

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 934**

A bill to fix minimum wages for employees within this state; to prohibit wage discrimination; to provide for a wage deviation board; to provide for the administration and enforcement of this act; to prescribe penalties for the violation of this act; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "workforce opportunity wage act".

3 Sec. 2. As used in this act:

4 (a) "Commissioner" means the director of the department of
5 licensing and regulatory affairs.

6 (b) "Employ" means to engage, suffer, or permit to work.

7 (c) "Employee" means an individual not less than 16 years of

1 age employed by an employer on the premises of the employer or at a
2 fixed site designated by the employer, and includes a minor
3 employed subject to section 15(1) of the youth employment standards
4 act, 1978 PA 90, MCL 409.115.

5 (d) "Employer" means a person, firm, or corporation, including
6 the state and its political subdivisions, agencies, and
7 instrumentalities, and a person acting in the interest of the
8 employer, who employs 2 or more employees at any 1 time within a
9 calendar year. An employer is subject to this act during the
10 remainder of that calendar year.

11 Sec. 3. An employer shall not pay any employee at a rate that
12 is less than prescribed in this act.

13 Sec. 4. (1) Subject to the exceptions specified in this act,
14 the minimum hourly wage rate is:

15 (a) Before September 1, 2014, \$7.40.

16 (b) Beginning September 1, 2014, \$7.65.

17 (c) Beginning September 1, 2015, \$7.95.

18 (d) Beginning September 1, 2016, \$8.20.

19 (e) Beginning September 1, 2017, \$8.50.

20 (2) An increase in the minimum hourly wage rate as prescribed
21 in subsection (1) does not take effect if at any time during the
22 year preceding the year of a prescribed increase, the unemployment
23 rate for this state is greater than 10%.

24 Sec. 4a. (1) Except as otherwise provided in this act, an
25 employee shall receive compensation at not less than 1-1/2 times
26 the regular rate at which the employee is employed for employment
27 in a workweek in excess of 40 hours.

1 (2) This state or a political subdivision, agency, or
2 instrumentality of this state does not violate subsection (1) with
3 respect to the employment of an employee in fire protection
4 activities or an employee in law enforcement activities, including
5 security personnel in correctional institutions, if any of the
6 following apply:

7 (a) In a work period of 28 consecutive days, the employee
8 receives for tours of duty, which in the aggregate exceed 216
9 hours, compensation for those hours in excess of 216 at a rate not
10 less than 1-1/2 times the regular rate at which the employee is
11 employed. The employee's regular rate shall be not less than the
12 statutory minimum hourly rate.

13 (b) For an employee to whom a work period of at least 7 but
14 less than 28 days applies, in the employee's work period the
15 employee receives for tours of duty, which in the aggregate exceed
16 a number of hours which bears the same ratio to the number of
17 consecutive days in the employee's work period as 216 bears to 28
18 days, compensation for those excess hours at a rate not less than
19 1-1/2 times the regular rate at which the employee is employed. The
20 employee's regular rate shall be not less than the statutory
21 minimum hourly rate.

22 (c) If an employee engaged in fire protection activities would
23 receive overtime payments under this act solely as a result of that
24 employee's trading of time with another employee pursuant to a
25 voluntary trading time arrangement, overtime, if any, shall be paid
26 to employees who participate in the trading of time as if the time
27 trade had not occurred. As used in this subdivision, "trading time

1 arrangement" means a practice under which employees of a fire
2 department voluntarily substitute for one another to allow an
3 employee to attend to personal matters, if the practice is neither
4 for the convenience of the employer nor because of the employer's
5 operations.

6 (3) This state or a political subdivision, agency, or
7 instrumentality of this state engaged in the operation of a
8 hospital or an establishment that is an institution primarily
9 engaged in the care of the sick, the aged, or the mentally ill or
10 developmentally disabled who reside on the premises does not
11 violate subsection (1) if both of the following conditions are met:

12 (a) Pursuant to a written agreement or written employment
13 policy arrived at between the employer and the employee before
14 performance of the work, a work period of 14 consecutive days is
15 accepted instead of the workweek of 7 consecutive days for purposes
16 of overtime computation.

17 (b) For the employee's employment in excess of 8 hours in a
18 workday and in excess of 80 hours in the 14-day period, the
19 employee receives compensation at a rate of 1-1/2 times the regular
20 rate, which shall be not less than the statutory minimum hourly
21 rate at which the employee is employed.

