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ENGROSSED SUBSTITUTE SENATE BILL 5697

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State of Washington

58th Legislature

2003 Regular Session

**By** Senate Committee on Commerce & Trade (originally sponsored by Senators Hewitt, T. Sheldon, Hale, Mulliken, Rasmussen, Parlette, Swecker, Oke, Deccio, Sheahan, Stevens, Honeyford and Morton)

READ FIRST TIME 02/27/03.

1 AN ACT Relating to modifying the inflationary adjustment to the  
2 minimum wage; amending RCW 49.46.010, 49.46.010, and 49.46.020;  
3 creating a new section; providing an effective date; providing an  
4 expiration date; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds and declares:

7 It is in the interest of Washington citizens to improve the state  
8 economy as expeditiously as possible. Washington has one of the  
9 highest unemployment rates in the nation. In addition to the dire  
10 economic situation in the state, Washington businesses are experiencing  
11 increases in mandatory minimum wage payments, workers' compensation  
12 costs, and unemployment insurance rates. The cumulative impact of  
13 these factors forces businesses to eliminate jobs and hire fewer  
14 employees. Immediate legislative action to reform the method for  
15 calculating the state's minimum wage rate is necessary for the economic  
16 vitality of the state.

1        These facts and findings are a declaration of facts constituting an  
2 emergency, and the reforms provided by this act are necessary for  
3 immediate preservation of the public health, safety, and welfare of the  
4 state.

5        **Sec. 2.** RCW 49.46.010 and 1997 c 203 s 3 are each amended to read  
6 as follows:

7        As used in this chapter:

8        (1) "Director" means the director of labor and industries;

9        (2) "Wage" means compensation due to an employee by reason of  
10 employment, payable in legal tender of the United States or checks on  
11 banks convertible into cash on demand at full face value, subject to  
12 such deductions, charges, or allowances as may be permitted by rules of  
13 the director;

14        (3) "Employ" includes to permit to work;

15        (4) "Employer" includes any individual, partnership, association,  
16 corporation, business trust, or any person or group of persons acting  
17 directly or indirectly in the interest of an employer in relation to an  
18 employee;

19        (5) "Employee" includes any individual employed by an employer but  
20 shall not include:

21        (a) Any individual (i) employed as a hand harvest laborer and paid  
22 on a piece rate basis in an operation which has been, and is generally  
23 and customarily recognized as having been, paid on a piece rate basis  
24 in the region of employment; (ii) who commutes daily from his or her  
25 permanent residence to the farm on which he or she is employed; and  
26 (iii) who has been employed in agriculture less than thirteen weeks  
27 during the preceding calendar year;

28        (b) Any individual employed in casual labor in or about a private  
29 home, unless performed in the course of the employer's trade, business,  
30 or profession;

31        (c) Any individual employed in a bona fide executive,  
32 administrative, or professional capacity or in the capacity of outside  
33 salesman as those terms are defined and delimited by rules of the  
34 director. However, those terms shall be defined and delimited by the  
35 Washington personnel resources board pursuant to chapter 41.06 RCW;

36        (d) Any individual engaged in the activities of an educational,  
37 charitable, religious, state or local governmental body or agency, or

1 nonprofit organization where the employer-employee relationship does  
2 not in fact exist or where the services are rendered to such  
3 organizations gratuitously. If the individual receives reimbursement  
4 in lieu of compensation for normally incurred out-of-pocket expenses or  
5 receives a nominal amount of compensation per unit of voluntary service  
6 rendered, an employer-employee relationship is deemed not to exist for  
7 the purpose of this section or for purposes of membership or  
8 qualification in any state, local government or publicly supported  
9 retirement system other than that provided under chapter 41.24 RCW;

10 (e) Any individual employed full time by any state or local  
11 governmental body or agency who provides voluntary services but only  
12 with regard to the provision of the voluntary services. The voluntary  
13 services and any compensation therefor shall not affect or add to  
14 qualification, entitlement or benefit rights under any state, local  
15 government, or publicly supported retirement system other than that  
16 provided under chapter 41.24 RCW;

17 (f) Any newspaper vendor or carrier;

18 (g) Any carrier subject to regulation by Part 1 of the Interstate  
19 Commerce Act;

20 (h) Any individual engaged in forest protection and fire prevention  
21 activities;

