

HOUSE BILL No. 4155

February 7, 1991, Introduced by Reps. DeLange, Middaugh, Gnodtke, Ouwinga, Hoekman, Robertson, Horton, Bender, Hoffman and Walberg and referred to the Committee on Labor.

A bill to amend sections 4, 4a, and 7 of Act No. 154 of the Public Acts of 1964, entitled as amended

"Minimum wage law of 1964,"

being sections 408.384, 408.384a, and 408.387 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 4, 4a, and 7 of Act No. 154 of the
2 Public Acts of 1964, being sections 408.384, 408.384a, and
3 408.387 of the Michigan Compiled Laws, are amended to read as
4 follows:

5 Sec. 4. (1) ~~The~~ EXCEPT AS OTHERWISE PROVIDED IN
6 SUBSECTION (4), THE minimum hourly rate shall be \$4.25 BEGINNING
7 APRIL 1, 1991. —

8 ~~(a) Beginning January 1, 1977, \$2.30.~~

~~(b) Beginning January 1, 1978, \$2.65.~~

~~(c) Beginning January 1, 1979, \$2.90.~~

~~(d) Beginning January 1, 1980, \$3.10.~~

~~(e) Beginning January 1, 1981, \$3.35.~~

(2) ~~The~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), THE increases or decreases in the minimum hourly rate ~~—~~ established in this act after 1967 ~~—~~ shall reflect corresponding increases or decreases in the cost of living.

(3) AS USED IN THIS SECTION:

(A) "MIGRANT AGRICULTURAL WORKER" MEANS THAT TERM AS DEFINED IN SECTION 3(8) OF THE MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT, PUBLIC LAW 97-470, 29 U.S.C. 1802.

(B) "SEASONAL AGRICULTURAL WORKER" MEANS THAT TERM AS DEFINED IN SECTION 3(10) OF THE MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT, PUBLIC LAW 97-470 29 U.S.C. 1802.

(C) "TRAINING WAGE" IS A WAGE OF THE AMOUNT DESCRIBED IN SUBSECTION (4), SUBJECT TO THE REQUIREMENTS OF SUBSECTIONS (5) THROUGH (9).

(4) UNTIL APRIL 1, 1993, AN EMPLOYER MAY PAY TO AN EMPLOYEE WHO IS NOT AN EMPLOYEE LISTED IN SUBSECTION (5) A TRAINING WAGE OF NOT LESS THAN 85% OF THE MINIMUM WAGE SET FORTH IN SUBSECTION (1), FOR A PERIOD OF NOT MORE THAN 90 DAYS OF EMPLOYMENT AFTER THE DATE OF THE HIRING OF THE EMPLOYEE, IF ALL OF THE FOLLOWING CIRCUMSTANCES EXIST:

(A) THE EMPLOYER DOES NOT LAY OFF OR REDUCE THE WAGES OF ANY OTHER EMPLOYEE IN THE SAME OR SUBSTANTIALLY SIMILAR POSITION AS A

1 RESULT OF HIRING AN EMPLOYEE WHO IS TO BE PAID THE TRAINING
2 WAGE.

3 (B) THE AMOUNT OF TRAINING WAGES PAID BY THE EMPLOYER DOES
4 NOT EXCEED 25% OF THE TOTAL WAGES PAID BY THE EMPLOYER FOR
5 EMPLOYEES UNDER THIS SUBSECTION AND SUBSECTION (1) IN ANY CALEN-
6 DAR MONTH.

7 (C) THE EMPLOYER INFORMS IN WRITING THE EMPLOYEE BEFORE
8 HIRING THE EMPLOYEE OF THE EMPLOYER'S INTENT TO PAY THE TRAINING
9 WAGE.

10 (5) AN EMPLOYER SHALL NOT PAY A TRAINING WAGE TO ANY OF THE
11 FOLLOWING EMPLOYEES:

12 (A) A MIGRANT AGRICULTURAL WORKER.

