



SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1001 be amended to read as follows:

- 1 Page 169, between lines 2 and 3, begin a new paragraph and insert:
2 "SECTION 158. IC 22-2-2-3, AS AMENDED BY P.L.7-2019,
3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2021]: Sec. 3. As used in this chapter:
5 "Commissioner" means the commissioner of labor or the
6 commissioner's authorized representative.
7 "Department" means the department of labor.
8 "Occupation" means an industry, trade, business, or class of work
9 in which employees are gainfully employed.
10 "Employer" means any individual, partnership, association, limited
11 liability company, corporation, business trust, the state, or other
12 governmental agency or political subdivision during any work week in
13 which they have two (2) or more employees. However, **except as**
14 **provided in section 14 of this chapter**, it shall not include any
15 employer who is subject to the minimum wage provisions of the federal
16 Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209).
17 "Employee" means any person employed or permitted to work or
18 perform any service for remuneration or under any contract of hire,
19 written or oral, express or implied by an employer in any occupation,
20 but shall not include any of the following:
21 (a) Persons less than sixteen (16) years of age.
22 (b) Persons engaged in an independently established trade,
23 occupation, profession, or business who, in performing the
24 services in question, are free from control or direction both under
25 a contract of service and in fact.
26 (c) Persons performing services not in the course of the
27 employing unit's trade or business.

- 1 (d) Persons employed on a commission basis.
- 2 (e) Persons employed by their own parent, spouse, or child.
- 3 (f) Members of any religious order performing any service for that
- 4 order, any ordained, commissioned, or licensed minister, priest,
- 5 rabbi, sexton, or Christian Science reader, and volunteers
- 6 performing services for any religious or charitable organization.
- 7 (g) Persons performing services as student nurses in the employ
- 8 of a hospital or nurses training school while enrolled and
- 9 regularly attending classes in a nurses training school chartered
- 10 or approved under law, or students performing services in the
- 11 employ of persons licensed as both funeral directors and
- 12 embalmers as a part of their requirements for apprenticeship to
- 13 secure an embalmer's license or a funeral director's license from
- 14 the state, or during their attendance at any schools required by law
- 15 for securing an embalmer's or funeral director's license.
- 16 (h) Persons who have completed a four (4) year course in a
- 17 medical school approved by law when employed as interns or
- 18 resident physicians by any accredited hospital.
- 19 (i) Students performing services for any school, college, or
- 20 university in which they are enrolled and are regularly attending
- 21 classes.
- 22 (j) Persons with physical or mental disabilities performing
- 23 services for nonprofit organizations organized primarily for the
- 24 purpose of providing employment for persons with disabilities or
- 25 for assisting in their therapy and rehabilitation.
- 26 (k) Persons employed as insurance producers, insurance
- 27 solicitors, and outside salesmen, if all their services are performed
- 28 for remuneration solely by commission.
- 29 (l) Persons performing services for any camping, recreational, or
- 30 guidance facilities operated by a charitable, religious, or
- 31 educational nonprofit organization.
- 32 (m) Persons engaged in agricultural labor. The term shall include
- 33 only services performed:
- 34 (1) on a farm, in connection with cultivating the soil, or in
- 35 connection with raising or harvesting any agricultural or
- 36 horticultural commodity, including the raising, shearing,
- 37 feeding, caring for, training, and management of livestock,
- 38 bees, poultry, and furbearing animals and wildlife;
- 39 (2) in the employ of the owner or tenant or other operator of a
- 40 farm, in connection with the operation, management,
- 41 conservation, improvement, or maintenance of the farm and its
- 42 tools and equipment if the major part of the service is
- 43 performed on a farm;
- 44 (3) in connection with:
- 45 (A) the production or harvesting of maple sugar or maple
- 46 syrup or any commodity defined as an agricultural

