

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
8 age employed by an employer on the premises of the employer or at a

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

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

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

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

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

15 (b) Beginning September 1, 2014, \$8.15.

16 (c) Beginning January 1, 2016, \$8.50.

17 (d) Beginning January 1, 2017, \$8.90.

18 (e) Beginning January 1, 2018, \$9.25.

19 (2) Every January beginning in January 2019, the state
20 treasurer shall adjust the minimum wage by an amount determined by
21 the state treasurer at the end of the preceding calendar year to
22 reflect the average annual percentage change in the consumer price
23 index for the most recent 5-year period for which data are
24 available. As used in this subsection, "consumer price index" means
25 the most comprehensive index of consumer prices available for the
26 midwest region from the bureau of labor statistics of the United
27 States department of labor. The wage and hours division of the

1 department of licensing and regulatory affairs shall post the
2 adjusted minimum wage on its website by February 1 of the year it
3 is calculated, and the adjusted rate is effective beginning April 1
4 of that year. An annual increase under this subsection shall not
5 exceed 3.5%.

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

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

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

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

27 (b) For an employee to whom a work period of at least 7 but

1 less than 28 days applies, in the employee's work period the
2 employee receives for tours of duty, which in the aggregate exceed
3 a number of hours which bears the same ratio to the number of
4 consecutive days in the employee's work period as 216 bears to 28
5 days, compensation for those excess hours at a rate not less than
6 1-1/2 times the regular rate at which the employee is employed. The
7 employee's regular rate shall be not less than the statutory
8 minimum hourly rate.

9 (c) If an employee engaged in fire protection activities would
10 receive overtime payments under this act solely as a result of that
11 employee's trading of time with another employee pursuant to a
12 voluntary trading time arrangement, overtime, if any, shall be paid
13 to employees who participate in the trading of time as if the time
14 trade had not occurred. As used in this subdivision, "trading time
15 arrangement" means a practice under which employees of a fire
16 department voluntarily substitute for one another to allow an
17 employee to attend to personal matters, if the practice is neither
18 for the convenience of the employer nor because of the employer's
19 operations.

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

26 (a) Pursuant to a written agreement or written employment
27 policy arrived at between the employer and the employee before

1 performance of the work, a work period of 14 consecutive days is
2 accepted instead of the workweek of 7 consecutive days for purposes
3 of overtime computation.

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

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

11 (a) An employee employed in a bona fide executive,
12 administrative, or professional capacity, including an employee
13 employed in the capacity of academic administrative personnel or
14 teacher in an elementary or secondary school. However, an employee
15 of a retail or service establishment is not excluded from the
16 definition of employee employed in a bona fide executive or
17 administrative capacity because of the number of hours in the
18 employee's workweek that the employee devotes to activities not
19 directly or closely related to the performance of executive or
20 administrative activities, if less than 40% of the employee's hours
21 in the workweek are devoted to those activities.

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

23 (c) A political appointee of a person holding public elective
24 office or a political appointee of a public body, if the political
25 appointee described in this subdivision is not covered by a civil
26 service system.

27 (d) An employee employed by an establishment that is an

Senate Bill No 934 (H-5) as amended May 27, 2014

1 amusement or recreational establishment, if the establishment does
2 not operate for more than 7 months in a calendar year.

3 (e) An employee employed in agriculture, including farming in
4 all its branches, which among other things includes: cultivating
5 and tilling soil; dairying; producing, cultivating, growing, and
6 harvesting agricultural or horticultural commodities; raising
7 livestock, bees, fur-bearing animals, or poultry; and a practice,
8 including forestry or lumbering operations, performed by a farmer
9 or on a farm as an incident to or in conjunction with farming
10 operations, including preparation for market, delivery to storage,
11 or delivery to market or to a carrier for transportation to market
12 or processing or preserving perishable farm products.

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

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

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

22 (7) The legislature shall annually appropriate from the
23 general fund to each political subdivision affected by subsection
24 (2) an amount equal to the difference in direct labor costs before
25 and after [the effective date of this act] arising from any change in
existing law
26 that results from the enactment of subsection (2) and incurred by
27 the political subdivision.

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

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

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

12 (ii) If employees are not represented by a collective
13 bargaining agent or other representative designated by the
14 employee, a plan adopted by the employer and provided in writing to
15 its employees that provides employees with a voluntary option to
16 receive compensatory time off for overtime work when there is an
17 express, voluntary written request to the employer by an individual
18 employee for compensatory time off in lieu of overtime pay before
19 the performance of any overtime assignment.