13 (B) A SEASONAL AGRICULTURAL WORKER.

14 (C) AN EMPLOYEE MORE THAN 19 YEARS OF AGE.

15 (6) AN EMPLOYER DESIRING TO HIRE AN EMPLOYEE AT A TRAINING
16 WAGE SHALL APPLY TO THE COMMISSIONER FOR A SEPARATE AUTHORIZATION
17 FOR THE HIRING OF EACH EMPLOYEE AT THE TRAINING WAGE. THE COM-
18 MISSIONER SHALL ISSUE AN AUTHORIZATION UPON THE EMPLOYER'S AGREE-
19 MENT TO DO ALL OF THE FOLLOWING:

20 (A) HIRE THE EMPLOYEE TO DO PRODUCTIVE WORK DESIGNED TO PRO-
21 VIDE TRAINING, TECHNICAL, AND OTHER SKILLS THAT ARE ESSENTIAL TO
22 HIS OR HER FULL AND ADEQUATE PERFORMANCE.

23 (B) PROVIDE TO THE EMPLOYEE AND THE COMMISSIONER A COPY OF
24 THE TRAINING PROGRAM.

25 (C) POST IN A CONSPICUOUS PLACE AT THE EMPLOYMENT SITE A
26 NOTICE OF THE TYPES OF JOBS FOR WHICH THE EMPLOYER IS PROVIDING A
27 TRAINING WAGE.

1 (7) AN EMPLOYER MAY NOT PAY A NEW EMPLOYEE A TRAINING WAGE
2 IF THE EMPLOYEE WAS ALREADY PAID A TRAINING WAGE BY 1 OR MORE
3 OTHER EMPLOYERS UNLESS THAT EMPLOYER APPLIES FOR AND OBTAINS FROM
4 THE COMMISSIONER AN EXCEPTION AS DESCRIBED IN SUBSECTION (8).

5 (8) UPON APPLICATION BY AN EMPLOYER, THE COMMISSIONER OR HIS
6 OR HER DESIGNEE SHALL GRANT AN EXCEPTION TO THE REQUIREMENT OF
7 SUBSECTION (7) WHICH WILL ALLOW AN EMPLOYER TO PAY A TRAINING
8 WAGE TO AN EMPLOYEE FOR NOT MORE THAN 90 DAYS IF THE EMPLOYER
9 DEMONSTRATES TO THE SATISFACTION OF THE COMMISSIONER THAT THE
10 EMPLOYEE IS EMPLOYED IN PRODUCTIVE WORK THAT IS DESIGNED TO PRO-
11 VIDE TRAINING, TECHNICAL, AND OTHER SKILLS TO THE EMPLOYEE THAT
12 ARE ESSENTIAL TO HIS OR HER FULL AND ADEQUATE PERFORMANCE.

13 (9) AN EMPLOYEE SHALL PROVIDE TO AN EMPLOYER PROOF OF ANY
14 OTHER EMPLOYMENT IN WHICH THE EMPLOYEE WAS PAID A TRAINING WAGE.
15 AN EMPLOYER'S GOOD FAITH RELIANCE ON THE INFORMATION PROVIDED BY
16 AN EMPLOYEE REGARDING THE PREVIOUS PAYMENT OF A TRAINING WAGE IS
17 A COMPLETE DEFENSE TO ANY CIVIL OR CRIMINAL ACTION BROUGHT BY ANY
18 PERSON FOR A VIOLATION OF THIS ACT OR RULES PROMULGATED UNDER
19 THIS ACT.

20 (10) THE COMMISSIONER SHALL REPORT NOT LATER THAN MARCH 1,
21 1993 TO THE CHAIRPERSONS OF THE SENATE AND HOUSE STANDING COMMIT-
22 TEES RESPONSIBLE FOR LABOR LEGISLATION ON THE EFFECTIVENESS OF
23 THE TRAINING WAGE AS IT APPLIES TO EMPLOYEES IN THIS STATE WHO
24 ARE NOT COVERED BY THE FEDERAL MINIMUM WAGE LAW.

