a wage that is less
22 than the living wage fixed shall constitute a separate and distinct violation of this
23 chapter.

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

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

5 **SECTION 20.** 234.94 (8) of the statutes is amended to read:

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

12 **SECTION 21.** 800.09 (1j) of the statutes is amended to read:

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

25 **SECTION 22.** 800.095 (1) (d) of the statutes is amended to read:

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1 800.095 (1) (d) That the defendant perform community service work for a
2 public agency or nonprofit charitable organization approved by the court and agreed
3 to by the agency or nonprofit charitable organization. If the community service work
4 is in lieu of restitution, then the person to whom restitution is owed must agree; the
5 defendant shall be given credit at the rate of not less than the minimum wage
6 established under ~~ch. 104 for adults in nonagriculture, nontipped employment s.~~
7 104.035 (1) for each one hour of community service completed. The defendant shall
8 be given a written statement of the community service order. Nothing in this
9 paragraph makes the defendant an employee or agent of the court or the
10 municipality. The defendant shall be responsible for providing the court with proof
11 that the community service hours have been completed.

12 **SECTION 23.** 895.035 (2m) (c) of the statutes is amended to read:

13 895.035 (2m) (c) The court assigned to exercise jurisdiction under chs. 48 and
14 938 may order that the juvenile perform community service work for a public agency
15 or nonprofit charitable organization that is designated by the court in lieu of making
16 restitution or paying the forfeiture or surcharge. If the parent agrees to perform
17 community service work in lieu of making restitution or paying the forfeiture or
18 surcharge, the court may order that the parent perform community service work for
19 a public 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 juvenile or parent to perform
24 community service work. The number of hours of community service work required
25 may not exceed the number determined by dividing the amount owed on the

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1 restitution, forfeiture, or surcharge by the minimum wage established under ~~eh. 104~~
2 ~~for adults in nonagriculture, nontipped employment s. 104.035 (1)~~. The court shall
3 ensure that the juvenile or parent is provided with a written statement of the terms
4 of the community service order and that the community service order is monitored.

5 **SECTION 24. Effective date.**

6 (1) MINIMUM WAGE. This act takes effect on the first day of the 3rd month
7 beginning after publication.

8 (END)