- 1 commodity in the Agricultural Marketing Act, as amended
- 2 (12 U.S.C. 1141j);
- 3 (B) the raising or harvesting of mushrooms;
- 4 (C) the hatching of poultry; or
- 5 (D) the operation or maintenance of ditches, canals,
- 6 reservoirs, or waterways used exclusively for supplying and
- 7 storing water for farming purposes; and
- 8 (4) in handling, planting, drying, packing, packaging,
- 9 processing, freezing, grading, storing, or delivering to storage,
- 10 to market, or to a carrier for transportation to market, any
- 11 agricultural or horticultural commodity, but only if service is
- 12 performed as an incident to ordinary farming operation or, in
- 13 the case of fruits and vegetables, as an incident to the
- 14 preparation of fruits and vegetables for market. However, this
- 15 exception shall not apply to services performed in connection
- 16 with any agricultural or horticultural commodity after its
- 17 delivery to a terminal market or processor for preparation or
- 18 distribution for consumption.

19 As used in this subdivision, "farm" includes stock, dairy, poultry,
 20 fruit, furbearing animals, and truck farms, nurseries, orchards, or
 21 greenhouses or other similar structures used primarily for the
 22 raising of agricultural or horticultural commodities.

23 (n) Those persons employed in executive, administrative, or
 24 professional occupations who have the authority to employ or
 25 discharge and who earn one hundred fifty dollars (\$150) or more
 26 a week, and outside salesmen.

27 (o) Any person not employed for more than four (4) weeks in any
 28 four (4) consecutive three (3) month periods.

29 (p) Any employee with respect to whom the Interstate Commerce
 30 Commission has power to establish qualifications and maximum
 31 hours of service under the federal Motor Carrier Act of 1935 (49
 32 U.S.C. 304(3)) or any employee of a carrier subject to IC 8-2.1.

33 (q) A person engaged in services as a direct seller. The term shall
 34 include only services performed:

- 35 (1) by a person that is in the trade or business of:
 - 36 (A) selling, or soliciting the sale of, consumer products or
 - 37 services to any buyer on a buy-sell basis,
 - 38 deposit-commission basis, or similar basis, in any place
 - 39 other than in a permanent retail establishment; or
 - 40 (B) selling, or soliciting the sale of, consumer products or
 - 41 services in any place other than in a permanent retail
 - 42 establishment;
- 43 (2) when substantially all the remuneration, whether or not
- 44 paid in cash, for the performance of the services is directly
- 45 related to sales or other output, including the performance of
- 46 services, rather than the number of hours worked; and

1 (3) when the services performed by the person are performed
 2 pursuant to a written contract and the contract provides that
 3 the person who performs the services will not be treated as an
 4 employee for tax purposes under the contract.

5 SECTION 159. IC 22-2-2-4, AS AMENDED BY P.L.147-2020,
 6 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2021]: Sec. 4. (a) No employer having employees subject to
 8 any provisions of this section shall discriminate, within any
 9 establishment in which employees are employed, between employees
 10 on the basis of sex by paying to employees in such establishment a rate
 11 less than the rate at which the employer pays wages to employees of the
 12 opposite sex in such establishment for equal work on jobs the
 13 performance of which requires equal skill, effort, and responsibility,
 14 and which are performed under similar working conditions, except
 15 where such payment is made pursuant to:

- 16 (1) a seniority system;
 17 (2) a merit system;
 18 (3) a system which measures earnings by quantity or quality of
 19 production; or
 20 (4) a differential based on any other factor other than sex.

21 (b) An employer who is paying a wage rate differential in violation
 22 of subsection (a) shall not, in order to comply with subsection (a),
 23 reduce the wage rate of any employee, and no labor organization, or its
 24 agents, representing employees of an employer having employees
 25 subject to subsection (a) shall cause or attempt to cause such an
 26 employer to discriminate against an employee in violation of
 27 subsection (a).