25 Sec. 4a. (1) Except as otherwise provided in this section,
26 an employee shall receive compensation at not less than 1-1/2

1 times the regular rate at which the employee is employed for
2 employment in a workweek in excess of 40 hours.

3 (2) The state or a political subdivision, agency, or instru-
4 mentality of the state ~~shall~~ IS not ~~be considered to have~~
5 ~~violated~~ IN VIOLATION OF subsection (1) with respect to the
6 employment of an employee in fire protection activities or an
7 employee in law enforcement activities, including security per-
8 sonnel in correctional institutions, if any of the following
9 ~~applies~~ APPLY:

10 (a) In a work period of 28 consecutive days, the employee
11 receives for tours of duty, which in the aggregate exceed 216
12 hours, compensation for those hours in excess of 216 at a rate
13 not less than 1-1/2 times the regular rate at which the employee
14 is employed, which rate shall be not less than the statutory min-
15 imum hourly rate.

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

25 (c) If an employee engaged in fire protection activities
26 would receive overtime payments under this act solely as a result
27 of that employee's trading of time with another employee pursuant

1 to a voluntary trading time arrangement, overtime, if any, shall
 2 be paid to employees who participate in the trading of time as if
 3 the time trade had not occurred. As used in this subdivision,
 4 "trading time arrangement" means a practice under which employees
 5 of a fire department voluntarily substitute for one another to
 6 allow an employee to attend to personal matters, which practice
 7 is neither for the convenience of the employer nor because of the
 8 employer's operations.

9 (3) The state or a political subdivision, agency, or instru-
 10 mentality of the state engaged in the operation of a hospital or
 11 an establishment ~~which~~ THAT is an institution primarily engaged
 12 in the care of the sick, the aged, or the mentally ill or defec-
 13 tive who reside on the premises shall not be considered to have
 14 violated subsection (1) if ~~—~~ pursuant to a written agreement or
 15 written employment policy arrived at between the employer and the
 16 employee before performance of the work: ~~—, a~~

17 (A) A work period of 14 consecutive days is accepted instead
 18 of the workweek of 7 consecutive days for purposes of overtime
 19 computation. ~~—, and if, for~~

20 (B) FOR the employee's employment in excess of 8 hours in a
 21 workday and in excess of 80 hours in the 14-day period, the
 22 employee receives compensation at a rate of 1-1/2 times the regu-
 23 lar rate, which rate shall be not less than the statutory minimum
 24 hourly rate, at which the employee is employed.

25 (4) Subsections (1), (2), and (3) ~~shall~~ DO not apply to
 26 any of the following:

1 (a) An employee employed in a bona fide executive,
2 administrative, or professional capacity, including an employee
3 employed in the capacity of academic administrative personnel or
4 teacher in an elementary or secondary school. ~~—, except that~~
5 HOWEVER, an employee of a retail or service establishment shall
6 not be excluded from the definition of employee employed in a
7 bona fide executive or administrative capacity because of the
8 number of hours in the employee's workweek ~~—which~~ THAT the
9 employee devotes to activities not directly or closely related to
10 the performance of executive or administrative activities ~~—~~ if
11 less than 40% of the employee's hours in the workweek are devoted
12 to those activities.

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

14 (c) A political appointee of a person holding public elec-
15 tive office or a political appointee of a public body.

16 (d) An employee employed by an establishment ~~—which~~ THAT is
17 an amusement or recreational establishment ~~—~~ if the establish-
18 ment does not operate for more than 7 months in a calendar year.

19 (e) An employee employed in agriculture, including farming
20 in all its branches, which among other things includes: the cul-
21 tivation and tillage of the soil; dairying; the production, cul-
22 tivation, growing, and harvesting of agricultural or horticul-
23 tural commodities; the raising of livestock, bees, fur-bearing
24 animals, or poultry; and a practice, including forestry or lum-
25 bering operations, performed by a farmer or on a farm as an inci-
26 dent to or in conjunction with farming operations, including
27 preparation for market, delivery to storage, or delivery to

1 market or to a carrier for transportation to market or the
2 processing or preserving of perishable farm products.

