



2011 ASSEMBLY BILL 281

September 28, 2011 - Introduced by Representatives MASON, GRIGSBY, PASCH, CLARK, POCAN, E. COGGS, BEWLEY, BERCEAU, KESSLER, YOUNG, POPE-ROBERTS, ROYS, TOLES, ZEPNICK, DANOU, TURNER, ZAMARRIPA, MILROY, C. TAYLOR and FIELDS, cosponsored by Senators WIRCH, S. COGGS, RISSER, HANSEN, CARPENTER, ERPENBACH, C. LARSON, VINEHOUT, JAUCH, TAYLOR and MILLER. Referred to Committee on Labor and Workforce Development.

1 **AN ACT** *to repeal* 104.001; *to renumber* 104.01 (1); *to renumber and amend*
2 104.045; *to amend* 49.141 (1) (g), 103.67 (2) (fm) 3., 103.70 (2) (b) 3., 104.01
3 (intro.), 104.01 (8), 104.05, 104.07 (1), 104.07 (2), 104.10, 104.11, 234.94 (5),
4 234.94 (8), 800.09 (1j), 800.095 (1) (d) and 895.035 (2m) (c); and *to create* 104.01
5 (1d), 104.01 (1g), 104.01 (5g), 104.01 (5m), 104.01 (7m), 104.035 and 104.045 (2)
6 and (3) of the statutes; **relating to:** a state minimum wage, permitting the
7 enactment of local living wage ordinances, extending the time limit for
8 emergency rule procedures, providing an exemption from emergency rule
9 procedures, providing an exemption from rule-making procedures, and
10 requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Currently, the state minimum wage law requires that employers pay a living wage to their employees. Under that law, the Department of Workforce Development (DWD) has provided, by rule, minimum wages for various types of employees, including employees, generally; minor employees; opportunity employees, which are defined as employees under 20 years of age in their first 90 days of employment with

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a particular employer; tipped employees; agricultural employees; camp counselors; golf caddies; students employed at independent colleges and universities for less than 20 hours per week; student learners employed in bona fide school training programs; and individuals who are unable to earn the standard minimum wage because of a disability. DWD has exempted, by rule, from the minimum wage law employees who perform less than 15 hours per week of casual employment, such as baby-sitting or lawn mowing, in and around an employer's home; employees who provide companionship services to elderly or infirm individuals; and elementary and secondary school students performing work-like activities in their schools. DWD has also promulgated rules providing allowances against the minimum wage for employers that provide meals or lodging for their employees.

Under this bill, DWD will continue to provide the exemptions listed above and separate minimum wages for students employed at independent colleges and universities for less than 20 hours per week, student learners employed in bona fide school training programs, and individuals who are unable to earn the standard minimum wages because of a disability. For other employees, however, the bill sets the minimum wages as follows:

Employees generally

Current minimum wage	\$7.25 per hour
Minimum wage on effective date	\$7.60 per hour

Minor employees

Current minimum wage	\$7.25 per hour
Minimum wage on effective date	\$7.25 per hour

Opportunity employees

Current minimum wage	\$5.90 per hour
Minimum wage on effective date	\$6.90 per hour

Tipped employees

Current minimum wage	\$2.33 per hour for nonopportunity employees \$2.13 per hour for opportunity employees
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Minimum wage on effective date	\$2.75 per hour for nonopportunity employees \$2.50 per hour for opportunity employees
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Agricultural employees

Current minimum wage	\$7.25 per hour
Minimum wage on effective date	\$7.25 per hour

Camp counselors

Current minimum wage	\$350 per week if meals and lodging not furnished \$265 per week if meals, but not lodging, furnished \$210 per week if meals and lodging furnished
Minimum wage on effective date	\$350 per week if meals and lodging not furnished \$265 per week if meals, but not lodging, furnished \$210 per week if meals and lodging furnished

Golf caddies

Current minimum wage	\$10.50 for 18 holes \$5.90 for 9 holes
Minimum wage on effective date	\$12.30 for 18 holes \$6.90 for 9 holes