28 (c) Except as provided in subsection ~~(d)~~; **(e)**, every employer
 29 employing at least two (2) employees during a work week shall, in any
 30 work week in which the employer is subject to this chapter, pay each
 31 of the employees in any work week beginning on or after June 30,
 32 2007, **and before January 1, 2022**, wages of not less than the
 33 minimum wage payable under the federal Fair Labor Standards Act of
 34 1938, as amended (29 U.S.C. 201 et seq.).

35 **(d) Except as provided in subsection (e), every employer**
 36 **employing at least two (2) employees during a work week shall, in**
 37 **any work week in which the employer is subject to this chapter,**
 38 **pay each of the employees the following in any work week:**

- 39 **(1) Beginning on or after January 1, 2022, and before January**
 40 **1, 2023, wages of not less than ten dollars (\$10) an hour.**
 41 **(2) Beginning on or after January 1, 2023, and before January**
 42 **1, 2024, wages of not less than eleven dollars (\$11) an hour.**
 43 **(3) Beginning on or after January 1, 2024, and before January**
 44 **1, 2025, wages of not less than twelve dollars (\$12) an hour.**
 45 **(4) Beginning on or after January 1, 2025, and before January**
 46 **1, 2026, wages of not less than thirteen dollars (\$13) an hour.**

1 **(5) Beginning on or after January 1, 2026, and before January**
 2 **1, 2027, wages of not less than fourteen dollars (\$14) an hour.**

3 **(6) Beginning on or after January 1, 2027, wages of not less**
 4 **than fifteen dollars (\$15) an hour.**

5 ~~(d)~~ **(e)** An employer subject to subsection (c) is permitted to apply
 6 a tip credit in determining the amount of cash wage paid to tipped
 7 employees. In determining the wage an employer is required to pay a
 8 tipped employee, the amount paid the employee by the employee's
 9 employer must be an amount equal to:

10 (1) the cash wage paid the employee, which for purposes of the
 11 determination may be not less than the cash wage required to be
 12 paid to employees covered under the federal Fair Labor Standards
 13 Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20,
 14 1996, which amount is two dollars and thirteen cents (\$2.13) an
 15 hour; and

16 (2) an additional amount on account of the tips received by the
 17 employee, which amount is equal to the difference between the
 18 wage specified in subdivision (1) and the wage in effect under
 19 subsection (c).

20 An employer is responsible for supporting the amount of tip credit
 21 taken through reported tips by the employees.

22 ~~(e)~~ **(f)** This section does not apply if an employee:

23 (1) provides companionship services to the aged and infirm (as
 24 defined in 29 CFR 552.6); and

25 (2) is employed by an employer or agency other than the family
 26 or household using the companionship services, as provided in 29
 27 CFR 552.109 (a).

28 ~~(f)~~ **(g)** Except as otherwise provided in this section, no employer
 29 shall employ any employee for a work week longer than forty (40)
 30 hours unless the employee receives compensation for employment in
 31 excess of forty (40) hours at a rate not less than one and one-half (1.5)
 32 times the regular rate at which the employee is employed.

33 ~~(g)~~ **(h)** For purposes of this section the following apply:

34 (1) "Overtime compensation" means the compensation required
 35 by subsection ~~(f)~~: **(g)**.

36 (2) "Compensatory time" and "compensatory time off" mean
 37 hours during which an employee is not working, which are not
 38 counted as hours worked during the applicable work week or
 39 other work period for purposes of overtime compensation, and for
 40 which the employee is compensated at the employee's regular
 41 rate.

