

1 **TIPPED EMPLOYEE WAGE AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Justin J. Miller**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions of the Utah Minimum Wage Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ provides that the minimum wage applies to a tipped employee; and
- 14 ▶ makes technical and conforming changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **34-40-102**, as last amended by Laws of Utah 2003, Chapter 151

22 **34-40-104**, as last amended by Laws of Utah 2008, Chapter 382

23 REPEALS AND REENACTS:

24 **34-40-103**, as last amended by Laws of Utah 1997, Chapter 375

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

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



28 **34-40-102. Definitions.**

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

32 (2) As used in this chapter:

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

35 ~~[(b)]~~ (a) "Commission" means the Labor Commission created in Section [34A-1-103](#).

36 ~~[(c)]~~ (b) "Division" means the Division of Antidiscrimination and Labor [~~in the
37 commission~~] created in Section [34A-1-202](#).

38 ~~[(d)]~~ (c) "Minimum wage" means the state minimum hourly wage, as established under
39 this chapter, for [adult employees as established under this chapter, unless the context clearly
40 indicates otherwise] an employee who is over 16 years of age.

41 (d) "Minor" means an individual who is 16 years of age or younger.

42 (e) "Tipped employee" means an employee who customarily and regularly receives tips
43 or gratuities.

44 Section 2. Section [34-40-103](#) is repealed and reenacted to read:

45 **34-40-103. Minimum wage -- Commission to review and modify minimum wage.**

46 (1) An employer shall pay each private employee, public employee, or tipped employee
47 at least the minimum wage.

48 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
49 consistent with the provisions of this section, the commission:

50 (a) shall establish by rule the minimum wage; and

51 (b) may establish by rule a minimum hourly wage for minors that is different than the
52 minimum wage.

53 (3) The minimum wage may not exceed the federal minimum wage established under
54 the Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 201 et seq., as amended.

55 (4) The commission shall review the minimum wage:

56 (a) any time the federal minimum wage changes; and

57 (b) at least once every three years.

58 Section 3. Section [34-40-104](#) is amended to read:

59 **34-40-104. Exemptions.**

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

61 (a) any employee who is entitled to a minimum wage as provided [in] under the Fair62 Labor Standards Act of 1938, 29 U.S.C. Sec. 201 et seq., [~~the Fair Labor Standards Act of~~63 ~~1938,~~] as amended;

64 (b) outside sales persons;

65 (c) an employee who is a member of the employer's immediate family;

66 (d) companionship service for persons who, because of age or infirmity, are unable to

67 care for themselves;

68 (e) casual and domestic employees as defined by the commission;

69 (f) seasonal employees of nonprofit camping programs, religious or recreation

70 programs, and nonprofit educational and charitable organizations registered under Title 13,

71 Chapter 22, Charitable Solicitations Act;

72 (g) an individual employed by the United States of America;

73 (h) any prisoner employed through the penal system;

74 (i) any employee employed in agriculture if the employee:

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

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

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

78 the region of employment;

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

80 year; or

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

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

83 (j) registered apprentices or students employed by the educational institution in which

84 they are enrolled; or

85 (k) any seasonal hourly employee employed by a seasonal amusement establishment

86 with permanent structures and facilities if the other direct monetary compensation from tips,

87 incentives, commissions, end-of-season bonus, or other forms of pay is sufficient to cause the

88 average hourly rate of total compensation for the season of seasonal hourly employees who

89 continue to work to the end of the operating season to equal the applicable minimum wage if

90 the seasonal amusement establishment:

91 (i) does not operate for more than seven months in any calendar year; or

92 (ii) during the preceding calendar year its average receipts for any six months of that
93 year were not more than 33-1/3% of its average receipts for the other six months of that year.

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

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

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

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

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

105 [~~(i) shall pay the tipped employee at least the cash wage obligation as an hourly wage;
106 and]~~

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

109 [~~(c)~~] (4) An employee shall retain all tips and gratuities except to the extent that the
110 employee participates in a bona fide tip pooling or sharing arrangement with other tipped
111 employees.

112 [~~(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
113 the commission shall by rule establish the cash wage obligation in conjunction with its review
114 of the minimum wage under Section [34-40-103](#).~~]

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Office of Legislative Research and General Counsel