

SENATE BILL No. 1388

August 9, 2006, Introduced by Senators EMERSON, SWITALSKI, BRATER, BASHAM, CHERRY, SCHAUER, BARCIA, LELAND, OLSHOVE and THOMAS and referred to the Committee on Government Operations.

A bill to amend 1964 PA 154, entitled
"Minimum wage law of 1964,"
by amending sections 4a and 14 (MCL 408.384a and 408.394), section
4a as amended by 1997 PA 2 and section 14 as amended by 1998 PA 37;
and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4a. (1) Except as otherwise provided in this section, an
2 employee shall receive compensation at not less than 1-1/2 times
3 the regular rate at which the employee is employed for employment
4 in a workweek in excess of 40 hours.

5 (2) ~~The~~ **THIS** state or a political subdivision, agency, or
6 instrumentality of ~~the~~ **THIS** state does not violate subsection (1)
7 with respect to the employment of an employee in fire protection
8 activities or an employee in law enforcement activities, including

1 security personnel in correctional institutions, if any of the
2 following ~~applies~~ **APPLY**:

3 (a) In a work period of 28 consecutive days, the employee
4 receives for tours of duty, which in the aggregate exceed 216
5 hours, compensation for those hours in excess of 216 at a rate not
6 less than 1-1/2 times the regular rate at which the employee is
7 employed. The employee's regular rate shall be not less than the
8 statutory minimum hourly rate.

9 (b) For an employee to whom a work period of at least 7 but
10 less than 28 days applies, in the employee's work period the
11 employee receives for tours of duty, which in the aggregate exceed
12 a number of hours ~~which~~ **THAT** bears the same ratio to the number
13 of consecutive days in the employee's work period as 216 bears to
14 28 days, compensation for those excess hours at a rate not less
15 than 1-1/2 times the regular rate at which the employee is
16 employed. The employee's regular rate shall be not less than the
17 statutory minimum hourly rate.

18 (C) IF AN INDIVIDUAL WHO IS EMPLOYED BY THIS STATE, A POLITICAL
19 SUBDIVISION OF THIS STATE, OR AN INTERSTATE GOVERNMENTAL AGENCY IN
20 FIRE PROTECTION OR LAW ENFORCEMENT ACTIVITIES, INCLUDING ACTIVITIES OF
21 SECURITY PERSONNEL IN CORRECTIONAL INSTITUTIONS, AND WHO, SOLELY AT
22 THE INDIVIDUAL'S OPTION, AGREES TO BE EMPLOYED ON A SPECIAL DETAIL BY
23 A SEPARATE OR INDEPENDENT EMPLOYER IN FIRE PROTECTION, LAW
24 ENFORCEMENT, OR RELATED ACTIVITIES, THE HOURS THE INDIVIDUAL WAS
25 EMPLOYED BY THE SEPARATE OR INDEPENDENT EMPLOYER SHALL BE EXCLUDED BY
26 THE PUBLIC AGENCY EMPLOYING THE INDIVIDUAL IN THE CALCULATION OF THE
27 HOURS FOR WHICH THE EMPLOYEE IS ENTITLED TO OVERTIME COMPENSATION

1 UNDER THIS SECTION IF THE PUBIC AGENCY DOES ANY OF THE FOLLOWING:

2 (i) REQUIRES THAT ITS EMPLOYEES ENGAGED IN FIRE PROTECTION, LAW
3 ENFORCEMENT, OR SECURITY ACTIVITIES BE HIRED BY A SEPARATE AND
4 INDEPENDENT EMPLOYER TO PERFORM THE SPECIAL DETAIL.

5 (ii) FACILITATES THE EMPLOYMENT OF THE EMPLOYEES BY A SEPARATE AND
6 INDEPENDENT EMPLOYER.

7 (iii) OTHERWISE AFFECTS THE CONDITION OF EMPLOYMENT OF THOSE
8 EMPLOYEES BY A SEPARATE AND INDEPENDENT EMPLOYER.

9 (D) IF AN EMPLOYEE OF THIS STATE, A POLITICAL SUBDIVISION OF THIS
10 STATE, OR AN INTERSTATE GOVERNMENTAL AGENCY UNDERTAKES, ON AN
11 OCCASIONAL OR SPORADIC BASIS AND SOLELY AT THE EMPLOYEE'S OPTION,
12 PART-TIME EMPLOYMENT FOR THE PUBLIC AGENCY WHICH IS IN A DIFFERENT
13 CAPACITY FROM ANY CAPACITY IN WHICH THE EMPLOYEE IS REGULARLY EMPLOYED
14 WITH THE PUBLIC AGENCY, THE HOURS THE EMPLOYEE WAS EMPLOYED IN
15 PERFORMING THE DIFFERENT EMPLOYMENT SHALL BE EXCLUDED BY THE PUBLIC
16 AGENCY IN CALCULATING THE HOURS FOR WHICH THE EMPLOYEE IS ENTITLED TO
17 OVERTIME COMPENSATION UNDER THIS SECTION.