42 (3) "Regular rate" means the rate at which an employee is
 43 employed is considered to include all remuneration for
 44 employment paid to, or on behalf of, the employee, but is not
 45 considered to include the following:

46 (A) Sums paid as gifts, payments in the nature of gifts made at

- 1 Christmas time or on other special occasions, as a reward for
2 service, the amounts of which are not measured by or
3 dependent on hours worked, production, or efficiency.
- 4 (B) Payments made for occasional periods when no work is
5 performed due to vacation, holiday, illness, failure of the
6 employer to provide sufficient work, or other similar cause,
7 reasonable payments for traveling expenses, or other expenses,
8 incurred by an employee in the furtherance of the employer's
9 interests and properly reimbursable by the employer, and other
10 similar payments to an employee which are not made as
11 compensation for the employee's hours of employment.
- 12 (C) Sums paid in recognition of services performed during a
13 given period if:
- 14 (i) both the fact that payment is to be made and the amount
15 of the payment are determined at the sole discretion of the
16 employer at or near the end of the period and not pursuant
17 to any prior contract, agreement, or promise causing the
18 employee to expect the payments regularly;
 - 19 (ii) the payments are made pursuant to a bona fide profit
20 sharing plan or trust or bona fide thrift or savings plan,
21 meeting the requirements of the administrator set forth in
22 appropriately issued regulations, having due regard among
23 other relevant factors, to the extent to which the amounts
24 paid to the employee are determined without regard to hours
25 of work, production, or efficiency; or
 - 26 (iii) the payments are talent fees paid to performers,
27 including announcers, on radio and television programs.
- 28 (D) Contributions irrevocably made by an employer to a
29 trustee or third person pursuant to a bona fide plan for
30 providing old age, retirement, life, accident, or health
31 insurance or similar benefits for employees.
- 32 (E) Extra compensation provided by a premium rate paid for
33 certain hours worked by the employee in any day or work
34 week because those hours are hours worked in excess of eight
35 (8) in a day or in excess of the maximum work week
36 applicable to the employee under subsection (f) (g) or in
37 excess of the employee's normal working hours or regular
38 working hours, as the case may be.
- 39 (F) Extra compensation provided by a premium rate paid for
40 work by the employee on Saturdays, Sundays, holidays, or
41 regular days of rest, or on the sixth or seventh day of the work
42 week, where the premium rate is not less than one and one-half
43 (1.5) times the rate established in good faith for like work
44 performed in nonovertime hours on other days.
- 45 (G) Extra compensation provided by a premium rate paid to
46 the employee, in pursuance of an applicable employment

1 contract or collective bargaining agreement, for work outside
 2 of the hours established in good faith by the contract or
 3 agreement as the basic, normal, or regular workday (not
 4 exceeding eight (8) hours) or work week (not exceeding the
 5 maximum work week applicable to the employee under
 6 subsection ~~(f)~~ **(g)**) where the premium rate is not less than one
 7 and one-half (1.5) times the rate established in good faith by
 8 the contract or agreement for like work performed during the
 9 workday or work week.

10 ~~(f)~~ **(i)** No employer shall be considered to have violated subsection
 11 ~~(f)~~ **(g)** by employing any employee for a work week in excess of that
 12 specified in subsection ~~(f)~~ **(g)** without paying the compensation for
 13 overtime employment prescribed therein if the employee is so
 14 employed:

15 (1) in pursuance of an agreement, made as a result of collective
 16 bargaining by representatives of employees certified as bona fide
 17 by the National Labor Relations Board, which provides that no
 18 employee shall be employed more than one thousand forty (1,040)
 19 hours during any period of twenty-six (26) consecutive weeks; or
 20 (2) in pursuance of an agreement, made as a result of collective
 21 bargaining by representatives of employees certified as bona fide
 22 by the National Labor Relations Board, which provides that
 23 during a specified period of fifty-two (52) consecutive weeks the
 24 employee shall be employed not more than two thousand two
 25 hundred forty (2,240) hours and shall be guaranteed not less than
 26 one thousand eight hundred forty (1,840) hours (or not less than
 27 forty-six (46) weeks at the normal number of hours worked per
 28 week, but not less than thirty (30) hours per week) and not more
 29 than two thousand eighty (2,080) hours of employment for which
 30 the employee shall receive compensation for all hours guaranteed
 31 or worked at rates not less than those applicable under the
 32 agreement to the work performed and for all hours in excess of
 33 the guaranty which are also in excess of the maximum work week
 34 applicable to the employee under subsection ~~(f)~~ **(g)** or two
 35 thousand eighty (2,080) in that period at rates not less than one
 36 and one-half (1.5) times the regular rate at which the employee is
 37 employed.

