

LIVING WAGE

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Justin J. Miller

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to the state minimum wage.

Highlighted Provisions:

This bill:

- ▶ provides the minimum wage for a private or public employee within the state;
- ▶ addresses the circumstances under which the minimum wage shall increase; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

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 2008, Chapter 382

34-40-106, as last amended by Laws of Utah 2005, Chapter 287

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

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]~~ the tipped employee receives.

35 (b) "Commission" means the Labor Commission created in Section 34A-1-103.

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

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

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

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

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

44 **34-40-103. Minimum wage -- Commission to review and modify minimum wage.**

45 (1) ~~[(a)]~~ The minimum wage for ~~[all]~~ a private ~~[and]~~ or public ~~[employees]~~ employee
46 within the state ~~[shall be \$3.35]~~ is \$10.25 per hour.

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

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

51 ~~[(b) The minimum wage, as established by the commission, may not exceed the federal~~
52 ~~minimum wage as provided in 29 U.S.C. Sec. 201 et seq., the Fair Labor Standards Act of~~
53 ~~1938, as amended, in effect at the time of implementation of this section.]~~

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

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

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

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

59 ~~[(3) The commission may provide for separate minimum hourly wages for minors.]~~

60 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 61 commission may establish by rule a minimum wage for minors that is different from the
 62 minimum wage described in Subsection (1).

63 (3) (a) Except as provided in Subsection (3)(b), on the first day of every odd numbered
 64 year, beginning on January 1, 2017, the minimum wage shall increase by a percentage equal to
 65 the percentage difference between the average of the Consumer Price Index for the two
 66 preceding calendar years and the Consumer Price Index for calendar year 2014.

67 (b) If the percentage difference described in Subsection (3)(a) is negative, the
 68 minimum wage does not change.

69 (c) For purposes of Subsection (3)(a), the Consumer Price Index shall be calculated as
 70 provided in 26 U.S.C. Secs. 1(f)(4) and (5).

71 (4) The commission shall post, on the homepage of the commission's website, a
 72 conspicuous and clearly identified link to the current minimum wage.

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

74 **34-40-104. Exemptions.**

75 (1) [The] Unless the individual is entitled to a minimum wage under 29 U.S.C. Sec.
 76 201 et seq., the Fair Labor Standards Act of 1938, as amended, the minimum wage established
 77 in this chapter does not apply to:

78 ~~[(a) any employee who is entitled to a minimum wage as provided in 29 U.S.C. Sec.~~
 79 ~~201 et seq., the Fair Labor Standards Act of 1938, as amended;]~~

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

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

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

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

85 ~~[(f)]~~ (e) seasonal employees of nonprofit camping programs, religious or recreation
 86 programs, and nonprofit educational and charitable organizations registered under Title 13,
 87 Chapter 22, Charitable Solicitations Act;

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

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

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

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

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

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

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

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

101 ~~[(k)]~~ (j) any seasonal hourly employee employed by a seasonal amusement
102 establishment with permanent structures and facilities if the other direct monetary
103 compensation from tips, incentives, commissions, end-of-season bonus, or other forms of pay
104 is sufficient to cause the average hourly rate of total compensation for the season of seasonal
105 hourly employees who continue to work to the end of the operating season to equal the
106 applicable minimum wage if the seasonal amusement establishment:

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

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

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

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

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

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

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

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

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

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

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

131 Section 4. Section **34-40-106** is amended to read:

132 **34-40-106. Limitations on minimum wage imposed by cities, towns, or counties.**

133 (1) A city, town, or county may not establish, mandate, or require a minimum wage
134 that exceeds the [~~federal~~] minimum wage [~~as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor~~
135 ~~Standards Act of 1938~~] described in Section 34-40-103.

136 (2) (a) A city, town, or county may not require that a person who contracts with the
137 city, town, or county pay [~~that~~] the person's employees a wage that exceeds the [~~federal~~]
138 minimum wage [~~as provided in 29 U.S.C. Sec. 201 et seq., Fair Labor Standards Act of 1938~~]
139 described in Section 34-40-103.

140 (b) Subsection (2)(a) does not apply when federal law requires the payment of a
141 specified wage to persons working on projects funded in whole or in part by federal funds.

142 (c) Subsection (2)(a) applies to contracts executed on or after [~~April 30, 2001~~] May 12,
143 2015.

144 (3) (a) If a city, town, or county contracts with a person for the direct purchase of goods
145 or services, in awarding or otherwise executing that contract, the city, town, or county may not
146 give any preferential treatment to a person on the basis that the person pays that person's
147 employees a wage that exceeds the minimum wage [~~as provided in 29 U.S.C. 201 et seq., Fair~~
148 ~~Labor Standards Act of 1938~~] described in Section 34-40-103.

149 (b) This Subsection (3) does not apply when federal law requires the consideration of
150 whether a person pays the person's employees a specified wage to persons working on projects
151 funded in whole or in part by federal funds.

152 (c) This Subsection (3) applies to contracts executed on or after [~~May 2, 2005~~] May 12,
153 2015.

154 (4) (a) The restrictions of this section on a city, town, or county apply to any entity
155 created by the city, town, or county.

156 (b) This Subsection (4) applies to contracts executed on or after [~~May 2, 2005~~] May 12,
157 2015.

Legislative Review Note
as of 2-9-15 2:33 PM

Office of Legislative Research and General Counsel