

SENATE BILL No. 1171

November 8, 2018, Introduced by Senator HILDENBRAND and referred to the Committee on Government Operations.

A bill to amend 2018 PA 337, entitled
"Improved workforce opportunity wage act,"
by amending sections 2 and 4d (MCL 408.932 and 408.934d).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Commissioner" means the director of the department of
3 licensing and regulatory affairs.

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

5 (c) "Employee" means an individual not less than 16 years of
6 age employed by an employer on the premises of the employer or at a
7 fixed site designated by the employer, and includes a minor
8 employed subject to section 15(1) of the youth employment standards
9 act, 1978 PA 90, MCL 409.115.

10 (d) "Employer" means a person, firm, or corporation, including

1 this state and its political subdivisions, agencies, and
2 instrumentalities, and a person acting in the interest of the
3 employer, who employs 2 or more employees at any 1 time within a
4 calendar year. An employer is subject to this act during the
5 remainder of that calendar year. Except as specifically provided in
6 the franchise agreement, as between a franchisee and franchisor,
7 the franchisee is considered the sole employer of workers for whom
8 the franchisee provides a benefit plan or pays wages.

9 (E) "GRATUITIES" MEANS TIPS OR VOLUNTARY MONETARY
10 CONTRIBUTIONS RECEIVED BY AN EMPLOYEE FROM A GUEST, PATRON, OR
11 CUSTOMER FOR SERVICES RENDERED TO THAT GUEST, PATRON, OR CUSTOMER
12 AND THAT THE EMPLOYEE REPORTS TO HIS OR HER EMPLOYER FOR PURPOSES
13 OF THE FEDERAL INSURANCE CONTRIBUTIONS ACT, 26 USC 3101 TO 3128.

14 Sec. 4d. (1) The minimum hourly wage rate ~~of an employee shall~~
15 ~~be as~~ IS 38% OF THE MINIMUM HOURLY WAGE RATE established under
16 ~~subsection (2)~~ SECTION 4 if all of the following occur:

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

19 (b) ~~The~~ IF THE gratuities described in subdivision (a) PLUS
20 THE MINIMUM HOURLY WAGE RATE UNDER THIS SUBSECTION DO NOT equal or
21 exceed ~~the difference between the~~ minimum hourly wage rate
22 OTHERWISE established under ~~subsection (2) and the minimum hourly~~
23 ~~wage established under~~ section 4, THE EMPLOYER PAYS ANY SHORTFALL
24 TO THE EMPLOYEE.

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

~~1 (d) The entirety of the gratuities are retained by the
2 employee who receives them, except as voluntarily shared with other
3 employees who are directly or indirectly part of the chain of
4 service and whose duties are not primarily managerial or
5 supervisory.~~

~~6 (D) (e) The employee was informed by the employer of the
7 provisions of this section. in writing, at or before the time of
8 hire, and gave written consent.~~

~~9 (2) For purposes of subsection (1) the minimum hourly wage
10 rate of an employee shall be 48% of the minimum hourly wage rate
11 established under section 4 effective January 1, 2019; beginning
12 January 1, 2020, it shall be 60% of the minimum hourly wage rate
13 established under section 4; beginning January 1, 2021, it shall be
14 70% of the minimum hourly wage rate established under section 4;
15 beginning January 1, 2022, it shall be 80% of the minimum hourly
16 wage rate established under section 4; beginning January 1, 2023,
17 it shall be 90% of the minimum hourly wage rate established under
18 section 4; and beginning January 1, 2024 and thereafter, it shall
19 be 100% of the minimum hourly wage rate established under section
20 4.~~

~~21 (3) As used in this section, "gratuities" means tips or
22 voluntary monetary contributions received by an employee from a
23 guest, patron, or customer for services rendered to that guest,
24 patron, or customer and that the employee reports to the employer
25 for purposes of the federal insurance contributions act, 26 USC
26 3101 to 3128.~~

~~27 (4) Gratuities will remain property of the employee who~~

1 ~~receives them, except pursuant to a valid and voluntary tip sharing~~
2 ~~agreement outlined in subsection (1)(d) above, regardless of~~
3 ~~whether the employer pays the lower tipped hourly wage described in~~
4 ~~subsection (2) or the full minimum hourly rate established under~~
5 ~~section 4. Gratuities and service charges paid to an employee are~~
6 ~~in addition to, and may not count towards, wages due to the~~
7 ~~employee.~~

8 ~~—— (5) Employers must provide employees and consumers written~~
9 ~~notice of their plan to distribute service charges.~~

10 ~~—— (6) Employer shall keep records showing compliance with~~
11 ~~provisions of Section 4d for no less than 3 years from the date of~~
12 ~~employee's last pay period.~~