The bill also increases the allowance against the minimum wage that an employer who provides room and board for an employee may take, as follows:

Employees generally

Lodging	
Current allowance	\$58 per week or \$8.30 per day

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Allowance on effective date \$61 per week or \$8.65 per day

Meals

Current allowance \$87 per week or \$4.15 per meal

Allowance on effective date \$91 per week or \$4.35 per meal

Minor employees

Lodging

Current allowance \$58 per week or \$8.30 per day

Allowance on effective date \$58 per week or \$8.30 per day

Meals

Current allowance \$87 per week or \$4.15 per meal

Allowance on effective date \$87 per week or \$4.15 per meal

Opportunity employees

Lodging

Current allowance \$47.20 per week or \$6.75 per day

Allowance on effective date \$55.20 per week or \$7.90 per day

Meals

Current allowance \$70.80 per week or \$3.35 per meal

Allowance on effective date \$82.85 per week or \$3.90 per meal

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Lodging

Current allowance	\$58 per week or \$8.30 per day
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Allowance on effective date	\$58 per week or \$8.30 per day
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Meals

Current allowance	\$87 per week or \$4.15 per meal
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Allowance on effective date	\$87 per week or \$4.15 per meal
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Beginning on May 1, 2012, the bill requires DWD annually to promulgate rules revising the minimum wages and allowances for meals and lodging established under the bill by determining the percentage difference between the consumer price index for the preceding year and the consumer price index for the current year, adjusting the minimum wages and allowances in effect on April 30 of the current year by that percentage difference, and rounding that result to the nearest multiple of five cents or, in the case of a camp counselor, the nearest dollar. This requirement does not apply, however, if the consumer price index for the current year has not increased over the consumer price index for the preceding year.

Finally, current law prohibits a city, village, town, or county from enacting and administering an ordinance establishing a living wage. This bill eliminates that prohibition.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 49.141 (1) (g) of the statutes is amended to read:

2 49.141 (1) (g) "Minimum wage" means the state minimum hourly wage under
3 ~~ch. 104 s. 104.035 (1)~~ or the federal minimum hourly wage under 29 USC 206 (a) (1),
4 whichever is applicable.

5 **SECTION 2.** 103.67 (2) (fm) 3. of the statutes is amended to read:

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1 103.67 (2) (fm) 3. The minor is paid the applicable minimum wage under eh.
2 104 s. 104.035 or under federal law, whichever is greater, for the work.

3 **SECTION 3.** 103.70 (2) (b) 3. of the statutes is amended to read:

4 103.70 (2) (b) 3. The minor is paid the applicable minimum wage under eh. 104
5 s. 104.035 or under federal law, whichever is greater, for the work.

6 **SECTION 4.** 104.001 of the statutes, as affected by 2011 Wisconsin Act 32, is
7 repealed.

8 **SECTION 5.** 104.01 (intro.) of the statutes is amended to read:

9 **104.01 Definitions.** (intro.) ~~The following terms as used in~~ In this chapter
10 ~~shall be construed as follows:~~

11 **SECTION 6.** 104.01 (1) of the statutes is renumbered 104.01 (1m).

12 **SECTION 7.** 104.01 (1d) of the statutes is created to read:

13 104.01 (1d) “Agricultural employee” means an employee who is employed in
14 farming, as defined in s. 102.04 (3).

15 **SECTION 8.** 104.01 (1g) of the statutes is created to read:

16 104.01 (1g) “Consumer price index” means the average of the consumer price
17 index over each 12-month period for all urban consumers, U.S. city average, as
18 determined by the bureau of labor statistics of the U.S. department of labor.

19 **SECTION 9.** 104.01 (5g) of the statutes is created to read:

20 104.01 (5g) “Minor employee” means a minor who is paid at the applicable
21 minimum wage rate for minors.

22 **SECTION 10.** 104.01 (5m) of the statutes is created to read:

23 104.01 (5m) “Opportunity employee” means a person under 20 years of age who
24 is in the first 90 consecutive days of employment with his or her employer.

