

SECOND REGULAR SESSION

HOUSE BILL NO. 1433

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BOWMAN (Sponsor), JOHNSON (61), HARRIS (23), BOGETTO, GEORGE, DARROUGH, BLAND, BAKER (25), WALSH, HOSKINS, RUCKER, CHAPPELLE-NADAL, MEINER, SPRENG, HAYWOOD, BOYKINS, WRIGHT-JONES, ROBINSON, DOUGHERTY, ZWEIFEL, STORCH, DONNELLY, LOWE (44), HUGHES, LOW (39), SCHOEMEHL, CURLS, OXFORD, JOHNSON (90), ROORDA, CASEY, HUBBARD, LeVOTA, FRASER, SANDERS BROOKS, JOLLY, CORCORAN, WILDBERGER, HENKE AND MEADOWS (Co-sponsors).

Read 1st time January 18, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4127L.02I

AN ACT

To repeal sections 290.500 and 290.507, RSMo, and to enact in lieu thereof two new sections relating to minimum wage.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 290.500 and 290.507, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 290.500 and 290.503, to read as follows:

290.500. As used in sections 290.500 to 290.530, the following words and phrases mean:

- 2 (1) "Agriculture", farming and all its branches including, but not limited to, the
3 cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting
4 of any agricultural commodities, the raising of livestock, fish and other marine life, bees,
5 fur-bearing animals or poultry and any practices performed by a farmer or on a farm as an
6 incident to or in conjunction with farming operations, including preparation for market, delivery
7 to storage or to market or to carriers for transportation to market;
- 8 (2) "**Agricultural employee**", **an employee who is employed in agriculture;**
- 9 (3) "**Camp counselor**", **a counselor at a seasonal, recreational, or educational camp,**
10 **including a day camp, who is an adult;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 (4) "Director", the director of the department of labor and industrial relations or his
12 authorized representative;

13 [(3)] (5) "Employee", an individual employed by an employer, except that the term
14 "employee" shall not include:

15 (a) Any individual employed in a bona fide executive, administrative, or professional
16 capacity;

17 (b) Any individual engaged in the activities of an educational, charitable, religious, or
18 nonprofit organization where the employer-employee relationship does not, in fact, exist or
19 where the services rendered to the organization are on a voluntary basis;

20 (c) Any individual standing in loco parentis to foster children in their care;

21 (d) Any individual who receives a minimum wage pursuant to the Fair Labor Standards
22 Act of 1938, as amended, including individuals employed by an employer covered by 29 U.S.C.
23 203, or other applicable federal law;

24 (e) [Any individual employed for less than four months in any year in a resident or day
25 camp for children or youth, or any individual employed by an educational conference center
26 operated by an educational, charitable or not-for-profit organization;

27 (f) Any individual engaged in the activities of an educational organization where
28 employment by the organization is in lieu of the requirement that the individual pay the cost of
29 tuition, housing or other educational fees of the organization or where earnings of the individual
30 employed by the organization are credited toward the payment of the cost of tuition, housing or
31 other educational fees of the organization;

32 [(g)] (f) Any individual employed on or about a private residence on an occasional basis
33 for six hours or less on each occasion;

34 [(h)] (g) Any handicapped person employed in a sheltered workshop, certified by the
35 department of elementary and secondary education;

36 [(i)] (h) Any person employed on a casual basis in domestic service employment to
37 provide baby-sitting services, any person employed in the domestic service of any family or
38 person at his home, and any employee employed **for not more than fifteen hours per week** in
39 domestic service employment to provide companionship services for individuals who because
40 of age or infirmity are unable to care for themselves;

41 [(j)] (i) Any individual employed by an employer subject to the provisions of Part I of
42 the Interstate Commerce Act;

43 [(k)] (j) Any individual employed on a casual or intermittent basis as a [golf caddy,]
44 newsboy[,] or in a similar occupation;

45 [(1)] (k) Any individual whose earnings are derived in whole or in part from sales
46 commissions and whose hours and places of employment are not substantially controlled by the
47 employer;

48 [(m)] (l) Any individual subject to the minimum wage provisions of applicable federal
49 law or any individual who is employed in any government position defined in 29 U.S.C.
50 203(2)(c)(i) and (ii);

51 [(n)] (m) Any individual employed by a retail or service business whose annual gross
52 volume sales made or business done is less than five hundred thousand dollars;

53 [(o)] (n) Any individual who is an offender, as defined in section 217.010, RSMo, who
54 is incarcerated in any correctional facility operated by the department of corrections, including
55 offenders who provide labor or services on the grounds of such correctional facility pursuant to
56 section 217.550, RSMo;

57 [(p)] (o) Any individual described by the provisions of section 29 U.S.C. 213(a)(8);

58 [(4)] (6) "Employer", any individual, partnership, association, corporation, business,
59 business trust, or any person or group of persons acting directly or indirectly in the interest of an
60 employer in relation to an employee;

61 [(5)] (7) "Learner and apprentice", any individual who has not completed the required
62 training for a particular job. In no event shall the individual be deemed a learner or apprentice
63 in the occupation after three months of training except where the director finds, after
64 investigation, that for the particular occupation a minimum of proficiency cannot be acquired in
65 three months. In no case shall a person be declared to be a learner or apprentice after six months
66 of training for a particular employer or job. Employees of an amusement or recreation business
67 that meets the criteria set out in 29 U.S.C. 213(a)(3) may be deemed a learner or apprentice for
68 ninety working days. No individual shall be deemed a learner or apprentice solely for the
69 purpose of evading the provisions of sections 290.500 to 290.530;

70 (8) **"Living wage", compensation for labor paid, whether by time, piecework, or**
71 **otherwise, sufficient to enable the employee receiving it to maintain himself or herself**
72 **under conditions consistent with his or her welfare;**

73 (9) **"Minor counselor", a counselor at a seasonal, recreational, or educational**
74 **camp, including a day camp, who is a minor;**

75 (10) **"Minor employee", a minor who is paid at the applicable minimum wage rate**
76 **for minors;**

77 [(6)] (11) "Occupation", any occupation, service, trade, business, industry, or branch or
78 group of industries or employment or class of employment in which individuals are gainfully
79 employed;

80 (12) "Opportunity employee", a person under twenty years of age who is in the first
81 ninety days of employment with his or her employer;

82 (13) "Tipped employee", an employee who in the course of employment
83 customarily and regularly receives money or other gratuities from persons other than the
84 employee's employer;

85 [(7)] (14) "Wage", compensation due to an employee by reason of his employment,
86 payable in legal tender of the United States or checks on banks convertible into cash on demand
87 at full face value.

**290.503. 1. Every wage paid or agreed to be paid by any employer to any employee,
2 except as otherwise provided, shall not be less than a living wage. Any employer paying,
3 offering to pay, or agreeing to pay any employee a wage lower or less in value than a living
4 wage is guilty of violating this chapter.**

5 **2. Except as otherwise provided in this section, the minimum wage for wages
6 earned after August 28, 2006, shall be six dollars and fifty cents per hour. Except as
7 provided in subsections 3 and 5 of this section, if an employer furnishes an employee with
8 meals or lodging in accordance with rules promulgated by the director, the employer may
9 deduct the following amounts from the wages of the employee:**

10 **(1) For lodging furnished after August 28, 2006, fifty-two dollars per week or seven
11 dollars and forty cents per day; and**

12 **(2) For meals furnished after August 28, 2006, seventy- eight dollars per week or
13 three dollars and seventy cents per meal.**

14 **3. Except as otherwise provided in this section, the minimum wage for a minor
15 employee for wages earned after August 28, 2006, shall be six dollars and twenty-five cents,
16 and the minimum wage for an opportunity employee for wages earned after August 28,
17 2006, shall be six dollars and twenty cents. Except as provided in subsection 5 of this
18 section, if an employer furnishes a minor employee or an opportunity employee with meals
19 or lodging in accordance with rules promulgated by the director, the employer may deduct
20 the following amounts from the wages of the employee:**

21 **(1) For lodging furnished after August 28, 2006, forty-two dollars and twenty cents
22 per week or six dollars and seventy-five cents per day; and**

23 **(2) For meals furnished after August 28, 2006, seventy dollars and eighty cents per
24 week or three dollars and thirty-five cents per meal.**

25 **4. Except as otherwise provided in this section, if an employer of a tipped employee
26 establishes by the employer's payroll records that, when adding the tips received by the
27 tipped employee in a week to the wages paid to the tipped employee in that week, the
28 tipped employee receives not less than the applicable minimum wage specified in**

29 subsection 1 or 2 of this section, the minimum wage for the tipped employee shall be as
30 follows:

31 (1) For wages earned by a tipped employee who is not an opportunity employee,
32 two dollars and thirty-three cents per hour; and

33 (2) For wages earned by a tipped employee who is an opportunity employee, two
34 dollars and thirteen cents per hour.

