

**SUBSTITUTE FOR
SENATE BILL NO. 8**

A bill to amend 2018 PA 337, entitled
"Improved workforce opportunity wage act,"
by amending sections 2, 4, 4d, 9, and 10 (MCL 408.932, 408.934,
408.934d, 408.939, and 408.940).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Commissioner" **or "director"** means the director of the
3 department of ~~licensing-labor~~ and ~~regulatory affairs-economic~~
4 **opportunity.**

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

6 (c) "Employee" means an individual not less than 16 years of
7 age employed by an employer on the premises of the employer or at a
8 fixed site designated by the employer, and includes a minor

1 employed subject to section 15(1) of the youth employment standards
2 act, 1978 PA 90, MCL 409.115.

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

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

15 (a) ~~a. Beginning January 1, 2019, \$10.00.~~**February 21, 2025,**
16 **\$12.48.**

17 (b) ~~b. Beginning January 1, 2020, \$10.65.~~**2026, \$13.73.**

18 (c) ~~c. Beginning January 1, 2021, \$11.35.~~**2027, \$15.00.**

19 ~~d. Beginning January 1, 2022, \$12.00.~~

20 (2) Every October beginning in October, ~~2022,~~**2027**, the state
21 treasurer shall calculate an adjusted minimum wage rate. The
22 adjustment ~~shall~~**must** increase the minimum wage by the rate of
23 inflation. The ~~increase~~**state treasurer** shall ~~be~~ calculated
24 **calculate the increase** by multiplying the otherwise applicable
25 minimum wage by the 12-month percentage increase, if any, in the
26 ~~consumer price index~~**Consumer Price Index** for ~~urban wage earners~~
27 ~~and clerical workers, CPI-W,~~**the midwest region, CPI-U**, or a
28 successor index, as published by the ~~bureau of labor statistics~~
29 **Bureau of Labor Statistics** of the United States ~~department of~~

1 ~~labor, Department of Labor,~~ based ~~upon~~ **on** the most recent 12-month
 2 period for which data are available. The **state treasurer shall**
 3 **publish the** adjusted minimum wage rate ~~shall be published by~~
 4 November 1 of the year **in which** it is calculated. ~~and shall be~~ **The**
 5 **adjusted minimum wage rate is** effective beginning January 1 of the
 6 **immediately** succeeding year.

7 (3) An increase in the minimum hourly wage rate as prescribed
 8 in subsection (2) does not take effect if the unemployment rate, **as**
 9 determined by the ~~bureau of labor statistics,~~ **Bureau of Labor**
 10 **Statistics of the** United States ~~department of labor,~~ **Department of**
 11 **Labor,** for this state is 8.5% or greater for the year **immediately**
 12 preceding the year of the prescribed increase.

13 Sec. 4d. (1) The minimum hourly wage rate of an employee ~~shall~~
 14 **must** be ~~as~~ established **as provided for** under subsection (2) if all
 15 of the following ~~occur:~~ **conditions are met:**

16 (a) The employee receives gratuities in the course of ~~his or~~
 17 ~~her~~ **the employee's** employment.

18 (b) The gratuities described in subdivision (a) equal or
 19 exceed the difference between the minimum hourly wage rate
 20 established under subsection (2) and the minimum hourly wage
 21 established under section 4.

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

25 (d) ~~The~~ **Except as otherwise provided in this subdivision, the**
 26 entirety of the gratuities are retained by the employee who
 27 receives them. ~~, except as~~ **This subdivision does not prohibit an**
 28 **employee from** voluntarily ~~shared~~ **sharing the employee's gratuities**
 29 with ~~other employees who are~~ **another employee if the other employee**

1 **is** directly or indirectly part of the chain of service and whose
 2 **the other employee's** duties are not primarily managerial or
 3 supervisory.

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

8 (2) ~~For purposes of subsection (1) the~~ **The** minimum hourly wage
 9 rate of an employee ~~shall be 48%~~ **described in subsection (1) is as**
 10 **follows:**

11 (a) **Beginning February 21, 2025, 38% of the minimum hourly**
 12 **wage rate established under section 4.**

13 (b) **Beginning January 1, 2026, 40%** of the minimum hourly wage
 14 rate established under section 4. ~~effective January 1, 2019;~~
 15 ~~beginning~~

16 (c) **Beginning January 1, 2027, 42% of the minimum hourly wage**
 17 **rate established under section 4.**

18 (d) **Beginning January 1, 2028, 44% of the minimum hourly wage**
 19 **rate established under section 4.**

20 (e) **Beginning January 1, 2029, 46% of the minimum hourly wage**
 21 **rate established under section 4.**

22 (f) **Beginning** ~~January 1, 2020, it shall be 60%~~ **2030, 48%** of
 23 the minimum hourly wage rate established under section 4. ~~+~~
 24 ~~beginning~~

25 (g) **Beginning** ~~January 1, 2021, it shall be 70%~~ **2031, 50%** of
 26 the minimum hourly wage rate established under section 4. ~~+~~
 27 ~~beginning January 1, 2022, it shall be 80% of the minimum hourly~~
 28 ~~wage rate established under section 4; beginning January 1, 2023,~~
 29 ~~it shall be 90% of the minimum hourly wage rate established under~~

1 ~~section 4; and beginning January 1, 2024 and thereafter, it shall~~
 2 ~~be 100% of the minimum hourly wage rate established under section~~
 3 ~~4.~~

4 (3) As used in this section, "gratuities" means tips or
 5 voluntary monetary contributions received by an employee from a
 6 guest, patron, or customer for services rendered to that guest,
 7 patron, or customer and that the employee reports to the employer
 8 for purposes of the federal insurance contributions act, 26 USC
 9 3101 to 3128.