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

22 (c) The employee is not required as a condition of employment
23 to accept or request compensatory time. An employer shall not
24 directly or indirectly intimidate, threaten, or coerce or attempt
25 to intimidate, threaten, or coerce an employee for the purpose of
26 interfering with the employee's rights under this section to
27 request or not request compensatory time off in lieu of payment of

1 overtime compensation for overtime hours, or requiring an employee
2 to use compensatory time. In assigning overtime hours, an employer
3 shall not discriminate among employees based upon an employee's
4 choice to request or not request compensatory time off in lieu of
5 overtime compensation. An employer who violates this subsection is
6 subject to a civil fine of not more than \$1,000.00.

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

9 (i) Maintain in an employee's pay record a statement of
10 compensatory time earned by that employee in the pay period that
11 the pay record identifies.

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

15 (e) Upon the request of an employee who has earned
16 compensatory time, the employer shall, within 30 days following the
17 request, provide monetary compensation for that compensatory time
18 at a rate not less than the regular rate earned by the employee at
19 the time the employee performed the overtime work.

20 (f) An employee who has earned compensatory time authorized
21 under this subsection shall, upon the voluntary or involuntary
22 termination of employment or upon expiration of this subsection, be
23 paid unused compensatory time at a rate of compensation not less
24 than the regular rate earned by the employee at the time the
25 employee performed the overtime work. A terminated employee's
26 receipt of or eligibility to receive monetary compensation for
27 earned compensatory time shall not be used by either of the

1 following:

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

5 (ii) The state to deny unemployment compensation or diminish an
6 employee's entitlement to unemployment compensation benefits under
7 the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL
8 421.1 to 421.75.

9 (g) An employee shall be permitted to use any compensatory
10 time accrued under this subsection for any reason unless use of the
11 compensatory time for the period requested will unduly disrupt the
12 operations of the employer.

13 (h) Unless prohibited by a collective bargaining agreement, an
14 employer may terminate a compensatory time plan upon not less than
15 60 days' notice to employees.

16 (i) As used in this subsection:

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

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

23 (iii) "Overtime compensation" means the compensation required
24 under this section.

25 Sec. 4b. (1) An employer may pay a new employee who is less
26 than 20 years of age a training hourly wage of \$4.25 for the first
27 90 days of that employee's employment. The hourly wage authorized

1 under this subsection is in lieu of the minimum hourly wage
2 otherwise prescribed by this act.

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

6 (3) An employer shall not displace an employee to hire an
7 individual at the hourly wage authorized under this section. As
8 used in this subsection, "displace" includes termination of
9 employment or any reduction of hours, wages, or employment
10 benefits.

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

13 Sec. 4c. On petition of a party in interest or on his or her
14 own initiative, the commissioner shall establish a suitable scale
15 of rates for apprentices, learners, and persons with physical or
16 mental disabilities who are clearly unable to meet normal
17 production standards. The rates established under this section may
18 be less than the regular minimum wage rate for workers who are
19 experienced and who are not disabled.

20 Sec. 4d. (1) Before September 1, 2014, the minimum hourly wage
21 rate is \$2.65 per hour and, beginning September 1, 2014, the
22 minimum hourly wage rate is 38% of the minimum hourly wage rate
23 established in section 4 if all of the following occur:

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

26 (b) If the gratuities described in subdivision (a) plus the
27 minimum hourly wage rate under this subsection do not equal or

1 exceed the minimum hourly wage otherwise established under section
2 4, the employer pays any shortfall to the employee.

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

6 (d) The employee was informed by the employer of the
7 provisions of this section.

8 (2) As used in this section, "gratuities" means tips or
9 voluntary monetary contributions received by an employee from a
10 guest, patron, or customer for services rendered to that guest,
11 patron, or customer and that the employee reports to the employer
12 for purposes of the federal insurance contributions act, 26 USC
13 3101 to 3128.

14 Sec. 5. (1) The governor shall appoint, with the advice and
15 consent of the senate, a wage deviation board composed of 3
16 representatives of the employers, 3 representatives of the
17 employees, and 3 persons representing the public. One of the 3
18 persons representing the public shall be designated as chairperson.
19 Members shall serve for terms of 3 years, except that of the
20 members first appointed, 1 from each group shall be appointed for 1
21 year, 1 for 2 years, and 1 for 3 years. The commissioner shall be
22 secretary of the wage deviation board.

