



2015 SENATE BILL 2

January 16, 2015 - Introduced by Senators WIRCH, CARPENTER, ERPENBACH, HANSEN, HARRIS DODD, C. LARSON, RINGHAND, RISSER, SHILLING, L. TAYLOR, VINEHOUT and MILLER, cosponsored by Representatives MASON, BARNES, BERCEAU, BILLINGS, GENRICH, GOYKE, HEBL, HINTZ, JOHNSON, JORGENSEN, KAHL, KOLSTE, OHNSTAD, SARGENT, SHANKLAND, SINICKI, C. TAYLOR, YOUNG and ZEPNICK. Referred to Committee on Labor and Government Reform.

1 **AN ACT to repeal** 104.01 (5), 104.04 (title), 104.05, 104.06 and 104.11; **to**
2 **renumber** 104.01 (1); **to renumber and amend** 104.04 and 104.045; **to**
3 **consolidate, renumber and amend** 104.02 and 104.03; **to amend** 49.141 (1)
4 (g), 103.06 (1) (b) 5., 103.06 (1) (c) 5., 103.06 (3) (a) 4., 103.06 (4) (a) 1., 103.67
5 (2) (fm) 3., 103.70 (2) (b) 3., 104.001 (1), 104.001 (2), 104.01 (intro.), 104.01 (8),
6 104.07 (1) and (2), 104.08 (2m), 104.10, 104.12, 234.94 (5), 234.94 (8), 800.09
7 (1j), 800.095 (1) (d) and 895.035 (2m) (c); and **to create** 104.01 (1d), 104.01 (1g),
8 104.01 (5m), 104.01 (7m), 104.035 and 104.045 (2) and (3) of the statutes;
9 **relating to:** a state minimum wage, extending the time limit for emergency
10 rule procedures, providing an exemption from emergency rule procedures,
11 providing an exemption from rule-making procedures, and requiring the
12 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

SENATE BILL 2

(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 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.

This bill repeals references to and provisions for a living wage and replaces them with provisions requiring a minimum wage, described as follows. 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

SENATE BILL 2

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 general 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.** 103.06 (1) (b) 5. of the statutes is amended to read:

6 103.06 (1) (b) 5. For purposes of maintaining records under sub. (3) (a) 4. as
7 required under rules promulgated under s. ~~104.04~~ 104.035, an employee, as defined
8 in s. 104.01 (2).

9 **SECTION 3.** 103.06 (1) (c) 5. of the statutes is amended to read:

10 103.06 (1) (c) 5. For purposes of maintaining records under sub. (3) (a) 4. as
11 required under rules promulgated under s. ~~104.04~~ 104.035, an employer, as defined
12 in s. 104.01 (3).

13 **SECTION 4.** 103.06 (3) (a) 4. of the statutes is amended to read:

14 103.06 (3) (a) 4. That the employer is maintaining records of the hours worked
15 by its employees, the wages paid to those employees, any deductions from those
16 wages, and any other information that the employer is required to keep under rules

SENATE BILL 2

1 promulgated under s. 103.02 or ~~104.04~~ 104.035, and is listing deductions from wages
2 as required under s. 103.457.

3 **SECTION 5.** 103.06 (4) (a) 1. of the statutes is amended to read:

4 103.06 (4) (a) 1. Enter and inspect any place of business or place of employment
5 and examine and copy any records that the employer is required to keep under rules
6 promulgated under s. 103.02 or ~~104.04~~ 104.035; any books, registers, payroll records,
7 records of wage withholdings, records of work activity and hours of work, and records
8 or indicia of the employment status of persons performing work for the employer; and
9 any other records relating to compliance with the requirements specified in sub. (3)
10 (a).

11 **SECTION 6.** 103.67 (2) (fm) 3. of the statutes is amended to read:

12 103.67 (2) (fm) 3. The minor is paid the applicable minimum wage under ~~ch.~~
13 ~~104~~ s. 104.035 or under federal law, whichever is greater, for the work.

