

**MINIMUM WAGE PROVISIONS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Neil A. Hansen**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies minimum wage provisions.

**Highlighted Provisions:**

This bill:

- ▶ increases the minimum wage to at least \$7.25 per hour with an annual inflation adjustment;
  - ▶ addresses review of minimum wages by the Labor Commission;
  - ▶ deletes the exemption for persons covered by the Federal Fair Labor Standards Act;
- and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2008.

**Utah Code Sections Affected:**

AMENDS:

**34-40-102**, as last amended by Laws of Utah 2003, Chapter 151

**34-40-103**, as last amended by Laws of Utah 1997, Chapter 375

**34-40-104**, as last amended by Laws of Utah 2003, Chapter 151

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28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **34-40-102** is amended to read:

30 **34-40-102. Federal law -- Definitions.**

31 (1) This chapter and the terms used in [it] this chapter, including the computation of  
32 wages, shall be interpreted consistently with the Fair Labor Standards Act, 29 U.S.C. Sec. 201  
33 et seq., [the Fair Labor Standards Act of 1938,] as amended, to the extent that [act] the Fair  
34 Labor Standards Act relates to the payment of a minimum wage.

35 (2) As used in this chapter:

36 (a) "Cash wage obligation" means an hourly wage that an employer pays a tipped  
37 employee regardless of the tips or gratuities a tipped employee receives.

38 (b) "Commission" means the Labor Commission.

39 (c) "Consumer Price Index" means the consumer price index for the United States city  
40 average of urban wage earners and clerical workers, or a successor index using all items as  
41 determined by the United States Department of Labor.

42 [~~e~~] (d) "Division" means the Division of Antidiscrimination and Labor in the  
43 commission.

44 [~~d~~] (e) "Minimum wage" means the state minimum hourly wage for adult employees  
45 as established under this chapter, unless the context clearly indicates otherwise.

46 [~~e~~] (f) "Tipped employee" means an employee who customarily and regularly  
47 receives tips or gratuities.

48 Section 2. Section **34-40-103** is amended to read:

49 **34-40-103. Minimum wage -- Commission to review and modify minimum wage.**

50 (1) (a) [~~The~~] Effective July 1, 2008, and subject to Subsection (3), the minimum wage  
51 for all private and public employees within the state shall be [~~\$3.35~~] the greater of:

52 (i) \$7.25 per hour[-]; or

53 (ii) the federal minimum wage as provided in the Fair Labor Standards Act, 29 U.S.C.  
54 Sec. 201 et seq.

55 [~~(b) Effective April 1, 1990, the minimum wage shall be \$3.80 per hour.]~~

56 [(2) (a) ~~After July 1, 1990, the commission may by rule establish the minimum wage or~~  
57 ~~wages as provided in this chapter that may be paid to employees in public and private~~  
58 ~~employment within the state].~~

59 ~~[(b) The minimum wage, as established by the commission, may not exceed the federal~~  
 60 ~~minimum wage as provided in 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act of~~  
 61 ~~1938, as amended, in effect at the time of implementation of this section.]~~

62 ~~[(c) The commission:]~~

63 ~~[(i) may review the minimum wage at any time;]~~

64 ~~[(ii) shall review the minimum wage at least every three years; and]~~

65 ~~[(iii) shall review the minimum wage whenever the federal minimum wage is~~  
 66 ~~changed.]~~

67 (b) Subject to Subsection (3), effective January 1, 2010, and on each following January  
 68 1, the minimum wage for a private or public employee within the state is the greater of:

69 (i) the adjusted minimum wage calculated under Subsection (2); or

70 (ii) the federal minimum wage as provided in the Fair Labor Standards Act, 29 U.S.C.  
 71 Sec. 201 et seq.

72 (2) The commission shall calculate the adjusted minimum wage as follows:

73 (a) for January 1, 2010, the commission shall calculate by no later than October 1,  
 74 2008, the adjusted minimum wage by increasing to the nearest cent \$7.25 by a percentage equal  
 75 to the positive annual change, if any, in the consumer price index for the 12-month period  
 76 ending on August 30, 2009; and

77 (b) beginning for January 1, 2011, the commission shall calculate by no later than the  
 78 immediately preceding October 1, the adjusted minimum wage by increasing to the nearest  
 79 cent the adjusted minimum wage in the year that the calculation is being made by a percentage  
 80 equal to the positive annual change, if any, in the consumer price index for the 12-month  
 81 period ending on August 30 in the year the adjusted minimum wage is being calculated.

82 (3) The commission may by rule provide for separate minimum hourly wages for  
 83 minors.