22 (4) Subsections (1), (2), and (3) do not apply to any of the
23 following:

24 (a) An employee employed in a bona fide executive,
25 administrative, or professional capacity, including an employee
26 employed in the capacity of academic administrative personnel or
27 teacher in an elementary or secondary school. However, an employee

1 of a retail or service establishment is not excluded from the
2 definition of employee employed in a bona fide executive or
3 administrative capacity because of the number of hours in the
4 employee's workweek that the employee devotes to activities not
5 directly or closely related to the performance of executive or
6 administrative activities, if less than 40% of the employee's hours
7 in the workweek are devoted to those activities.

8 (b) An individual who holds a public elective office.

9 (c) A political appointee of a person holding public elective
10 office or a political appointee of a public body, if the political
11 appointee described in this subdivision is not covered by a civil
12 service system.

13 (d) An employee employed by an establishment that is an
14 amusement or recreational establishment, if the establishment does
15 not operate for more than 7 months in a calendar year.

16 (e) An employee employed in agriculture, including farming in
17 all its branches, which among other things includes: cultivating
18 and tilling soil; dairying; producing, cultivating, growing, and
19 harvesting agricultural or horticultural commodities; raising
20 livestock, bees, fur-bearing animals, or poultry; and a practice,
21 including forestry or lumbering operations, performed by a farmer
22 or on a farm as an incident to or in conjunction with farming
23 operations, including preparation for market, delivery to storage,
24 or delivery to market or to a carrier for transportation to market
25 or processing or preserving perishable farm products.

26 (f) An employee who is not subject to the minimum hourly wage
27 provisions of this act.

1 (5) The director of the department of licensing and regulatory
2 affairs shall promulgate rules under the administrative procedures
3 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to define the terms
4 used in subsection (4).

5 (6) For purposes of administration and enforcement, an amount
6 owing to an employee that is withheld in violation of this section
7 is unpaid minimum wages under this act.

8 (7) The legislature shall annually appropriate from the
9 general fund to each political subdivision affected by subsection
10 (2) an amount equal to the difference in direct labor costs before
11 and after January 4, 1979 arising from any change in existing law
12 that results from the enactment of subsection (2) and incurred by
13 the political subdivision.

14 (8) In lieu of monetary overtime compensation, an employee
15 subject to this act may receive compensatory time off at a rate
16 that is not less than 1-1/2 hours for each hour of employment for
17 which overtime compensation is required under this act, subject to
18 all of the following:

19 (a) The employer must allow employees a total of at least 10
20 days of leave per year without loss of pay and must provide the
21 compensatory time to the employee under either of the following:

22 (i) Applicable provisions of a collective bargaining agreement,
23 memorandum of understanding, or any other written agreement between
24 the employer and representative of the employee.

25 (ii) If employees are not represented by a collective
26 bargaining agent or other representative designated by the
27 employee, a plan adopted by the employer and provided in writing to

1 its employees that provides employees with a voluntary option to
2 receive compensatory time off for overtime work when there is an
3 express, voluntary written request to the employer by an individual
4 employee for compensatory time off in lieu of overtime pay before
5 the performance of any overtime assignment.

6 (b) The employee has not earned compensatory time in excess of
7 the applicable limit prescribed by subdivision (d).

8 (c) The employee is not required as a condition of employment
9 to accept or request compensatory time. An employer shall not
10 directly or indirectly intimidate, threaten, or coerce or attempt
11 to intimidate, threaten, or coerce an employee for the purpose of
12 interfering with the employee's rights under this section to
13 request or not request compensatory time off in lieu of payment of
14 overtime compensation for overtime hours, or requiring an employee
15 to use compensatory time. In assigning overtime hours, an employer
16 shall not discriminate among employees based upon an employee's
17 choice to request or not request compensatory time off in lieu of
18 overtime compensation. An employer who violates this subsection is
19 subject to a civil fine of not more than \$1,000.00.

20 (d) An employee may not accrue more than a total of 240 hours
21 of compensatory time. An employer shall do both of the following:

22 (i) Maintain in an employee's pay record a statement of
23 compensatory time earned by that employee in the pay period that
24 the pay record identifies.

25 (ii) Provide an employee with a record of compensatory time
26 earned by or paid to the employee in a statement of earnings for
27 the period in which the compensatory time is earned or paid.