14 **SECTION 7.** 103.70 (2) (b) 3. of the statutes is amended to read:

15 103.70 (2) (b) 3. The minor is paid the applicable minimum wage under
16 ~~ch. 104~~ s. 104.035 or under federal law, whichever is greater, for the work.

17 **SECTION 8.** 104.001 (1) of the statutes is amended to read:

18 104.001 (1) The legislature finds that the provision of a living minimum wage
19 that is uniform throughout the state is a matter of statewide concern and that the
20 enactment of a living minimum wage ordinance by a city, village, town, or county
21 would be logically inconsistent with, would defeat the purpose of, and would go
22 against the spirit of this chapter. Therefore, this chapter shall be construed as an
23 enactment of statewide concern for the purpose of providing a living minimum wage
24 that is uniform throughout the state.

25 **SECTION 9.** 104.001 (2) of the statutes is amended to read:

SENATE BILL 2

1 104.001 (2) A city, village, town, or county may not enact and administer an
2 ordinance establishing a living minimum wage. Any city, village, town, or county
3 living minimum wage ordinance that is in effect on June 16, 2005, is void.

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

5 **104.01 Definitions.** (intro.) ~~The following terms as used in~~ In this chapter
6 shall be construed as follows:

7 **SECTION 11.** 104.01 (1) of the statutes is renumbered 104.01 (1m).

8 **SECTION 12.** 104.01 (1d) of the statutes is created to read:

9 104.01 (1d) “Agricultural employee” means an employee who is employed in
10 the operation of farm premises, as described in s. 102.04 (3).

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

12 104.01 (1g) “Consumer price index” means the average of the consumer price
13 index over each 12-month period for all urban consumers, U.S. city average, all
14 items, not seasonally adjusted, as determined by the bureau of labor statistics of the
15 U.S. department of labor.

16 **SECTION 14.** 104.01 (5) of the statutes is repealed.

17 **SECTION 15.** 104.01 (5m) of the statutes is created to read:

18 104.01 (5m) “Opportunity employee” means a person under 20 years of age who
19 is in the first 90 consecutive days of employment with his or her employer.

20 **SECTION 16.** 104.01 (7m) of the statutes is created to read:

21 104.01 (7m) “Tipped employee” means an employee who in the course of
22 employment customarily and regularly receives money or other gratuities from
23 persons other than the employee’s employer.

24 **SECTION 17.** 104.01 (8) of the statutes is amended to read:

SENATE BILL 2

1 104.01 (8) ~~The term “wage” and the term “wages” shall each mean “Wage”~~
2 ~~means~~ any compensation for labor measured by time, piece, or otherwise.

3 **SECTION 18.** 104.02 and 104.03 of the statutes are consolidated, renumbered
4 104.02 and amended to read:

5 **104.02 Living Minimum wage prescribed: requirement to pay.** Every
6 wage paid or agreed to be paid by any employer to any employee, except as otherwise
7 provided in s. 104.07, shall be not less than a living the applicable minimum wage
8 established under s. 104.035. ~~104.03 Unlawful wages.~~ Any employer paying,
9 offering to pay, or agreeing to pay any employee a wage lower or less in value than
10 ~~a living the applicable minimum wage established under s. 104.035~~ is guilty of a
11 violation of this chapter.

12 **SECTION 19.** 104.035 of the statutes is created to read:

13 **104.035 Minimum wage; established. (1) EMPLOYEES GENERALLY.** Except
14 as provided in subs. (2) to (4), the minimum wage is as follows:

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

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

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

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

SENATE BILL 2

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

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

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

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

14 (a) Opportunity employees.

15 (b) Agricultural employees.

16 (c) Camp counselors.

17 (d) Golf caddies.

18 (e) An employee or worker with a disability covered under a license under s.
19 104.07.

20 (f) A student learner.

21 (g) A student employed by an independent college or university for less than
22 20 hours per week.