22 (i) Any individual employed by any charitable institution charged  
23 with child care responsibilities engaged primarily in the development  
24 of character or citizenship or promoting health or physical fitness or  
25 providing or sponsoring recreational opportunities or facilities for  
26 young people or members of the armed forces of the United States;

27 (j) Any individual whose duties require that he or she reside or  
28 sleep at the place of his or her employment or who otherwise spends a  
29 substantial portion of his or her work time subject to call, and not  
30 engaged in the performance of active duties;

31 (k) Any resident, inmate, or patient of a state, county, or  
32 municipal correctional, detention, treatment or rehabilitative  
33 institution;

34 (l) Any individual who holds a public elective or appointive office  
35 of the state, any county, city, town, municipal corporation or quasi  
36 municipal corporation, political subdivision, or any instrumentality  
37 thereof, or any employee of the state legislature;

1 (m) All vessel operating crews of the Washington state ferries  
2 operated by the department of transportation;

3 (n) Any individual employed as a seaman on a vessel other than an  
4 American vessel;

5 (6) "Occupation" means any occupation, service, trade, business,  
6 industry, or branch or group of industries or employment or class of  
7 employment in which employees are gainfully employed;

8 (7) "Retail or service establishment" means an establishment  
9 seventy-five percent of whose annual dollar volume of sales of goods or  
10 services, or both, is not for resale and is recognized as retail sales  
11 or services in the particular industry;

12 (8) "Full employment" means a total, not seasonally adjusted,  
13 unemployment rate in the state of Washington that is less than the  
14 total, not seasonally adjusted, national unemployment rate as  
15 determined by the United States department of labor.

16 **Sec. 3.** RCW 49.46.010 and 2002 c 354 s 231 are each amended to  
17 read as follows:

18 As used in this chapter:

19 (1) "Director" means the director of labor and industries;

20 (2) "Wage" means compensation due to an employee by reason of  
21 employment, payable in legal tender of the United States or checks on  
22 banks convertible into cash on demand at full face value, subject to  
23 such deductions, charges, or allowances as may be permitted by rules of  
24 the director;

25 (3) "Employ" includes to permit to work;

26 (4) "Employer" includes any individual, partnership, association,  
27 corporation, business trust, or any person or group of persons acting  
28 directly or indirectly in the interest of an employer in relation to an  
29 employee;

30 (5) "Employee" includes any individual employed by an employer but  
31 shall not include:

32 (a) Any individual (i) employed as a hand harvest laborer and paid  
33 on a piece rate basis in an operation which has been, and is generally  
34 and customarily recognized as having been, paid on a piece rate basis  
35 in the region of employment; (ii) who commutes daily from his or her  
36 permanent residence to the farm on which he or she is employed; and

1 (iii) who has been employed in agriculture less than thirteen weeks  
2 during the preceding calendar year;

3 (b) Any individual employed in casual labor in or about a private  
4 home, unless performed in the course of the employer's trade, business,  
5 or profession;

6 (c) Any individual employed in a bona fide executive,  
7 administrative, or professional capacity or in the capacity of outside  
8 salesman as those terms are defined and delimited by rules of the  
9 director. However, those terms shall be defined and delimited by the  
10 director of personnel pursuant to chapter 41.06 RCW for employees  
11 employed under the director of personnel's jurisdiction;

12 (d) Any individual engaged in the activities of an educational,  
13 charitable, religious, state or local governmental body or agency, or  
14 nonprofit organization where the employer-employee relationship does  
15 not in fact exist or where the services are rendered to such  
16 organizations gratuitously. If the individual receives reimbursement  
17 in lieu of compensation for normally incurred out-of-pocket expenses or  
18 receives a nominal amount of compensation per unit of voluntary service  
19 rendered, an employer-employee relationship is deemed not to exist for  
20 the purpose of this section or for purposes of membership or  
21 qualification in any state, local government or publicly supported  
22 retirement system other than that provided under chapter 41.24 RCW;

23 (e) Any individual employed full time by any state or local  
24 governmental body or agency who provides voluntary services but only  
25 with regard to the provision of the voluntary services. The voluntary  
26 services and any compensation therefor shall not affect or add to  
27 qualification, entitlement or benefit rights under any state, local  
28 government, or publicly supported retirement system other than that  
29 provided under chapter 41.24 RCW;

30 (f) Any newspaper vendor or carrier;

31 (g) Any carrier subject to regulation by Part 1 of the Interstate  
32 Commerce Act;

33 (h) Any individual engaged in forest protection and fire prevention  
34 activities;