25 **SECTION 11.** 104.01 (7m) of the statutes is created to read:

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1 104.01 (7m) “Tipped employee” means an employee who in the course of
2 employment customarily and regularly receives money or other gratuities from
3 persons other than the employee’s employer.

4 **SECTION 12.** 104.01 (8) of the statutes is amended to read:

5 104.01 (8) ~~The term “wage” and the term “wages” shall each mean “Wage”~~
6 means any compensation for labor measured by time, piece, or otherwise.

7 **SECTION 13.** 104.035 of the statutes is created to read:

8 **104.035 Minimum wage. (1) EMPLOYEES GENERALLY. (a) Minimum rates.**

9 Except as provided in subs. (2) to (8), the minimum wage is as follows:

- 10 1. For wages earned before May 1, 2012, \$7.60 per hour.
11 2. For wages earned beginning on May 1, 2012, the amount determined by the
12 department by rule promulgated under sub. (9).

13 (b) *Allowances for meals and lodging.* Except as provided in subs. (2) (b) and
14 (4) (b), if an employer furnishes an employee with meals or lodging in accordance
15 with rules promulgated by the department under s. 104.045 (2), the employer may
16 deduct the following amounts from the wages of the employee:

- 17 1. For lodging furnished before May 1, 2012, \$61 per week or \$8.65 per day and
18 for meals furnished before May 1, 2012, \$91 per week or \$4.35 per meal.
19 2. For meals and lodging furnished beginning on May 1, 2012, the amounts
20 determined by the department by rule promulgated under sub. (9).

21 **(2) MINOR EMPLOYEES. (a) Minimum rates.** Except as provided in subs. (2m)
22 to (8), the minimum wage for a minor employee is as follows:

- 23 1. For wages earned before May 1, 2012, \$7.25 per hour.
24 2. For wages earned beginning on May 1, 2012, the amount determined by the
25 department by rule promulgated under sub. (9).

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1 (b) *Allowances for meals and lodging.* Except as provided in sub. (4) (b), if an
2 employer furnishes a minor employee or an opportunity employee with meals or
3 lodging in accordance with rules promulgated by the department under s. 104.045
4 (2), the employer may deduct the following amounts from the wages of the employee:

5 1. For lodging furnished before May 1, 2012, \$58 per week or \$8.30 per day and
6 for meals furnished before May 1, 2012, \$87 per week or \$4.15 per meal.

7 2. For meals and lodging furnished beginning on May 1, 2012, the amounts
8 determined by the department by rule promulgated under sub. (9).

9 **(2m)** OPPORTUNITY EMPLOYEES. (a) *Minimum rates.* Except as provided in subs.
10 (3) to (8), the minimum wage for an opportunity employee is as follows:

11 1. For wages earned before May 1, 2012, \$6.90 per hour.

12 2. For wages earned beginning on May 1, 2012, the amount determined by the
13 department by rule promulgated under sub. (9).

14 (b) *Allowances for meals and lodging.* Except as provided in sub. (4) (b), if an
15 employer furnishes an opportunity employee with meals or lodging in accordance
16 with rules promulgated by the department under s. 104.045 (2), the employer may
17 deduct the following amounts from the wages of the employee:

18 1. For lodging furnished before May 1, 2012, \$55.20 per week or \$7.90 per day
19 and for meals furnished before May 1, 2012, \$82.85 per week or \$3.90 per meal.

20 2. For meals and lodging furnished beginning on May 1, 2012, the amounts
21 determined by the department by rule promulgated under sub. (9).

22 **(3)** TIPPED EMPLOYEES. (a) *Minimum rates.* Except as provided in subs. (4) to
23 (8), if an employer of a tipped employee establishes by the employer's payroll records
24 that, when adding the tips received by the tipped employee in a week to the wages
25 paid to the tipped employee in that week, the tipped employee receives not less than

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1 the applicable minimum wage specified in sub. (1) or (2), the minimum wage for the
2 tipped employee is as follows:

3 1. For wages earned before May 1, 2012, by a tipped employee who is not an
4 opportunity employee, \$2.75 per hour.