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

SENATE BILL 2

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

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

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

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

19 2. In revising the minimum wage for tipped employees under sub. (2), each year
20 the department shall increase that minimum wage by 95 cents or by the amount that
21 is necessary for that minimum wage to equal 70 percent of the minimum wage under
22 sub. (1) as determined under subd. 1., rounded to the nearest multiple of 5 cents,
23 whichever is less. For years subsequent to the first year in which the minimum wage
24 under sub. (2) equals 70 percent of the minimum wage under sub. (1) as determined
25 under subd. 1., the department shall revise the minimum wage under sub. (2) by the

SENATE BILL 2

1 amount that is necessary for that minimum wage to remain equal to 70 percent of
2 the minimum wage under sub. (1) as determined under subd. 1., rounded to the
3 nearest multiple of 5 cents.

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

16 (b) Paragraph (a) 1. does not apply if the consumer price index for the 12-month
17 period ending on the last day of the last month for which that information is available
18 has not increased over the consumer price index for the 12-month period ending on
19 the last day of the month 12 months prior to that month.

20 **(6) GENDER-SPECIFIC MINIMUM WAGE PROHIBITED.**

21 **SECTION 20.** 104.04 (title) of the statutes is repealed.

22 **SECTION 21.** 104.04 of the statutes is renumbered 104.035 (6) and amended to
23 read:

24 104.035 **(6)** ~~The department shall investigate, ascertain, determine, and fix~~
25 ~~such reasonable classifications, and shall impose general or special orders,~~

SENATE BILL 2**SECTION 21**

1 ~~determining the living wage, and shall carry out the purposes of this chapter. Such~~
2 ~~investigations, classifications, and orders shall be made as provided under s.~~
3 ~~103.005, and the penalties specified in s. 103.005 (12) shall apply to and be imposed~~
4 ~~for any violation of this chapter. In determining the living wage, the department may~~
5 ~~consider the effect that an increase in the living wage might have on the economy of~~
6 ~~the state, including the effect of a living wage increase on job creation, retention, and~~
7 ~~expansion, on the availability of entry-level jobs, and on regional economic~~
8 ~~conditions within the state. The department may not establish a different minimum~~
9 ~~wage for men and women. Said orders shall be subject to review in the manner~~
10 ~~provided in ch. 227.~~

11 **SECTION 22.** 104.045 of the statutes is renumbered 104.045 (intro.) and
12 amended to read:

13 **104.045 Tipped employees Tips, meals, lodging, and hours worked.**
14 (intro.) The department shall ~~by rule determine what amount of~~ promulgate rules
15 governing all of the following:

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

18 **SECTION 23.** 104.045 (2) and (3) of the statutes are created to read:

19 104.045 (2) The deduction of meals or lodging provided by an employer to an
20 employee from the employer's obligation under this chapter.

21 (3) The determination of hours worked by an employee during which the
22 employee is entitled to the minimum wage established under s. 104.035.

23 **SECTION 24.** 104.05 of the statutes is repealed.

24 **SECTION 25.** 104.06 of the statutes is repealed.

25 **SECTION 26.** 104.07 (1) and (2) of the statutes are amended to read:

SENATE BILL 2

1 104.07 (1) The department shall ~~make promulgate~~ rules, and, except as
2 provided under subs. (5), (6), and (7), grant licenses a license to any employer who
3 employs any employee ~~who is unable to earn the living wage determined by the~~
4 ~~department, permitting the employee to work for a wage that~~ for whom the minimum
5 wage established under s. 104.035 is not commensurate with the employee's ability.
6 Each license so granted shall establish a wage for ~~the licensee~~ any such employees
7 of the licensee.

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

14 **SECTION 27.** 104.08 (2m) of the statutes is amended to read:

15 104.08 (2m) Any person working in a trade industry for which a living
16 minimum wage has been established for minors, and who has no trade, shall be
17 employed under an apprentice contract under s. 106.01.

18 **SECTION 28.** 104.10 of the statutes is amended to read:

19 **104.10 Penalty for intimidating witness.** Any employer who discharges or
20 threatens to discharge, or who in any way discriminates, or threatens to discriminate
21 against, any employee because the employee has testified or is about to testify, or
22 because the employer believes that the employee may testify, in any investigation or
23 proceeding relative to the enforcement of this chapter, ~~is guilty of a misdemeanor,~~
24 ~~and upon conviction thereof shall be punished by a fine of~~ may be fined \$25 for each
25 offense.

SENATE BILL 2

1 **SECTION 29.** 104.11 of the statutes is repealed.

2 **SECTION 30.** 104.12 of the statutes is amended to read:

3 **104.12 Complaints.** Any person may register with the department a
4 complaint that the wages paid to an employee for whom a living minimum wage has
5 been established under s. 104.035 are less than that living minimum wage, and the
6 department shall investigate the matter and take all proceedings necessary to
7 enforce the payment of ~~a that minimum wage that is not less than the living wage.~~
8 Section 111.322 (2m) applies to discharge and other discriminatory acts arising in
9 connection with any proceeding under this section.

10 **SECTION 31.** 234.94 (5) of the statutes is amended to read:

11 234.94 (5) "Primary employment" means work ~~which~~ that pays at least the
12 minimum wage as established under ~~ch. 104- s. 104.035 (1)~~ or under federal law,
13 whichever is greater,~~;~~ offers adequate fringe benefits, including health insurance,~~;~~
14 and is not seasonal or part time.

15 **SECTION 32.** 234.94 (8) of the statutes is amended to read:

16 234.94 (8) "Target group" means a population group for which the
17 unemployment level is at least ~~25%~~ 25 percent higher than the statewide
18 unemployment level, or a population group for which the average wage received is
19 less than 1.2 times the minimum wage as established under ~~ch. 104- s. 104.035 (1)~~
20 or under federal law, whichever is greater. No population group is required to be
21 located within a contiguous geographic area to be considered a target group.

22 **SECTION 33.** 800.09 (1j) of the statutes is amended to read:

23 800.09 (1j) If the court orders the defendant to perform community service
24 work in lieu of making restitution or of paying the forfeiture, surcharges, fees and
25 costs, or both, the court may order that the defendant perform community service

SENATE BILL 2

1 work for a public agency or a nonprofit charitable organization that is approved by
2 the court and agreed to by the public agency or nonprofit charitable organization.
3 Community service work may be in lieu of restitution only if also agreed to by the
4 person to whom restitution is owed. The number of hours of community service work
5 required may not exceed the number determined by dividing the amount owed on the
6 forfeiture by the minimum wage established under ~~ch. 104 for adults in~~
7 ~~nonagriculture, nontipped employment~~ s. 104.035 (1). The court shall ensure that
8 the defendant is provided a written statement of the terms of the community service
9 order and that the community service order is monitored.

10 **SECTION 34.** 800.095 (1) (d) of the statutes is amended to read:

11 800.095 (1) (d) That the defendant perform community service work for a
12 public agency or nonprofit charitable organization approved by the court and agreed
13 to by the agency or nonprofit charitable organization. If the community service work
14 is in lieu of restitution, then the person to whom restitution is owed must agree; the
15 defendant shall be given credit at the rate of not less than the minimum wage
16 established under ~~ch. 104 for adults in nonagriculture, nontipped employment~~ s.
17 104.035 (1) for each one hour of community service completed. The defendant shall
18 be given a written statement of the community service order. Nothing in this
19 paragraph makes the defendant an employee or agent of the court or the
20 municipality. The defendant shall be responsible for providing the court with proof
21 that the community service hours have been completed.

22 **SECTION 35.** 895.035 (2m) (c) of the statutes is amended to read:

23 895.035 (2m) (c) The court assigned to exercise jurisdiction under chs. 48 and
24 938 may order that the juvenile perform community service work for a public agency
25 or nonprofit charitable organization that is designated by the court in lieu of making

SENATE BILL 2

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

SECTION 36. Effective date.

16 (1) MINIMUM WAGE. This act takes effect on the first day of the 3rd month
17 beginning after publication.
18

19 (END)