1 (e) Upon the request of an employee who has earned
2 compensatory time, the employer shall, within 30 days following the
3 request, provide monetary compensation for that compensatory time
4 at a rate not less than the regular rate earned by the employee at
5 the time the employee performed the overtime work.

6 (f) An employee who has earned compensatory time authorized
7 under this subsection shall, upon the voluntary or involuntary
8 termination of employment or upon expiration of this subsection, be
9 paid unused compensatory time at a rate of compensation not less
10 than the regular rate earned by the employee at the time the
11 employee performed the overtime work. A terminated employee's
12 receipt of or eligibility to receive monetary compensation for
13 earned compensatory time shall not be used by either of the
14 following:

15 (i) The employer to oppose an employee's application for
16 unemployment compensation under the Michigan employment security
17 act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.

18 (ii) The state to deny unemployment compensation or diminish an
19 employee's entitlement to unemployment compensation benefits under
20 the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL
21 421.1 to 421.75.

22 (g) An employee shall be permitted to use any compensatory
23 time accrued under this subsection for any reason unless use of the
24 compensatory time for the period requested will unduly disrupt the
25 operations of the employer.

26 (h) Unless prohibited by a collective bargaining agreement, an
27 employer may terminate a compensatory time plan upon not less than

1 60 days' notice to employees.

2 (i) As used in this subsection:

3 (i) "Compensatory time" and "compensatory time off" mean hours
4 during which an employee is not working and for which the employee
5 is compensated in accordance with this subsection in lieu of
6 monetary overtime compensation.

7 (ii) "Overtime assignment" means an assignment of hours for
8 which overtime compensation is required under this act.

9 (iii) "Overtime compensation" means the compensation required
10 under this section.

11 Sec. 4b. (1) An employer may pay a new employee who is less
12 than 20 years of age a training hourly wage of \$4.25 for the first
13 90 days of that employee's employment. The hourly wage authorized
14 under this subsection is in lieu of the minimum hourly wage
15 otherwise prescribed by this act.

16 (2) Except as provided in subsection (1), the minimum hourly
17 wage for an employee who is less than 21 years of age is 85% of the
18 general minimum hourly wage established in section 4.

19 (3) An employer shall not displace an employee to hire an
20 individual at the hourly wage authorized under this section. As
21 used in this subsection, "displace" includes termination of
22 employment or any reduction of hours, wages, or employment
23 benefits.

24 (4) A person who violates subsection (3) is subject to a civil
25 fine of not more than \$1,000.00.

26 Sec. 4c. On petition of a party in interest or on his or her
27 own initiative, the commissioner shall establish a suitable scale

1 of rates for apprentices, learners, and persons with physical or
2 mental disabilities who are clearly unable to meet normal
3 production standards. The rates established under this section may
4 be less than the regular minimum wage rate for workers who are
5 experienced and who are not disabled.

6 Sec. 4d. (1) Except as provided in subsection (2), before
7 September 1, 2014, the minimum hourly wage rate is \$2.65 per hour
8 and beginning September 1, 2014, the minimum hourly wage rate is
9 38% of the minimum hourly wage rate established in section 4, if
10 all of the following occur:

11 (a) The employee receives gratuities in the course of his or
12 her employment.

13 (b) If the gratuities described in subdivision (a) plus the
14 minimum hourly wage rate under this subsection do not equal or
15 exceed the minimum hourly wage otherwise established under section
16 4, the employer pays any shortfall to the employee.

17 (c) The gratuities are proven gratuities as indicated by the
18 employee's declaration for purposes of the federal insurance
19 contributions act, 26 USC 3101 to 3128.

20 (d) The employee was informed by the employer of the
21 provisions of this section.

22 (2) An increase in the minimum hourly wage rate as prescribed
23 in subsection (1) does not take effect if at any time during the
24 year preceding the year of a prescribed increase, the unemployment
25 rate for this state is greater than 10%.

26 (3) As used in this section, "gratuities" means tips or
27 voluntary monetary contributions received by an employee from a

1 guest, patron, or customer for services rendered to that guest,
2 patron, or customer and that the employee reports to the employer
3 for purposes of the federal insurance contributions act, 26 USC
4 3101 to 3128.