5 2. For wages earned before May 1, 2012, by a tipped employee who is an
6 opportunity employee, \$2.50 per hour.

7 3. For wages earned beginning on May 1, 2012, the amounts determined by the
8 department by rule promulgated under sub. (9).

9 (b) *Allowances for meals and lodging.* If an employer furnishes a tipped
10 employee with meals or lodging in accordance with rules promulgated by the
11 department under s. 104.045 (2), the employer may deduct the applicable amounts
12 specified in sub. (1) (b) or (2) (b) from the wages of the tipped employee.

13 **(4) AGRICULTURAL EMPLOYEES.** (a) *Minimum rates.* Except as provided in subs.
14 (7) and (8), the minimum wage for an agricultural employee is as follows:

15 1. For wages earned before May 1, 2012, \$7.25 per hour.

16 2. For wages earned beginning on May 1, 2012, the amounts determined by the
17 department by rule promulgated under sub. (9).

18 (b) *Allowances for meals and lodging.* If an employer furnishes an agricultural
19 employee with meals or lodging in accordance with rules promulgated by the
20 department under s. 104.045 (2), the employer may deduct the following amounts
21 from the wages of the employee:

22 1. For lodging furnished before May 1, 2012, \$58 per week or \$8.30 per day and
23 for meals furnished before May 1, 2012, \$87 per week or \$4.15 per meal.

24 2. For meals and lodging furnished beginning on May 1, 2012, the amounts
25 determined by the department by rule promulgated under sub. (9).

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1 **(5) CAMP COUNSELORS.** The minimum wage for a counselor at a seasonal
2 recreational or educational camp, including a day camp, is as follows:

3 (a) For wages earned before May 1, 2012, \$350 per week if meals and lodging
4 are not furnished, \$265 per week if only meals are furnished, and \$210 per week if
5 both meals and lodging are furnished.

6 (b) For wages earned beginning on May 1, 2012, the amounts determined by
7 the department by rule promulgated under sub. (9).

8 **(6) GOLF CADDIES.** The minimum wage for a golf caddy is as follows:

9 (a) For wages earned before May 1, 2012, \$12.30 for caddying 18 holes.

10 (b) For wages earned before May 1, 2012, \$6.90 for caddying 9 holes.

11 (c) For wages earned beginning on May 1, 2012, the amounts determined by
12 the department by rule promulgated under sub. (9).

13 **(7) MINIMUM WAGE ESTABLISHED BY DEPARTMENT.** The department shall
14 promulgate rules providing the minimum wage for all of the following:

15 (a) An employee or worker with a disability covered under a license under s.
16 104.07.

17 (b) A student learner.

18 (c) A student employed by an independent college or university for less than
19 20 hours per week.

20 **(8) EMPLOYMENT EXEMPTED BY DEPARTMENT.** The department shall promulgate
21 rules exempting from the minimum wage requirements under subs. (1) to (7) all of
22 the following:

23 (a) A person engaged in casual employment in and around an employer's home
24 on an irregular or intermittent basis for not more than 15 hours per week.

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1 (b) A person who resides in the home of an employer who, due to advanced age
2 or physical or mental disability, cannot care for his or her own needs, for the purpose
3 of companionship and who spends not more than 15 hours per week on general
4 household work for the employer.

5 (c) An elementary or secondary school student performing student work-like
6 activities in the student's school.