38 ~~(f)~~ **(j)** No employer shall be considered to have violated subsection
 39 ~~(f)~~ **(g)** by employing any employee for a work week in excess of the
 40 maximum work week applicable to the employee under subsection ~~(f)~~
 41 **(g)** if the employee is employed pursuant to a bona fide individual
 42 contract, or pursuant to an agreement made as a result of collective
 43 bargaining by representatives of employees, if the duties of the
 44 employee necessitate irregular hours of work, and the contract or
 45 agreement includes the following:

46 (1) Specifies a regular rate of pay of not less than the minimum

- 1 hourly rate provided in subsections ~~(c)~~ and ~~(d)~~ (c), (d), and (e),
 2 (whichever is applicable) and compensation at not less than one
 3 and one-half (1.5) times that rate for all hours worked in excess
 4 of the maximum work week.
 5 (2) Provides a weekly guaranty of pay for not more than sixty (60)
 6 hours based on the rates so specified.
- 7 ~~(f)~~ (k) No employer shall be considered to have violated subsection
 8 ~~(f)~~ (g) by employing any employee for a work week in excess of the
 9 maximum work week applicable to the employee under that subsection
 10 if, pursuant to an agreement or understanding arrived at between the
 11 employer and the employee before performance of the work, the
 12 amount paid to the employee for the number of hours worked by the
 13 employee in the work week in excess of the maximum work week
 14 applicable to the employee under that subsection:
- 15 (1) in the case of an employee employed at piece rates, is
 16 computed at piece rates not less than one and one-half (1.5) times
 17 the bona fide piece rates applicable to the same work when
 18 performed during nonovertime hours;
 19 (2) in the case of an employee performing two (2) or more kinds
 20 of work for which different hourly or piece rates have been
 21 established, is computed at rates not less than one and one-half
 22 (1.5) times those bona fide rates applicable to the same work
 23 when performed during nonovertime hours; or
 24 (3) is computed at a rate not less than one and one-half (1.5) times
 25 the rate established by the agreement or understanding as the
 26 basic rate to be used in computing overtime compensation
 27 thereunder, provided that the rate so established shall be
 28 substantially equivalent to the average hourly earnings of the
 29 employee, exclusive of overtime premiums, in the particular work
 30 over a representative period of time;
- 31 and if the employee's average hourly earnings for the work week
 32 exclusive of payments described in this section are not less than the
 33 minimum hourly rate required by applicable law, and extra overtime
 34 compensation is properly computed and paid on other forms of
 35 additional pay required to be included in computing the regular rate.
- 36 ~~(k)~~ (l) Extra compensation paid as described in this section shall be
 37 creditable toward overtime compensation payable pursuant to this
 38 section.
- 39 ~~(f)~~ (m) No employer shall be considered to have violated subsection
 40 ~~(f)~~ (g) by employing any employee of a retail or service establishment
 41 for a work week in excess of the applicable work week specified
 42 therein, if:
- 43 (1) the regular rate of pay of the employee is in excess of one and
 44 one-half (1.5) times the minimum hourly rate applicable to the
 45 employee under section 2 of this chapter; and
 46 (2) more than half of the employee's compensation for a

1 representative period (not less than one (1) month) represents
2 commissions on goods or services.

3 In determining the proportion of compensation representing
4 commissions, all earnings resulting from the application of a bona fide
5 commission rate shall be considered commissions on goods or services
6 without regard to whether the computed commissions exceed the draw
7 or guarantee.