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

5 (G) AN EMPLOYEE EMPLOYED FOR NOT MORE THAN A TOTAL OF 10
6 HOURS IN EXCESS OF THE MAXIMUM WORK WEEK AS SPECIFIED BY LAW,
7 COMPANY POLICY, OR THE TERMS OF AN EMPLOYEE CONTRACT IF DURING
8 THOSE HOURS THE EMPLOYER IS PROVIDING REMEDIAL EDUCATION TO AN
9 EMPLOYEE WHO LACKS A HIGH SCHOOL DIPLOMA OR WHO LACKS EDUCATIONAL
10 ATTAINMENT AT AN EIGHTH GRADE LEVEL AS DETERMINED BY STANDARDS
11 CONTAINED IN RULES PROMULGATED BY THE COMMISSIONER.

12 (5) The director of labor shall promulgate rules pursuant to
13 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, Act No. 306 of the
14 Public Acts of 1969, as amended, being sections 24.201 to 24.328
15 of the Michigan Compiled Laws, to define the terms used in sub-
16 section (4). Subsection (4)(c) ~~shall~~ DOES not apply to a
17 person covered by a civil service system.

18 (6) For purposes of administration and enforcement, an
19 amount owing to an employee ~~which~~ THAT is withheld in violation
20 of this section shall be considered to be unpaid minimum wages
21 under this act.

22 (7) The legislature shall annually appropriate from the gen-
23 eral fund to each political subdivision affected by subsection
24 (2) an amount equal to the difference in direct labor costs
25 before and after ~~the effective date of subsection (2) which~~
26 JANUARY 4, 1979 THAT arises from any change in existing law

1 resulting from the enactment of subsection (2) and incurred by
2 each ~~such~~ AFFECTED political subdivision.

3 Sec. 7. On petition of a party in interest or on its own
4 motion, the wage deviation board shall DO THE FOLLOWING:

5 (a) Determine ~~the amount of the gratuities and~~ the value
6 to the employee of board, ~~and~~ lodging, and apparel or other
7 items or services customarily furnished to an employee for his OR
8 HER benefit, and establish ~~therefrom~~ FROM THOSE ITEMS OR
9 SERVICES a reasonable deduction from the minimum wage set in this
10 act to be paid by the employer. ~~In no case shall the~~ BEGINNING
11 APRIL 1, 1991, THE total deduction ~~allowed~~ FOR BOARD, LODGING,
12 AND APPAREL OR OTHER ITEMS OR SERVICES CUSTOMARILY FURNISHED TO
13 AN EMPLOYEE COMBINED WITH THE TOTAL DEDUCTION FOR THE GRATUITIES
14 SHALL NOT be more than ~~25%~~ 45% of the hourly wage rate OR
15 RESULT IN AN HOURLY WAGE RATE OF LESS THAN \$2.51 AN HOUR.
16 BEGINNING APRIL 1, 1992, THAT TOTAL DEDUCTION ALLOWED SHALL NOT
17 BE MORE THAN 50% OF THE HOURLY WAGE RATE OR RESULT IN AN HOURLY
18 WAGE RATE OF LESS THAN \$2.51 PER HOUR. The WAGE DEVIATION board
19 may grant a stay of THE present employment situation until ~~such~~
20 THE determination DESCRIBED IN THIS SUBDIVISION IS MADE.

21 (b) ~~Establish~~ EXCEPT IN THE CASE OF AN EMPLOYEE BEING PAID
22 THE TRAINING WAGE DESCRIBED IN SECTION 4, ESTABLISH a suitable
23 scale of rates for apprentices, learners, physically and mentally
24 handicapped persons who are clearly unable to meet normal produc-
25 tion standards, which may be less than the regular minimum wage
26 rate for experienced and nonhandicapped workers.