5 Sec. 5. (1) The governor shall appoint, with the advice and
6 consent of the senate, a wage deviation board composed of 3
7 representatives of the employers, 3 representatives of the
8 employees, and 3 persons representing the public. One of the 3
9 persons representing the public shall be designated as chairperson.
10 Members shall serve for terms of 3 years, except that of the
11 members first appointed, 1 from each group shall be appointed for 1
12 year, 1 for 2 years, and 1 for 3 years. The commissioner shall be
13 secretary of the wage deviation board.

14 (2) A majority of the members of the board constitute a
15 quorum, and the recommendation or report of the board requires a
16 vote of not less than a majority of its members. The business which
17 the wage deviation board may perform shall be conducted at a public
18 meeting of the board held in compliance with the open meetings act,
19 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date,
20 and place of the meeting shall be given in the manner required by
21 that act.

22 (3) A writing prepared, owned, used, in the possession of, or
23 retained by the wage deviation board in the performance of an
24 official function shall be made available to the public in
25 compliance with the freedom of information act, 1976 PA 442, MCL
26 15.231 to 15.246.

27 (4) The per diem compensation of the board and the schedule

1 for reimbursement of expenses shall be established annually by the
2 legislature.

3 (5) The wage deviation board may request data of any employer,
4 subject to the provisions of this act, as to the wages paid and
5 hours worked by the employer's employees and may hold hearings as
6 necessary in the process of obtaining this information.

7 (6) The wage deviation board shall submit its report to the
8 commissioner, who shall file it in his or her office as a public
9 record together with the regulations established by the board.

10 (7) At any time after a deviated wage rate has been in effect
11 for 6 months or more, the wage deviation board may reconsider the
12 rate.

13 Sec. 6. The commissioner may promulgate rules necessary for
14 administration of this act under the administrative procedures act
15 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

16 Sec. 7. An employer who is subject to this act or any
17 regulation or order issued under this act shall furnish each
18 employee with a statement of the hours worked by the employee and
19 of the wages paid to the employee, listing deductions made each pay
20 period. The employer shall furnish the commissioner, upon demand, a
21 sworn statement of the wage information. These records shall be
22 open to inspection by the commissioner, his or her deputy, or any
23 authorized agent of the department at any reasonable time. An
24 employer subject to this act or any regulation or order issued
25 under this act shall keep a copy of this act and regulations and
26 orders promulgated under this act posted in a conspicuous place in
27 the workplace that is accessible to employees. The commissioner

1 shall furnish copies of this act and the regulations and orders to
2 employers without charge.

3 Sec. 8. The commissioner shall administer and enforce this act
4 and, at the request of the wage deviation board, may investigate
5 and ascertain the wages of employees of an employer subject to this
6 act. The commissioner and the commissioner's employees shall not
7 reveal facts or information obtained in the course of official
8 duties, except as when required by law, to report upon or take
9 official action or testify in proceedings regarding the affairs of
10 an employer subject to this act.

11 Sec. 9. (1) If an employer violates this act, the employee
12 affected by the violation, at any time within 3 years, may do any
13 of the following:

14 (a) Bring a civil action for the recovery of the difference
15 between the amount paid and the amount that, but for the violation,
16 would have been paid the employee under this act and an equal
17 additional amount as liquidated damages together with costs and
18 reasonable attorney fees as are allowed by the court.

19 (b) File a claim with the commissioner who shall investigate
20 the claim.

21 (2) If the commissioner determines there is reasonable cause
22 to believe that the employer has violated this act and the
23 commissioner is subsequently unable to obtain voluntary compliance
24 by the employer within a reasonable period of time, the
25 commissioner shall bring a civil action under subsection (1)(a).
26 The commissioner may investigate and file a civil action under
27 subsection (1)(a) on behalf of all employees of that employer who

1 are similarly situated at the same work site and who have not
2 brought a civil action under subsection (1)(a). A contract or
3 agreement between the employer and the employee or any acceptance
4 of a lesser wage by the employee is not a bar to the action.

5 (3) In addition to bearing liability for civil remedies
6 described in this section, an employer who fails to pay the minimum
7 hourly wage in violation of this act, or who violates a provision
8 of section 4a governing an employee's compensatory time, is subject
9 to a civil fine of not more than \$1,000.00.