7 **(9) DEPARTMENT TO REVISE.** (a) Subject to pars. (b) and (c), by May 1 of each year,
8 the department, using the procedures under s. 227.24, shall promulgate rules to
9 revise the minimum wages and allowances for meals and lodging established under
10 subs. (1) to (7). The department shall determine those revised minimum wages and
11 allowances by calculating the percentage difference between the consumer price
12 index for the 12-month period ending on January 31 of the preceding year and the
13 consumer price index for the 12-month period ending on January 31 of the current
14 year, adjusting the minimum wages and allowances in effect on April 30 of the
15 current year by that percentage difference, and rounding that result to the nearest
16 multiple of 5 cents, except that, for a minimum wage under sub. (5), the department
17 shall round the result to the nearest dollar. Notwithstanding s. 227.24 (1) (a), (2) (b),
18 and (3), the department may promulgate an emergency rule under s. 227.24 revising
19 the minimum wages and allowances established under subs. (1) to (7) without
20 providing evidence that the emergency rule is necessary to preserve the public peace,
21 health, safety, or welfare and without a finding of emergency. A revised minimum
22 wage or allowance determined under this paragraph shall first apply to wages
23 earned or meals or lodging furnished on May 1 of the year in which the wage or
24 allowance is revised.

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1 (b) Paragraph (a) does not apply if the consumer price index for the 12-month
2 period ending on January 31 of the current year has not increased over the consumer
3 price index for the 12-month period ending on January 31 of the preceding year.

4 (c) Paragraph (a) does not preclude the department from promulgating rules
5 to increase a minimum wage provided under subs. (1) to (7).

6 **SECTION 14.** 104.045 of the statutes is renumbered 104.045 (intro.) and
7 amended to read:

8 **104.045 ~~Tipped employees~~ Tips, meals, lodging, and hours worked.**
9 (intro.) The department shall ~~by rule determine what amount of~~ promulgate rules
10 governing all of the following:

11 (1) The counting of tips or similar gratuities may be counted toward fulfillment
12 of the employer's obligation under this chapter.

13 **SECTION 15.** 104.045 (2) and (3) of the statutes are created to read:

14 104.045 **(2)** The deduction of meals or lodging provided by an employer to an
15 employee from the employer's obligation under this chapter.

16 **(3)** The determination of hours worked by an employee during which the
17 employee is entitled to a living wage under this chapter.

18 **SECTION 16.** 104.05 of the statutes is amended to read:

19 **104.05 ~~Complaints; investigation.~~ The department shall, within Within 20**
20 **days after the filing of a verified complaint of any person ~~setting forth~~ alleging that**
21 **the wages paid to any employee in any occupation are not sufficient to enable the**
22 **employee to maintain himself or herself under conditions consistent with his or her**
23 **welfare, the department shall investigate and determine whether there is**
24 **reasonable cause to believe that the wage paid to any employee is not a living wage.**

25 **SECTION 17.** 104.07 (1) of the statutes is amended to read:

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1 104.07 (1) The department shall ~~make~~ promulgate rules, and, except as
2 provided under subs. (5) and (6), grant licenses to any employer who employs any
3 employee who is unable to earn the living wage determined by the department,
4 permitting the employee to work for a wage that is commensurate with the
5 employee's ability. Each license so granted shall establish a wage for the licensee
6 employees of the licensee who are unable to earn a living wage.

7 **SECTION 18.** 104.07 (2) of the statutes is amended to read:

8 104.07 (2) The department shall ~~make~~ promulgate rules, and, except as
9 provided under subs. (5) and (6), grant licenses to sheltered workshops, to permit the
10 employment of workers with disabilities who are unable to earn the living wage at
11 a wage that is commensurate with their ability and productivity. A license granted
12 to a sheltered workshop under this subsection may be issued for the entire workshop
13 or a department of the workshop.

14 **SECTION 19.** 104.10 of the statutes is amended to read:

15 **104.10 Penalty for intimidating witness.** Any employer who discharges or
16 threatens to discharge, or who in any way discriminates, or threatens to discriminate
17 against, any employee because the employee has testified or is about to testify, or
18 because the employer believes that the employee may testify, in any investigation or
19 proceeding relative to the enforcement of this chapter, ~~is guilty of a misdemeanor,~~
20 ~~and upon conviction thereof shall be punished by a fine of~~ may be fined \$25 for each
21 offense.