8 ~~(m)~~ **(n)** No employer engaged in the operation of a hospital or an
9 establishment which is an institution primarily engaged in the care of
10 the sick, the aged, or individuals with a mental illness or defect who
11 reside on the premises shall be considered to have violated subsection
12 ~~(f)~~ **(g)** if, pursuant to an agreement or understanding arrived at between
13 the employer and the employee before performance of the work, a work
14 period of fourteen (14) consecutive days is accepted in lieu of the work
15 week of seven (7) consecutive days for purposes of overtime
16 computation and if, for the employee's employment in excess of eight
17 (8) hours in any workday and in excess of eighty (80) hours in that
18 fourteen (14) day period, the employee receives compensation at a rate
19 not less than one and one-half (1.5) times the regular rate at which the
20 employee is employed.

21 ~~(n)~~ **(o)** No employer shall employ any employee in domestic service
22 in one (1) or more households for a work week longer than forty (40)
23 hours unless the employee receives compensation for that employment
24 in accordance with subsection ~~(f)~~ **(g)**.

25 ~~(o)~~ **(p)** In the case of an employee of an employer engaged in the
26 business of operating a street, a suburban or interurban electric railway,
27 or a local trolley or motorbus carrier (regardless of whether or not the
28 railway or carrier is public or private or operated for profit or not for
29 profit), in determining the hours of employment of such an employee
30 to which the rate prescribed by subsection ~~(f)~~ **(g)** applies, there shall be
31 excluded the hours the employee was employed in charter activities by
32 the employer if both of the following apply:

33 (1) The employee's employment in the charter activities was
34 pursuant to an agreement or understanding with the employer
35 arrived at before engaging in that employment.

36 (2) If employment in the charter activities is not part of the
37 employee's regular employment.

38 ~~(p)~~ **(q)** Any employer may employ any employee for a period or
39 periods of not more than ten (10) hours in the aggregate in any work
40 week in excess of the maximum work week specified in subsection ~~(f)~~
41 **(g)** without paying the compensation for overtime employment
42 prescribed in subsection ~~(f)~~ **(g)**, if during that period or periods the
43 employee is receiving remedial education that:

44 (1) is provided to employees who lack a high school diploma or
45 educational attainment at the eighth grade level;

46 (2) is designed to provide reading and other basic skills at an

1 eighth grade level or below; and
 2 (3) does not include job specific training.
 3 ~~(q)~~ **(r)** Subsection ~~(f)~~ **(g)** does not apply to an employee of a motion
 4 picture theater.
 5 ~~(r)~~ **(s)** Subsection ~~(f)~~ **(g)** does not apply to an employee of a seasonal
 6 amusement or recreational establishment, an organized camp, or a
 7 religious or nonprofit educational conference center that is exempt
 8 under the federal Fair Labor Standards Act of 1938, as amended (29
 9 U.S.C. 213).
 10 ~~(s)~~ **(t)** Subsection ~~(f)~~ **(g)** does not apply to an employee of an air
 11 carrier subject to Title II of the federal Railway Labor Act (45 U.S.C.
 12 181 et seq.) to the extent that the hours worked by the employee during
 13 a work week in excess of forty (40) hours are not required by the air
 14 carrier but are arranged through a voluntary agreement between
 15 employees to trade or reassign their scheduled work hours.
 16 SECTION 160. IC 22-2-2-14 IS ADDED TO THE INDIANA
 17 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2021]: **Sec. 14. (a) This section applies to an**
 19 **employer that is subject to the minimum wage provisions of the**
 20 **federal Fair Labor Standards Act of 1938, as amended (29 U.S.C.**
 21 **201-209).**
 22 **(b) If the minimum hourly wage required under section 4 of this**
 23 **chapter is higher than the minimum wage provisions of the federal**
 24 **Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209),**
 25 **an employer shall pay the minimum hourly wage required under**
 26 **section 4 of this chapter."**
 27 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1001 as printed April 9, 2021.)

Senator MELTON