

MINIMUM WAGE PROVISIONS

2007 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 at least \$7.25 per hour and each year based on inflation;
 - ▶ 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, 2007.

Utah Code Sections Affected:**AMENDS:****34-40-102**, as last amended by Chapter 151, Laws of Utah 2003**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 **34-40-102** is amended to read:

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

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

(2) As used in this chapter:

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

(b) "Commission" means the Labor Commission.

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

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

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

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

Section 2. 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, 2007, and subject to Subsection (3), the minimum wage for all private and public employees within the state shall be ~~[\$3.35]~~ the greater of:

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

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

~~[(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 commission:]~~

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

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

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

(b) Effective January 1, 2009, and on each following January 1, the minimum wage for all private and public employees within the state shall be the greater of:

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

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

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

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

(b) beginning for January 1, 2010, the commission shall calculate by no later than the immediately proceeding October 1, the adjusted minimum wage by increasing to the nearest cent the adjusted minimum wage in the year that the calculation is being made by a percentage equal to the positive annual change, if any, in the consumer price index for the 12-month period ending on August 30 in the year the adjusted minimum wage is being calculated.

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

Section 3. 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;

90 ~~[(e)]~~ (b) an employee who is a member of the employer's immediate family;
91 ~~[(d)]~~ (c) 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) seasonal employees of:
95 (i) nonprofit camping programs[;];
96 (ii) religious or recreation programs[;]; and
97 (iii) nonprofit educational and charitable organizations registered under Title 13,
98 Chapter 22, Charitable Solicitations Act;
99 ~~[(g)]~~ (f) an individual employed by the United States of America;
100 ~~[(h)]~~ (g) any prisoner employed through the penal system;
101 ~~[(i)]~~ (h) any 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) registered apprentices or students employed by the educational institution in
111 which they are enrolled; or
112 ~~[(k)]~~ (j) any 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 ~~[if]~~;
118 (A) tips;
119 (B) incentives;
120 (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

[(i)] (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 4. **Effective date.**

This bill takes effect on July 1, 2007.

Legislative Review Note
as of 1-2-07 1:06 PM

Office of Legislative Research and General Counsel

H.B. 256 - Minimum Wage Provisions

Fiscal Note

2007 General Session

State of Utah

State Impact

Passage of this bill may require increased funding for wages for some state agencies and institutions of Higher Education. No reliable estimate is currently available since factors such as taxes paid, effects on state financial assistance programs, and effects on employment rates should be considered in any detailed study of this issue.

Individual, Business and/or Local Impact

Passage of this bill may require increased funding for wages for local school districts and local governments. Increasing the minimum wage would increase pay to some employees, increase personal services costs for some employers.

1/29/2007, 12:00:45 PM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst