

ASSEMBLY BILL NO. 87—ASSEMBLYMEN GIUNCHIGLIANI, PERKINS, BUCKLEY, PIERCE, ARBERRY JR., ANDERSON, ATKINSON, CARPENTER, CLABORN, CONKLIN, DENIS, GERHARDT, GOICOECHEA, GRADY, HOGAN, HORNE, KIRKPATRICK, KOIVISTO, LESLIE, MANENDO, MARVEL, MCCLAIN, MCCLEARY, MORTENSON, MUNFORD, OCEGUERA, OHRENSCHALL, PARKS, PARNELL, SEALE, SHERER, SIBLEY AND SMITH

FEBRUARY 18, 2005

JOINT SPONSORS: SENATORS TITUS, WIENER, COFFIN, CARLTON, AMODEI, CARE, HORSFORD, LEE, MATHEWS AND SCHNEIDER

Referred to Committee on Commerce and Labor

SUMMARY—Establishes statutory minimum wage for employees in this State. (BDR 53-1110)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to employment; establishing a statutory minimum wage for employees in this State; providing for the adjustment of the minimum wage; prohibiting the waiver of the minimum wage except in a collective bargaining agreement; providing a cause of action for violations; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law requires the Labor Commissioner to establish by regulation the
- 2 minimum wage that a private employer must pay an employee and to increase the
- 3 minimum wage in accordance with the federal minimum wage, unless he
- 4 determines the increase is contrary to public interest. (NRS 608.250) The current
- 5 minimum wage set by the Labor Commissioner is \$5.15 per hour for an employee



who is 18 years of age or older and \$4.38 per hour for an employee who is under 18 years of age. (NAC 608.110) In 2004, an initiative petition entitled "Raise the Minimum Wage for Working Nevadans" was filed with the Secretary of State and was submitted to and approved by the voters in the 2004 general election. This petition proposed various changes to the minimum wage laws in this State and will be submitted to voters for second approval in 2006.

This bill places in statute the changes proposed by the initiative petition. It establishes by statute the minimum wage in this State at \$5.15 per hour if the employer provides health benefits to his employees and \$6.15 per hour if the employer does not provide such benefits. The minimum wage must be adjusted by the amount of an increase in the federal minimum wage over \$5.15 per hour, or, if greater, by the cumulative increase in the cost of living. Tips or gratuities received by employees must not be credited as being any part of or offset against the rates of wages required by this bill. This bill also prohibits an employee and employer from waiving the minimum wage requirements, except pursuant to a collective bargaining agreement.

Existing law authorizes an employee to bring a civil action against his employer if the employer pays less than the minimum wage, and entitles the employee to recover the difference between the amount paid to the employee and the amount of the minimum wage. (NRS 608.260)

This bill repeals the provisions of NRS 608.260. This bill provides that an employee may commence an action against his employer to enforce the provisions of this bill and is entitled to all appropriate legal and equitable remedies. If the employee prevails in the action, he must be awarded reasonable attorney's fees and costs. This bill prohibits an employer from retaliating against an employee who brings an action to enforce the provisions of this bill.

This bill further provides that an employer who violates the provisions of this bill is guilty of a misdemeanor. In addition to any other remedy or penalty, the Labor Commissioner may impose an administrative penalty of not more than \$5,000 for each violation by an employer.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The Legislature hereby finds and declares that:

1. No full-time worker should live in poverty in our State.

2. Raising the minimum wage is the best way to fight poverty. By raising the minimum wage from \$5.15 an hour to \$6.15 an hour, a full-time worker will earn an additional \$2,000 in wages per year. That's enough to make a big difference in the lives of low-income workers to move many families out of poverty.

3. For low-wage workers, a disproportionate amount of their income goes toward cost of living expenses. Living expenses such as housing, healthcare and food have far outpaced wage levels for Nevada's working families.

4. In our State, 6 out of 10 minimum wage earners are women. Moreover, 25 percent of all minimum wage earners are single mothers, many of whom work full time.

5. At \$5.15 an hour, minimum wage workers in Nevada make less money than they would on welfare. When people choose work



1 over welfare, they become productive members of society and the
2 burden on Nevada taxpayers is reduced.

3 6. Raising the minimum wage from \$5.15 an hour to \$6.15 an
4 hour affirms Nevadan's beliefs that we value work, especially the
5 difficult jobs performed by hotel maids, childcare workers and
6 nursing home employees. We need to make sure the workers who
7 are the backbone of our economy receive fair paychecks that allow
8 them and their families to live above the poverty line.