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36 If an employer furnishes a tipped employee with meals or lodging in accordance with rules
37 promulgated by the director, the employer may deduct the applicable amounts specified
38 in subsection 2 or 3 of this section from the wages of the tipped employee.

39 5. Except as otherwise provided in this section, the minimum wage for an
40 agricultural employee shall be five dollars and fifteen cents for wages earned by an adult
41 agricultural employee, and four dollars and twenty-five cents for wages earned by a minor
42 agricultural employee. If an employer furnishes an agricultural employee with meals or
43 lodging in accordance with rules promulgated by the director, the employer may deduct
44 the following amounts from the wages of the employee:

45 (1) For lodging furnished to an adult agricultural employee, forty-one dollars and
46 twenty cents per week or five dollars and ninety cents per day, or for lodging furnished to
47 a minor agricultural employee, thirty-four dollars per week or four dollars and eighty-five
48 cents per day; and

49 (2) For meals furnished to an adult agricultural employee, sixty-one dollars and
50 eighty cents per week or two dollars and ninety-five cents per meal, or for meals furnished
51 to a minor agricultural employee, fifty-one dollars per week or two dollars and forty cents
52 per meal.

53 6. For an adult camp counselor the minimum wage for wages earned after August
54 28, 2006, but before August 28, 2007, shall be two hundred seventy dollars per week if
55 meals and lodging are not furnished, two hundred seventeen dollars per week if only meals
56 are furnished, and one hundred seventy-one dollars per week if both meals and lodging are
57 furnished. For wages earned by an adult camp counselor on or after August 28, 2007, the
58 minimum wage shall be three hundred fifteen dollars per week if meals and lodging are not
59 furnished, two hundred forty dollars per week if only meals are furnished, and one
60 hundred eighty-nine dollars per week if both meals and lodging are furnished. For minor
61 counselors the minimum wage for wages earned after August 28, 2006, but before August
62 28, 2007, shall be two hundred twenty-five dollars per week if meals and lodging are not
63 furnished, one hundred seventy-one dollars per week if only meals are furnished, and one
64 hundred thirty-five dollars per week if both meals and lodging are furnished. For wages

65 earned by a minor counselor on or after August 28, 2007, the minimum wage shall be two
66 hundred seventy-five dollars per week if meals and lodging are not furnished, two hundred
67 nine dollars per week if only meals are furnished, and one hundred sixty-five dollars per
68 week if both meals and lodging are furnished.

69 **7. The minimum wage for a golf caddie is as follows:**

70 **(1) For eighteen holes, ten dollars and fifty cents;**

71 **(2) For nine holes, five dollars and ninety cents.**

72 **8. The director shall promulgate rules providing the minimum wage for all of the**
73 **following:**

74 **(1) An employee or worker with a disability covered under a license;**

75 **(2) A student learner; or**

76 **(3) A student employed by an independent college or university for less than twenty**
77 **hours per week.**

78 **9. The director shall promulgate rules exempting from the minimum wage**
79 **requirements under this section all of the following:**

80 **(1) A person engaged in casual employment in and around an employer's home on**
81 **an irregular or intermittent basis for not more than fifteen hours per week;**

82 **(2) A person who resides with and who provides companionship and care, not**
83 **including practical or professional nursing, and not more than fifteen hours per week of**
84 **general household work for an employer who, due to advanced age or physical or mental**
85 **disability, cannot care for his or her own needs; or**

86 **(3) An elementary or secondary school student performing student work-like**
87 **activities in the student's school.**

88 **10. The director may promulgate rules to increase a minimum wage or an**
89 **allowance for meals and lodging provided under subsections 2 to 8 of this section.**

90 **11. Beginning in 2008, the minimum wage requirements in this section shall be**
91 **adjusted annually based on the rate of inflation according to the consumer price index as**
92 **reported annually by the federal Bureau of Labor Statistics. Such adjustments shall**
93 **become effective on March first of each year. Beginning February 15, 2008, and each**
94 **February fifteenth thereafter, the director shall make available on the department's**
95 **Internet web site the new required minimum wages for each category listed in this section**
96 **after application of the cost-of-living adjustment required by this subsection.**

97 **12. The director shall promulgate rules to implement the provisions of this section.**
98 **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is**
99 **created under the authority delegated in this section shall become effective only if it**
100 **complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**

101 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
102 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
103 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
104 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
105 **adopted after August 28, 2006, shall be invalid and void.**

2 [290.507. Sections 290.500 to 290.530 shall not apply to any employee
or employer engaged in agriculture, as defined in section 290.500.]

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