

MINIMUM WAGE REVISIONS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Neil A. Hansen

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies minimum wage provisions.

Highlighted Provisions:

This bill:

- ▶ increases the minimum wage to \$7 per hour;
 - ▶ 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, 2006.

Utah Code Sections Affected:

AMENDS:

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

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

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

Section 1. Section **34-40-103** is amended to read:



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

(1) ~~[(a) The]~~ Effective July 1, 2006 and subject to Subsection (3), the minimum wage for all private and public employees within the state shall be ~~[\$3.35]~~ \$7 per hour.

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

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

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

~~[(c) The]~~ (2) To recommend to the Legislature whether or not the minimum wage should be changed, the commission:

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

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

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

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

Section 2. Section **34-40-104** is amended to read:

34-40-104. Exemptions.

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

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

~~[(b)]~~ (a) outside sales persons;

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

~~[(d)]~~ (c) companionship service for persons who, because of age or infirmity, are unable to care for themselves;

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

~~[(f)]~~ (e) seasonal employees of;

(i) nonprofit camping programs[;];

(ii) religious or recreation programs[;]; and

(iii) nonprofit educational and charitable organizations registered under Title 13, Chapter 22, Charitable Solicitations Act;

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

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

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

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

(ii) is employed as a harvest laborer and is paid on a piece rate basis in an operation that has been and is generally recognized by custom as having been paid on a piece rate basis in the region of employment;

(iii) was employed in agriculture less than 13 weeks during the preceding calendar year; or

(iv) is a retired or semiretired person performing part-time or incidental work as a condition of the employee's residence on a farm or ranch;

~~[(j)]~~ (i) registered apprentices or students employed by the educational institution in which they are enrolled; or

~~[(k)]~~ (j) any seasonal hourly employee employed by a seasonal amusement establishment with permanent structures and facilities if:

(i) the other direct monetary compensation from ~~[tips, incentives, commissions, end-of-season bonus, or other forms of pay]~~ the following is sufficient to cause the average hourly rate of total compensation for the season of seasonal hourly employees who continue to work to the end of the operating season to equal the applicable minimum wage ~~[if]~~:

(A) tips;

(B) incentives;

(C) commissions;

(D) end-of-season bonus; or

(E) other form of pay; and

(ii) the seasonal amusement establishment:

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

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

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

(b) The commission may establish and regulate the wages paid or wage scales for persons with a disability.

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

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

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

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

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

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

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

Section 3. **Effective date.**

This bill takes effect on July 1, 2006.

Legislative Review Note

as of 1-23-06 3:07 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel