

SENATE BILL No. 934

May 8, 2014, Introduced by Senator RICHARDVILLE and referred to the Committee on Committee of the Whole.

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. Subject to the exceptions specified in this act, the
14 minimum hourly wage rate is:

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

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

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

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

27 (a) In a work period of 28 consecutive days, the employee

1 receives for tours of duty, which in the aggregate exceed 216
2 hours, compensation for those hours in excess of 216 at a rate not
3 less than 1-1/2 times the regular rate at which the employee is
4 employed. The employee's regular rate shall be not less than the
5 statutory minimum hourly rate.

6 (b) For an employee to whom a work period of at least 7 but
7 less than 28 days applies, in the employee's work period the
8 employee receives for tours of duty, which in the aggregate exceed
9 a number of hours which bears the same ratio to the number of
10 consecutive days in the employee's work period as 216 bears to 28
11 days, compensation for those excess hours at a rate not less than
12 1-1/2 times the regular rate at which the employee is employed. The
13 employee's regular rate shall be not less than the statutory
14 minimum hourly rate.

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

26 (3) This state or a political subdivision, agency, or
27 instrumentality of this state engaged in the operation of a

1 hospital or an establishment that is an institution primarily
2 engaged in the care of the sick, the aged, or the mentally ill or
3 developmentally disabled who reside on the premises does not
4 violate subsection (1) if both of the following conditions are met:

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

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

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

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

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

2 (c) A political appointee of a person holding public elective
3 office or a political appointee of a public body, if the political
4 appointee described in this subdivision is not covered by a civil
5 service system.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (i) Maintain in an employee's pay record a statement of
16 compensatory time earned by that employee in the pay period that
17 the pay record identifies.

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

21 (e) Upon the request of an employee who has earned
22 compensatory time, the employer shall, within 30 days following the
23 request, provide monetary compensation for that compensatory time
24 at a rate not less than the regular rate earned by the employee at
25 the time the employee performed the overtime work.

26 (f) An employee who has earned compensatory time authorized
27 under this subsection shall, upon the voluntary or involuntary

1 termination of employment or upon expiration of this subsection, be
2 paid unused compensatory time at a rate of compensation not less
3 than the regular rate earned by the employee at the time the
4 employee performed the overtime work. A terminated employee's
5 receipt of or eligibility to receive monetary compensation for
6 earned compensatory time shall not be used by either of the
7 following:

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

11 (ii) The state to deny unemployment compensation or diminish an
12 employee's entitlement to unemployment compensation benefits under
13 the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL
14 421.1 to 421.75.

15 (g) An employee shall be permitted to use any compensatory
16 time accrued under this subsection for any reason unless use of the
17 compensatory time for the period requested will unduly disrupt the
18 operations of the employer.

19 (h) Unless prohibited by a collective bargaining agreement, an
20 employer may terminate a compensatory time plan upon not less than
21 60 days' notice to employees.

22 (i) As used in this subsection:

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

27 (ii) "Overtime assignment" means an assignment of hours for

1 which overtime compensation is required under this act.

2 (iii) "Overtime compensation" means the compensation required
3 under this section.

4 Sec. 4b. (1) An employer may pay a new employee who is less
5 than 20 years of age a training hourly wage of \$4.25 for the first
6 90 days of that employee's employment. The hourly wage authorized
7 under this subsection is in lieu of the minimum hourly wage
8 otherwise prescribed by this act.

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

12 (3) An employer shall not displace an employee to hire an
13 individual at the hourly wage authorized under this section. As
14 used in this subsection, "displace" includes termination of
15 employment or any reduction of hours, wages, or employment
16 benefits.

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

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

26 Sec. 4d. (1) Before September 1, 2014, the minimum hourly wage
27 rate of an employee shall be \$2.65 per hour, and beginning

1 September 1, 2014, the minimum hourly wage rate of an employee
2 shall be \$2.93, if all of the following occur:

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

5 (b) If the gratuities described in subdivision (a) plus the
6 minimum hourly wage rate under this subsection do not equal or
7 exceed the minimum hourly wage otherwise established under section
8 4, the employer pays any shortfall to the employee.

9 (c) The gratuities are proven gratuities as indicated by the
10 employee's declaration for federal insurance contribution act
11 purposes.

12 (d) The employee was informed by the employer of the
13 provisions of this section.

14 (2) As used in this section, "gratuities" means tips or
15 voluntary monetary contributions received by an employee from a
16 guest, patron, or customer for services rendered to that guest,
17 patron, or customer and that the employee reports to the employer
18 for purposes of the federal insurance contributions act, 26 USC
19 3101 to 3128.

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

1 secretary of the wage deviation board.

2 (2) A majority of the members of the board constitute a
3 quorum, and the recommendation or report of the board requires a
4 vote of not less than a majority of its members. The business which
5 the wage deviation board may perform shall be conducted at a public
6 meeting of the board held in compliance with the open meetings act,
7 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date,
8 and place of the meeting shall be given in the manner required by
9 that act.

10 (3) A writing prepared, owned, used, in the possession of, or
11 retained by the wage deviation board in the performance of an
12 official function shall be made available to the public in
13 compliance with the freedom of information act, 1976 PA 442, MCL
14 15.231 to 15.246.

15 (4) The per diem compensation of the board and the schedule
16 for reimbursement of expenses shall be established annually by the
17 legislature.

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

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

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

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

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

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

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

1 of the following:

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

7 (b) File a claim with the commissioner who shall investigate
8 the claim.

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

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

25 Sec. 10. (1) This act does not apply to an employer that is
26 subject to the minimum wage provisions of the fair labor standards
27 act of 1938, 29 USC 201 to 219, unless those federal minimum wage

1 provisions would result in a lower minimum hourly wage than
2 provided in this act. Each of the following exceptions applies to
3 an employer who is subject to this act only by application of this
4 subsection:

5 (a) Section 4a does not apply.

6 (b) This act does not apply to an employee who is exempt from
7 the minimum wage requirements of the fair labor standards act of
8 1938, 29 USC 201 to 219.

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

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

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

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

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

25 (iii) He or she provides services that do not regularly exceed
26 20 hours per week, in the aggregate.

27 (3) This act does not apply to persons employed in summer

1 camps for not more than 4 months or to employees who are covered
2 under section 14 of the fair labor standards act of 1938, 29 USC
3 214.

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

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

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

1 Sec. 12. Any employer that consistently discharges employees
2 within 10 weeks of their employment and replaces the discharged
3 employees without work stoppage is presumed to have discharged them
4 to evade payment of the wage rates established in this act and is
5 guilty of a misdemeanor.

6 Sec. 13. (1) An employer having employees subject to this act
7 shall not discriminate between employees within an establishment on
8 the basis of sex by paying wages to employees in the establishment
9 at a rate less than the rate at which the employer pays wages to
10 employees of the opposite sex for equal work on jobs, the
11 performance of which requires equal skill, effort, and
12 responsibility and that is performed under similar working
13 conditions, except if the payment is made under 1 or more of the
14 following:

15 (a) A seniority system.

16 (b) A merit system.

17 (c) A system that measures earnings by quantity or quality of
18 production.

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

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

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

26 Sec. 14. An employer operating a massage establishment as
27 defined in section 2 of former 1974 PA 251 that violates this act

1 is guilty of a misdemeanor punishable by imprisonment for not more
2 than 1 year or a fine of not more than \$1,000.00, or both.

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