9 **Sec. 2.** NRS 608.250 is hereby amended to read as follows:

10 608.250 1. Except as otherwise provided in this section ~~the~~
11 ~~Labor Commissioner shall, in accordance with federal law, establish~~
12 ~~by regulation the minimum wage which may be paid to employees~~
13 ~~in private employment within the State. The Labor Commissioner~~
14 ~~shall prescribe increases in the minimum wage in accordance with~~
15 ~~those prescribed by federal law, unless he determines that those~~
16 ~~increases are contrary to the public interest.] and NRS 444.300,~~
17 *each employer shall pay a wage to each employee of not less than*
18 *\$5.15 per hour worked if the employer provides health benefits to*
19 *the employee, or \$6.15 per hour worked if the employer does not*
20 *provide health benefits to the employee. These rates of wages must*
21 *be adjusted by the amount of increases in the federal minimum*
22 *wage over \$5.15 per hour or, if greater, by the cumulative increase*
23 *in the cost of living. The increase in the cost of living must be*
24 *measured by the percentage increase as of December 31 in any*
25 *year over the level as of December 31, 2004, of the Consumer*
26 *Price Index (All Urban Consumers, U.S. City Average) as*
27 *published by the Bureau of Labor Statistics, United States*
28 *Department of Labor, or the successor index or federal agency. No*
29 *adjustment in the cost of living for any 1-year period may be*
30 *greater than 3 percent. The Governor or the state agency*
31 *designated by the Governor shall publish a bulletin by April 1 of*
32 *each year announcing the adjusted rates, which must take effect*
33 *the following July 1. The bulletin must be made available to all*
34 *employers and to any other person who has filed with the*
35 *Governor or the designated state agency a request to receive notice*
36 *of the adjusted rates, but lack of notice does not excuse*
37 *noncompliance with this section. An employer shall provide*
38 *written notification of the adjusted rates to each of its employees*
39 *and make the necessary payroll adjustments by July 1 following*
40 *the publication of the bulletin. Tips or gratuities received by*
41 *employees must not be credited as being any part of or offset*
42 *against the rates of wages required by this section.*

43 2. The provisions of subsection 1 do not apply to:

44 (a) Casual babysitters.



(b) Domestic service employees who reside in the household where they work.

(c) Outside salespersons whose earnings are based on commissions.

(d) Employees engaged in an agricultural pursuit for an employer who did not use more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year.

(e) Taxicab and limousine drivers.

(f) Severely handicapped persons whose disabilities have diminished their productive capacity in a specific job and who are specified in certificates issued by the Rehabilitation Division of the Department of Employment, Training and Rehabilitation.

3. It is unlawful for any person to employ, cause to be employed or permit to be employed, or to contract with, cause to be contracted with or permit to be contracted with, any person for a wage less than that established ~~by the Labor Commissioner~~ pursuant to ~~the provisions of this section.~~ subsection 1.

4. *The provisions of this section may not be waived by agreement between an individual employee and an employer. All or any part of the provisions of this section may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship does not constitute a waiver of all or any part of the provisions of this section. An employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedy to enforce the provisions of this section or otherwise asserting his rights under this section. An employee claiming a violation of this section may bring an action against his employer in the courts of this State to enforce the provisions of this section and is entitled to all remedies available under law or equity appropriate to remedy any violation of this section, including, without limitation, back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce the provisions of this section must be awarded reasonable attorney's fees and costs.*

5. As used in this section:

(a) "Employee" means any person who is employed by an employer, but does not include an employee who is under 18 years of age and who is employed by a nonprofit organization for after-school or summer employment or as a trainee for a period of not more than 90 days.

(b) "Employer" means any natural person, proprietorship, partnership, joint venture, corporation, limited-liability company,



1 *trust, association or other entity that may employ natural persons*
2 *or enter into contracts of employment.*

3 (c) *“Provides health benefits” means making health insurance*
4 *available to an employee for the employee and the employee’s*
5 *dependents at a total cost to the employee for premiums of not*
6 *more than 10 percent of the employee’s gross taxable income from*
7 *the employer.*

8 **Sec. 3.** NRS 608.290 is hereby amended to read as follows:

9 608.290 1. Any person who violates any provision of NRS
10 608.250 ~~for any regulation adopted pursuant thereto~~ is guilty of a
11 misdemeanor.

12 2. In addition to any other remedy or penalty, the Labor
13 Commissioner may impose against the person an administrative
14 penalty of not more than \$5,000 for each ~~such~~ violation.

15 **Sec. 4.** The administrative regulation adopted by the Labor
16 Commissioner which is codified as NAC 608.110 is hereby declared
17 void. In preparing the supplements to the Nevada Administrative
18 Code on or after October 1, 2005, the Legislative Counsel shall
19 remove that regulation.

20 **Sec. 5.** NRS 608.260 is hereby repealed.

TEXT OF REPEALED SECTION

608.260 Action by employee to recover difference between minimum wage and amount paid; limitation of action. If any employer pays any employee a lesser amount than the minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250, the employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage. A contract between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action.