35 (i) Any individual employed by any charitable institution charged  
36 with child care responsibilities engaged primarily in the development  
37 of character or citizenship or promoting health or physical fitness or

1 providing or sponsoring recreational opportunities or facilities for  
2 young people or members of the armed forces of the United States;

3 (j) Any individual whose duties require that he or she reside or  
4 sleep at the place of his or her employment or who otherwise spends a  
5 substantial portion of his or her work time subject to call, and not  
6 engaged in the performance of active duties;

7 (k) Any resident, inmate, or patient of a state, county, or  
8 municipal correctional, detention, treatment or rehabilitative  
9 institution;

10 (l) Any individual who holds a public elective or appointive office  
11 of the state, any county, city, town, municipal corporation or quasi  
12 municipal corporation, political subdivision, or any instrumentality  
13 thereof, or any employee of the state legislature;

14 (m) All vessel operating crews of the Washington state ferries  
15 operated by the department of transportation;

16 (n) Any individual employed as a seaman on a vessel other than an  
17 American vessel;

18 (6) "Occupation" means any occupation, service, trade, business,  
19 industry, or branch or group of industries or employment or class of  
20 employment in which employees are gainfully employed;

21 (7) "Retail or service establishment" means an establishment  
22 seventy-five percent of whose annual dollar volume of sales of goods or  
23 services, or both, is not for resale and is recognized as retail sales  
24 or services in the particular industry;

25 (8) "Full employment" means a total, not seasonally adjusted,  
26 unemployment rate in the state of Washington that is less than the  
27 total, not seasonally adjusted, national unemployment rate as  
28 determined by the United States department of labor.

29 **Sec. 4.** RCW 49.46.020 and 1999 c 1 s 1 are each amended to read as  
30 follows:

31 ~~(1) ((Until January 1, 1999, every employer shall pay to each of~~  
32 ~~his or her employees who has reached the age of eighteen years wages at~~  
33 ~~a rate of not less than four dollars and ninety cents per hour.~~

34 ~~(2) Beginning January 1, 1999, and until January 1, 2000, every~~  
35 ~~employer shall pay to each of his or her employees who has reached the~~  
36 ~~age of eighteen years wages at a rate of not less than five dollars and~~  
37 ~~seventy cents per hour.~~

1       ~~(3)~~) Beginning January 1, 2000, and until January 1, 2001, every  
2 employer shall pay to each of his or her employees who has reached the  
3 age of eighteen years wages at a rate of not less than six dollars and  
4 fifty cents per hour.

5       ~~((4))~~ (2)(a) Beginning on January 1, 2001, and each following  
6 January 1st as set forth under (b) of this subsection, every employer  
7 shall pay to each of his or her employees who has reached the age of  
8 eighteen years wages at a rate of not less than the amount established  
9 under (b) of this subsection.

10       (b) Subject to (c) of this subsection, on September 30, 2000, and  
11 on each following September 30th, the department of labor and  
12 industries shall calculate an adjusted minimum wage rate to maintain  
13 employee purchasing power by increasing the current year's minimum wage  
14 rate by the rate of inflation. The adjusted minimum wage rate shall be  
15 calculated to the nearest cent using the consumer price index for urban  
16 wage earners and clerical workers, CPI-W, or a successor index, for the  
17 twelve months prior to each September 1st as calculated by the United  
18 States department of labor. Each adjusted minimum wage rate calculated  
19 under this subsection ~~((4))~~ (2)(b) takes effect on the following  
20 January 1st.

21       ~~((5))~~ (c) Beginning September 30, 2003, and each September 30th  
22 thereafter, the current year's minimum wage rate shall be increased by  
23 the rate of inflation as provided under (b) of this subsection only for  
24 the months the state of Washington had full employment during the  
25 twelve months prior to each September 30th. Only the inflationary  
26 increases during the months of full employment shall be used for the  
27 purposes of the calculation under (b) of this subsection.

28       (3) The director shall by regulation establish the minimum wage for  
29 employees under the age of eighteen years.

30       NEW SECTION. Sec. 5. (1) Sections 2 and 4 of this act are  
31 necessary for the immediate preservation of the public peace, health,  
32 or safety, or support of the state government and its existing public  
33 institutions, and take effect immediately.

34       (2) Section 3 of this act takes effect July 1, 2004.

35       (3) Section 2 of this act expires July 1, 2004.

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