10 (4) ~~Gratuities will~~ **Except as otherwise provided under**
 11 **subsection (1) (d), gratuities** remain **the** property of the employee
 12 who receives them, ~~except pursuant to a valid and voluntary tip~~
 13 ~~sharing agreement outlined in subsection (1) (d) above, regardless~~
 14 of whether the **employee's** employer pays the **employee** ~~lower tipped~~
 15 **the minimum** hourly wage ~~described in rate established under~~
 16 subsection (2) or the ~~full~~ minimum hourly **wage** rate established
 17 under section 4. Gratuities and service charges paid to an employee
 18 are in addition to, and ~~may do~~ not count ~~towards,~~ **toward**, wages due
 19 ~~to~~ the employee.

20 (5) Employers ~~must~~ **shall** provide employees and consumers
 21 written notice of ~~their~~ **the employer's** plan to distribute service
 22 charges.

23 (6) ~~Employer~~ **An employer** shall keep records ~~showing that show~~
 24 compliance with ~~provisions of Section 4d~~ **this section** for ~~no~~ **not**
 25 less than 3 years ~~from~~ **after** the date of **an** employee's last pay
 26 period.

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

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

6 (b) File a claim with the ~~commissioner~~**director** who shall
7 investigate the claim.

8 (2) If the ~~commissioner~~**director** determines there is
9 reasonable cause to believe that the employer has violated this act
10 and the ~~commissioner~~**director** is subsequently unable to obtain
11 voluntary compliance by the employer within a reasonable period of
12 time, the ~~commissioner~~**director** shall bring a civil action under
13 subsection (1) (a). The ~~commissioner~~**director** may investigate and
14 file a civil action under subsection (1) (a) on behalf of all
15 employees of that employer who are similarly situated at the same
16 work site and who have not brought a civil action under subsection
17 (1) (a). A contract or agreement between the employer and the
18 employee or any acceptance of a lesser wage by the employee is not
19 a bar to the action.

20 (3) ~~In~~**Except as otherwise provided in subsection (4), in**
21 addition to bearing liability for civil remedies described in this
22 section, an employer who fails to pay the minimum hourly wage in
23 violation of this act, or ~~who~~**that** violates a provision of section
24 4a governing an employee's compensatory time, is subject to a civil
25 fine of not more than \$1,000.00.

26 **(4) An employer that fails to pay the minimum hourly wage to**
27 **an employee as described in section 4d(1) is subject to a civil**
28 **fine of not more than \$2,500.00.**

29 Sec. 10. (1) This act does not apply to an employer that is

1 subject to the minimum wage provisions of the fair labor standards
 2 act of 1938, 29 USC 201 to 219, unless **the application of** those
 3 federal minimum wage provisions **to the employer** would result in a
 4 lower minimum hourly wage than provided ~~in~~**under** this act. ~~Each of~~
 5 ~~the following exceptions applies to~~**If** an employer ~~who~~ is subject
 6 to this act only by application of this subsection, ÷

7 ~~(a) Section 4a does not apply.~~

8 ~~(b) This~~**this** act does not apply to ~~an~~**the employer's** employee
 9 who is exempt from the minimum wage requirements of the fair labor
 10 standards act of 1938, 29 USC 201 to 219.

11 (2) Notwithstanding subsection (1), an employee ~~shall~~**must** be
 12 paid in accordance with the minimum wage and overtime compensation
 13 requirements of sections 4 and 4a if the employee meets either of
 14 the following conditions:

15 (a) ~~He or she~~**The employee** is employed in domestic service
 16 employment to provide companionship services as **that term is**
 17 defined in 29 CFR 552.6 for individuals who, because of age or
 18 infirmity, are unable to care for themselves and is not a live-in
 19 domestic service employee as described in 29 CFR 552.102.

20 (b) ~~He or she~~**The employee** is employed to provide ~~child care,~~
 21 **childcare**, but is not a live-in domestic service employee as
 22 described in 29 CFR 552.102. However, the requirements of sections
 23 4 and 4a do not apply if the employee meets all the following
 24 conditions:

25 (i) ~~(i) He or she is under~~**Is younger than** the age of 18.

26 (ii) ~~(ii) He or she provides~~**Provides** services on a casual
 27 basis as **that term is** defined in 29 CFR 552.5.

28 (iii) ~~(iii) He or she provides~~**Provides** services that do not
 29 regularly exceed 20 hours per week, in the aggregate.

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

5 (4) This act does not apply to agricultural fruit growers,
6 pickle growers and tomato growers, or other agricultural employers
7 who traditionally contract for harvesting on a piecework basis, as
8 to those employees used for harvesting, until the board has
9 acquired sufficient data to determine an adequate basis to
10 establish a scale of piecework and determines a scale equivalent to
11 the prevailing minimum wage for that employment. The piece rate
12 scale ~~shall~~**must** be equivalent to the minimum hourly wage in that,
13 if the payment by unit of production is applied to a worker of
14 average ability and diligence in harvesting a particular commodity,
15 ~~he or she~~**the worker** receives an amount not less than the hourly
16 minimum wage.

17 (5) Notwithstanding any other provision of this act,
18 subsection (1) (a) and (b) and subsection (2) do not deprive an
19 employee or any class of employees of any right that existed on
20 September 30, 2006 to receive overtime compensation or to be paid
21 the minimum wage.

22 Enacting section 1. This amendatory act does not take effect
23 unless House Bill No. 4002 of the 103rd Legislature is enacted into
24 law.