22 **SECTION 20.** 104.11 of the statutes is amended to read:

23 **104.11 Definition of violation.** Each day during which any employer shall
24 ~~employ~~ employs a person for whom a living wage has been fixed at a wage that is less

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1 than the living wage fixed shall constitute a separate and distinct violation of this
2 chapter.

3 **SECTION 21.** 234.94 (5) of the statutes is amended to read:

4 234.94 (5) "Primary employment" means work ~~which~~ that pays at least the
5 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,
6 whichever is greater, offers adequate fringe benefits, including health insurance,
7 and is not seasonal or part time.

8 **SECTION 22.** 234.94 (8) of the statutes is amended to read:

9 234.94 (8) "Target group" means a population group for which the
10 unemployment level is at least 25% higher than the statewide unemployment level,
11 or a population group for which the average wage received is less than 1.2 times the
12 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,
13 whichever is greater. No population group is required to be located within a
14 contiguous geographic area to be considered a target group.

15 **SECTION 23.** 800.09 (1j) of the statutes is amended to read:

16 800.09 (1j) If the court orders the defendant to perform community service
17 work in lieu of making restitution or of paying the forfeiture, surcharges, fees and
18 costs, or both, the court may order that the defendant perform community service
19 work for a public agency or a nonprofit charitable organization that is approved by
20 the court and agreed to by the public agency or nonprofit charitable organization.
21 Community service work may be in lieu of restitution only if also agreed to by the
22 person to whom restitution is owed. The number of hours of community service work
23 required may not exceed the number determined by dividing the amount owed on the
24 forfeiture by the minimum wage established under ~~ch. 104 for adults in~~
25 ~~nonagriculture, nontipped employment~~ s. 104.035 (1). The court shall ensure that

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1 the defendant is provided a written statement of the terms of the community service
2 order and that the community service order is monitored.

3 **SECTION 24.** 800.095 (1) (d) of the statutes is amended to read:

4 800.095 (1) (d) That the defendant perform community service work for a
5 public agency or nonprofit charitable organization approved by the court and agreed
6 to by the agency or nonprofit charitable organization. If the community service work
7 is in lieu of restitution, then the person to whom restitution is owed must agree; the
8 defendant shall be given credit at the rate of not less than the minimum wage
9 established under ~~ch. 104 for adults in nonagriculture, nontipped employment s.~~
10 104.035 (1) for each one hour of community service completed. The defendant shall
11 be given a written statement of the community service order. Nothing in this
12 paragraph makes the defendant an employee or agent of the court or the
13 municipality. The defendant shall be responsible for providing the court with proof
14 that the community service hours have been completed.

15 **SECTION 25.** 895.035 (2m) (c) of the statutes is amended to read:

16 895.035 (2m) (c) The court assigned to exercise jurisdiction under chs. 48 and
17 938 may order that the juvenile perform community service work for a public agency
18 or nonprofit charitable organization that is designated by the court in lieu of making
19 restitution or paying the forfeiture or surcharge. If the parent agrees to perform
20 community service work in lieu of making restitution or paying the forfeiture or
21 surcharge, the court may order that the parent perform community service work for
22 a public agency or a nonprofit charitable organization that is designated by the court.
23 Community service work may be in lieu of restitution only if also agreed to by the
24 public agency or nonprofit charitable organization and by the person to whom
25 restitution is owed. The court may utilize any available resources, including any

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1 community service work program, in ordering the juvenile or parent to perform
2 community service work. The number of hours of community service work required
3 may not exceed the number determined by dividing the amount owed on the
4 restitution, forfeiture, or surcharge by the minimum wage established under ~~ch. 104~~
5 ~~for adults in nonagriculture, nontipped employment s. 104.035 (1)~~. The court shall
6 ensure that the juvenile or parent is provided with a written statement of the terms
7 of the community service order and that the community service order is monitored.

8 **SECTION 26. Effective date.**

9 (1) MINIMUM WAGE. This act takes effect on the first day of the first month
10 beginning after publication.

11 (END)