10 Sec. 10. (1) This act does not apply to an employer that is
11 subject to the minimum wage provisions of the fair labor standards
12 act of 1938, 29 USC 201 to 219, unless those federal minimum wage
13 provisions would result in a lower minimum hourly wage than
14 provided in this act. Each of the following exceptions applies to
15 an employer who is subject to this act only by application of this
16 subsection:

17 (a) Section 4a does not apply.

18 (b) This act does not apply to an employee who is exempt from
19 the minimum wage requirements of the fair labor standards act of
20 1938, 29 USC 201 to 219.

21 (2) Notwithstanding subsection (1), an employee shall be paid
22 in accordance with the minimum wage and overtime compensation
23 requirements of sections 4 and 4a if the employee meets either of
24 the following conditions:

25 (a) He or she is employed in domestic service employment to
26 provide companionship services as defined in 29 CFR 552.6 for
27 individuals who, because of age or infirmity, are unable to care

1 for themselves and is not a live-in domestic service employee as
2 described in 29 CFR 552.102.

3 (b) He or she is employed to provide child care, but is not a
4 live-in domestic service employee as described in 29 CFR 552.102.
5 However, the requirements of sections 4 and 4a do not apply if the
6 employee meets all of the following conditions:

7 (i) He or she is under the age of 18.

8 (ii) He or she provides services on a casual basis as defined
9 in 29 CFR 552.5.

10 (iii) He or she provides services that do not regularly exceed
11 20 hours per week, in the aggregate.

12 (3) This act does not apply to persons employed in summer
13 camps for not more than 4 months or to employees who are covered
14 under section 14 of the fair labor standards act of 1938, 29 USC
15 214.

16 (4) This act does not apply to agricultural fruit growers,
17 pickle growers and tomato growers, or other agricultural employers
18 who traditionally contract for harvesting on a piecework basis, as
19 to those employees used for harvesting, until the board has
20 acquired sufficient data to determine an adequate basis to
21 establish a scale of piecework and determines a scale equivalent to
22 the prevailing minimum wage for that employment. The piece rate
23 scale shall be equivalent to the minimum hourly wage in that, if
24 the payment by unit of production is applied to a worker of average
25 ability and diligence in harvesting a particular commodity, he or
26 she receives an amount not less than the hourly minimum wage.

27 (5) Notwithstanding any other provision of this act,

1 subsection (1) (a) and (b) and subsection (2) do not deprive an
2 employee or any class of employees of any right that existed on
3 September 30, 2006 to receive overtime compensation or to be paid
4 the minimum wage.

5 Sec. 11. An employer that discharges or in any other manner
6 discriminates against an employee because the employee has served
7 or is about to serve on the wage deviation board or has testified
8 or is about to testify before the board, or because the employer
9 believes that the employee may serve on the board or may testify
10 before the board or in any investigation under this act, and any
11 person who violates any provision of this act or of any regulation
12 or order issued under this act, is guilty of a misdemeanor.

13 Sec. 12. Any employer that consistently discharges employees
14 within 10 weeks of their employment and replaces the discharged
15 employees without work stoppage is presumed to have discharged them
16 to evade payment of the wage rates established in this act and is
17 guilty of a misdemeanor.

18 Sec. 13. (1) An employer having employees subject to this act
19 shall not discriminate between employees within an establishment on
20 the basis of sex by paying wages to employees in the establishment
21 at a rate less than the rate at which the employer pays wages to
22 employees of the opposite sex for equal work on jobs, the
23 performance of which requires equal skill, effort, and
24 responsibility and that is performed under similar working
25 conditions, except if the payment is made under 1 or more of the
26 following:

27 (a) A seniority system.

1 (b) A merit system.

2 (c) A system that measures earnings by quantity or quality of
3 production.

4 (d) A differential based on a factor other than sex.

5 (2) An employer that is paying a wage differential in
6 violation of this section shall not reduce the wage rate of an
7 employee to comply with this section.

8 (3) For purposes of administration and enforcement, any amount
9 owing to an employee that has been withheld in violation of this
10 section is considered unpaid minimum wages under this act.

11 Sec. 14. An employer operating a massage establishment as
12 defined in section 2 of former 1974 PA 251 that violates this act
13 is guilty of a misdemeanor punishable by imprisonment for not more
14 than 1 year or a fine of not more than \$1,000.00, or both.

15 Enacting section 1. The minimum wage law of 1964, 1964 PA 154,
16 MCL 408.381 to 408.398, is repealed.