84 Section 3. Section **34-40-104** is amended to read:

85 **34-40-104. Exemptions.**

86 (1) The minimum wage established in this chapter does not apply to:

87 ~~[(a) any employee who is entitled to a minimum wage as provided in 29 U.S.C. Sec.~~  
 88 ~~201 et seq., the Fair Labor Standards Act of 1938, as amended;]~~

89 ~~[(b)]~~ (a) an outside sales [persons] person;

90           ~~[(e)]~~ (b) an employee who is a member of the employer's immediate family;

91           ~~[(d)]~~ (c) a companionship service for persons who, because of age or infirmity, are

92 unable to care for themselves;

93           ~~[(e)]~~ (d) casual and domestic employees as defined by the commission;

94           ~~[(f)]~~ (e) a seasonal ~~[employees]~~ employee of:

95           (i) a nonprofit camping ~~[programs,]~~ program;

96           (ii) a religious or recreation ~~[programs,]~~ program; and

97           (iii) a nonprofit educational and charitable ~~[organizations]~~ organization registered

98 under Title 13, Chapter 22, Charitable Solicitations Act;

99           ~~[(g)]~~ (f) an individual employed by the United States of America;

100           ~~[(h) any]~~ (g) a prisoner employed through the penal system;

101           ~~[(i) any]~~ (h) an employee employed in agriculture if the employee:

102           (i) is principally engaged in the range production of livestock;

103           (ii) is employed as a harvest laborer and is paid on a piece rate basis in an operation

104 that has been and is generally recognized by custom as having been paid on a piece rate basis in

105 the region of employment;

106           (iii) was employed in agriculture less than 13 weeks during the preceding calendar

107 year; or

108           (iv) is a retired or semiretired person performing part-time or incidental work as a

109 condition of the employee's residence on a farm or ranch;

110           ~~[(j)]~~ (i) a registered ~~[apprentices or students]~~ apprentice or student employed by the

111 educational institution in which ~~[they are]~~ the apprentice or student is enrolled; or

112           ~~[(k) any]~~ (j) a seasonal hourly employee employed by a seasonal amusement

113 establishment with permanent structures and facilities if:

114           (i) the other direct monetary compensation from ~~[tips, incentives, commissions,~~

115 ~~end-of-season bonus, or other forms of pay]~~ the following is sufficient to cause the average

116 hourly rate of total compensation for the season of seasonal hourly employees who continue to

117 work to the end of the operating season to equal the applicable minimum wage;

118           (A) a tip;

119           (B) an incentive;

120           (C) a commission;

121 (D) an end-of-season bonus; or

122 (E) another form of pay; and

123 (ii) if the seasonal amusement establishment:

124 [(†)] (A) does not operate for more than seven months in any calendar year; or

125 [(†)] (B) during the preceding calendar year [its] it has average receipts for any six  
126 months of that year [were] that are not more than 33-1/3% of its average receipts for the other  
127 six months of that year.

128 (2) (a) ~~[Persons]~~ A person with a disability whose earnings or productive capacities are  
129 impaired by age, physical or mental deficiencies, or injury may be employed at wages that are  
130 lower than the minimum wage, provided the wage is related to the employee's productivity.

131 (b) The commission may establish and regulate the wages paid or wage scales for  
132 ~~[persons]~~ a person with a disability.

133 (3) The commission may establish or may set a lesser minimum wage for ~~[learners]~~ a  
134 learner not to exceed the first 160 hours of employment.

135 (4) (a) An employer of a tipped employee shall pay the tipped employee at least the  
136 minimum wage established by this chapter.

137 (b) In computing a tipped employee's wage under this Subsection (4), an employer of a  
138 tipped employee:

139 (i) shall pay the tipped employee at least the cash wage obligation as an hourly wage;  
140 and

141 (ii) may compute the remainder of the tipped employee's wage using the tips or  
142 gratuities the tipped employee actually receives.

143 (c) An employee shall retain all tips and gratuities except to the extent that the  
144 employee participates in a bona fide tip pooling or sharing arrangement with other tipped  
145 employees.

146 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
147 commission shall by rule establish the cash wage obligation ~~[in conjunction with its review of~~  
148 ~~the minimum wage under Section 34-40-103].~~

149 **Section 4. Effective date.**

150 This bill takes effect on July 1, 2008.

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**Legislative Review Note**  
as of 11-29-07 3:43 PM

**Office of Legislative Research and General Counsel**

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**H.B. 114 - Minimum Wage Provisions**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Enactment of this bill will require additional appropriations of at least \$16,000 from the General Fund and \$79,300 from the Education Fund for FY 2009. Additional funds may be required for wages and benefits for higher education employees. Federal Minimum Wage laws already require \$7.25 per hour minimum beginning in FY 2010.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund, One-Time	\$0	\$16,000	\$0	\$0	\$0	\$0
Education Fund, One-Time	\$0	\$79,300	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$95,300</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill may affect local governments and businesses due to increased wages that they are required to pay to employees. Individuals may benefit from an increase in salary.

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