23 (2) A majority of the members of the board constitute a
24 quorum, and the recommendation or report of the board requires a
25 vote of not less than a majority of its members. The business which
26 the wage deviation board may perform shall be conducted at a public
27 meeting of the board held in compliance with the open meetings act,

1 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date,
2 and place of the meeting shall be given in the manner required by
3 that act.

4 (3) A writing prepared, owned, used, in the possession of, or
5 retained by the wage deviation board in the performance of an
6 official function shall be made available to the public in
7 compliance with the freedom of information act, 1976 PA 442, MCL
8 15.231 to 15.246.

9 (4) The per diem compensation of the board and the schedule
10 for reimbursement of expenses shall be established annually by the
11 legislature.

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

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

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

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

25 Sec. 7. An employer who is subject to this act or any
26 regulation or order issued under this act shall furnish each
27 employee with a statement of the hours worked by the employee and

1 of the wages paid to the employee, listing deductions made each pay
2 period. The employer shall furnish the commissioner, upon demand, a
3 sworn statement of the wage information. These records shall be
4 open to inspection by the commissioner, his or her deputy, or any
5 authorized agent of the department at any reasonable time. An
6 employer subject to this act or any regulation or order issued
7 under this act shall keep a copy of this act and regulations and
8 orders promulgated under this act posted in a conspicuous place in
9 the workplace that is accessible to employees. The commissioner
10 shall furnish copies of this act and the regulations and orders to
11 employers without charge.

12 Sec. 8. The commissioner shall administer and enforce this act
13 and, at the request of the wage deviation board, may investigate
14 and ascertain the wages of employees of an employer subject to this
15 act. The commissioner and the commissioner's employees shall not
16 reveal facts or information obtained in the course of official
17 duties, except as when required by law, to report upon or take
18 official action or testify in proceedings regarding the affairs of
19 an employer subject to this act.

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

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

1 (b) File a claim with the commissioner who shall investigate
2 the claim.

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

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

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

26 (a) Section 4a does not apply.

27 (b) This act does not apply to an employee who is exempt from

1 the minimum wage requirements of the fair labor standards act of
2 1938, 29 USC 201 to 219.

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

7 (a) He or she is employed in domestic service employment to
8 provide companionship services as defined in 29 CFR 552.6 for
9 individuals who, because of age or infirmity, are unable to care
10 for themselves and is not a live-in domestic service employee as
11 described in 29 CFR 552.102.

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

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

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

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

21 (3) This act does not apply to persons employed in summer
22 camps for not more than 4 months or to employees who are covered
23 under section 14 of the fair labor standards act of 1938, 29 USC
24 214.

25 (4) This act does not apply to agricultural fruit growers,
26 pickle growers and tomato growers, or other agricultural employers
27 who traditionally contract for harvesting on a piecework basis, as

1 to those employees used for harvesting, until the board has
2 acquired sufficient data to determine an adequate basis to
3 establish a scale of piecework and determines a scale equivalent to
4 the prevailing minimum wage for that employment. The piece rate
5 scale shall be equivalent to the minimum hourly wage in that, if
6 the payment by unit of production is applied to a worker of average
7 ability and diligence in harvesting a particular commodity, he or
8 she receives an amount not less than the hourly minimum wage.

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

14 Sec. 11. An employer that discharges or in any other manner
15 discriminates against an employee because the employee has served
16 or is about to serve on the wage deviation board or has testified
17 or is about to testify before the board, or because the employer
18 believes that the employee may serve on the board or may testify
19 before the board or in any investigation under this act, and any
20 person who violates any provision of this act or of any regulation
21 or order issued under this act, is guilty of a misdemeanor.

22 Sec. 12. Any employer that consistently discharges employees
23 within 10 weeks of their employment and replaces the discharged
24 employees without work stoppage is presumed to have discharged them
25 to evade payment of the wage rates established in this act and is
26 guilty of a misdemeanor.

27 Sec. 13. (1) An employer having employees subject to this act

Senate Bill No. 934 (H-5) as amended May 27, 2014

1 shall not discriminate between employees within an establishment on
2 the basis of sex by paying wages to employees in the establishment
3 at a rate less than the rate at which the employer pays wages to
4 employees of the opposite sex for equal work on jobs, the
5 performance of which requires equal skill, effort, and
6 responsibility and that is performed under similar working
7 conditions, except if the payment is made under 1 or more of the
8 following:

9 (a) A seniority system.

10 (b) A merit system.

11 (c) A system that measures earnings by quantity or quality of
12 production.

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

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

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

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

24 Enacting section 1. The minimum wage law of 1964, 1964 PA 154,
25 MCL 408.381 to 408.398, is repealed [.

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