

HOUSE BILL 838

By Moore

AN ACT to amend Tennessee Code Annotated, Title 50, Chapter 2, to enact the "Tennessee Minimum Wage Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 2, is amended by adding Sections 2 through 10 of this act as a new part.

SECTION 2. This act shall be known as the "Tennessee Minimum Wage Act".

SECTION 3. As used in this act:

(1) "Commissioner" means the commissioner of the Tennessee department of labor and workforce development;

(2) "Department" means the Tennessee department of labor and workforce development;

(3) "Employ" means to suffer or permit to work;

(4) "Employee" means a person born or naturalized in the United States and subject to the jurisdiction thereof, or a person legally present in this country, either of whom is employed by an employer;

(5) "Employer" includes an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, not involved in interstate commerce acting directly or indirectly in the interest of an employer in relation to an employee; and

(6) "Wages" means compensation paid to an employee in the form of legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value; provided, wages may include the reasonable cost to

the employer, as determined by the commissioner, of furnishing meals or lodging to an employee, if such board or lodging is customarily furnished by the employer, and used by the employee.

SECTION 4.

(a) Every employer shall pay each employee wages at an hourly rate not less than the federal minimum wage established pursuant to the federal Fair Labor Standards Act of 1938, as amended, or, alternatively, shall pay each employee wages at an hourly rate not less than the Tennessee minimum wage established pursuant to subsection (b), whichever rate is greater.

(b) If the U.S. congress fails to increase the federal minimum wage for a period of five (5) consecutive, full calendar years, then every employer in this state who is subject to the federal Fair Labor Standards Act of 1938, as amended, shall thereafter pay the Tennessee minimum wage beginning February 1st next succeeding such fifth calendar year. The amount of the Tennessee minimum wage shall be established by the department and shall equal the federal minimum wage as adjusted to reflect the percentage increase in the average consumer price index [(all items-city average) as published by the United States department of labor, bureau of labor statistics], for the period of the five (5) consecutive, full calendar years of congressional inaction. On February 1st each year thereafter, the Tennessee minimum wage shall be adjusted by the department to reflect the percentage increase in such average consumer price index for the previous calendar year. Such annual adjustment shall continue until such time as the U.S. congress increases the federal minimum wage to a level that equals or exceeds the Tennessee minimum wage; and, upon the effective date of such congressional enactment, the Tennessee minimum wage shall be suspended and the tolling of a new

period shall begin for purposes of any subsequent implementation of the Tennessee minimum wage pursuant to this subsection.

(c) For purposes of the initial implementation of subsection (b), the department shall toll the period of congressional inaction from the effective date of the most recent increase in the federal minimum wage; and if such period of congressional inaction exceeds five (5) consecutive, full calendar years, then the adjustment shall reflect the increase in the average consumer price index for the total number of intervening consecutive, full calendar years of congressional inaction.

SECTION 5. Every employer subject to the provisions of this act shall keep a summary of this act and any applicable wage orders and regulations posted in a conspicuous and accessible place in or about the premises of the employer's place of business.

SECTION 6. Any employer who violates the minimum wage requirements of this act shall be liable to the employee or employees affected for the amount of unpaid minimum wages. Upon a judgment being rendered in favor of any employee or employees, in any action brought in any court of competent jurisdiction to recover unpaid wages under this act, such judgment shall include, in addition to the unpaid wages adjudged to be due, an additional amount equal to such wages as damages. The court shall, in addition to any judgment awarded to the employees, require the defendant to pay court costs and reasonable attorney's fees incurred by the employee or employees. However, action to recover must be instituted within three (3) years from the date such wages should have been paid.

SECTION 7. In the administration of this act, the commissioner shall cooperate, to the fullest extent consistent with this act, with the administrator of the wage and hour division of the United States department of labor.

SECTION 8. Nothing in this act shall be deemed to interfere with, impede or in any way diminish the right of employees to bargain collectively through representatives of their own choosing in order to establish wages in excess of the applicable minimum under this act.

SECTION 9. Employees excluded pursuant to 29 U.S.C. § 213(a) are exempt from the provisions of this act to the same extent such employees are exempt under such federal law.

SECTION 10. Within existing resources of the department, the commissioner shall promulgate rules and regulations to effectuate the purposes of this act that are not inconsistent with the provisions of the federal Fair Labor Standards Act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. For the purposes of promulgating rules and regulations, this act shall take effect on becoming a law, the public welfare requiring it. For all other purposes this act shall take effect July 1, 2009, the public welfare requiring it.