18 (E) ~~—(e)—~~ If an employee engaged in fire protection activities
19 would receive overtime payments under this act solely as a result
20 of that employee's trading of time with another employee pursuant
21 to a voluntary trading time arrangement, overtime, if any, shall be
22 paid to employees who participate in the trading of time as if the
23 time trade had not occurred. As used in this subdivision, "trading
24 time arrangement" means a practice under which employees of a fire
25 department voluntarily substitute for one another to allow an
26 employee to attend to personal matters, which practice is neither
27 for the convenience of the employer nor because of the employer's

1 operations.

2 (3) ~~The state or a political subdivision, agency, or~~
3 ~~instrumentality of the state engaged in the operation of~~ **AN**
4 **EMPLOYER OPERATING** a hospital or an establishment that is an
5 institution primarily engaged in the care of the sick, the aged, or
6 the mentally ill or defective who reside on the premises does not
7 violate subsection (1) if both of the following conditions are met:

8 (a) Pursuant to a written agreement or written employment
9 policy arrived at between the employer and the employee before
10 performance of the work **OR PURSUANT TO A COLLECTIVE BARGAINING**
11 **AGREEMENT**, a work period of 14 consecutive days is accepted instead
12 of the workweek of 7 consecutive days for purposes of overtime
13 computation.

14 (b) For the employee's employment in excess of 8 hours in a
15 workday and in excess of 80 hours in the 14-day period, the
16 employee receives compensation at a rate of 1-1/2 times the regular
17 rate, which rate shall be not less than the statutory minimum
18 hourly rate at which the employee is employed.

19 (4) Subsections (1), (2), and (3) do not apply to any of the
20 following:

21 (a) An employee employed in a bona fide executive,
22 administrative, or professional capacity, including an employee
23 employed in the capacity of academic administrative personnel or
24 teacher in an elementary or secondary school. However, an employee
25 of a retail or service establishment is not excluded from the
26 definition of employee employed in a bona fide executive or
27 administrative capacity because of the number of hours in the

1 employee's workweek which the employee devotes to activities not
2 directly or closely related to the performance of executive or
3 administrative activities, if less than 40% of the employee's hours
4 in the workweek are devoted to those activities.

5 (b) An individual who holds a public elective office.

6 (c) A political appointee of a person holding public elective
7 office or a political appointee of a public body, if the political
8 appointee described in this subdivision is not covered by a civil
9 service system.

10 (d) An employee employed by an establishment ~~which~~ **THAT** is
11 an amusement or recreational establishment, **ORGANIZED CAMP, OR**
12 **RELIGIOUS OR NONPROFIT EDUCATIONAL CONFERENCE CENTER** if the
13 establishment does not operate for more than 7 months in a calendar
14 year.

15 (e) An employee employed in agriculture, including farming in
16 all its branches, which among other things includes: the
17 cultivation and tillage of the soil; dairying; the production,
18 cultivation, growing, and harvesting of agricultural or
19 horticultural commodities; the raising of livestock, bees, fur-
20 bearing animals, or poultry; and a practice, including forestry or
21 lumbering operations, performed by a farmer or on a farm as an
22 incident to or in conjunction with farming operations, including
23 preparation for market, delivery to storage, or delivery to market
24 or to a carrier for transportation to market or the processing or
25 preserving of perishable farm products.

26 (f) An employee who is not subject to the minimum hourly wage
27 provisions of this act.

1 (G) AN EMPLOYEE EMPLOYED UNDER A COLLECTIVE BARGAINING
2 AGREEMENT THAT PROVIDES EITHER OF THE FOLLOWING:

3 (i) THAT AN EMPLOYEE SHALL NOT BE EMPLOYED MORE THAN 1,040
4 HOURS DURING ANY 26 CONSECUTIVE WEEKS.

5 (ii) THAT DURING A SPECIFIED CONSECUTIVE 52-WEEK PERIOD AN
6 EMPLOYEE SHALL NOT BE EMPLOYED MORE THAN 2,240 HOURS AND SHALL BE
7 GUARANTEED NOT LESS THAN EITHER 1,840 HOURS OR 46 WEEKS AT THE NORMAL
8 NUMBER OF HOURS WORKED PER WEEK, BUT NOT LESS THAN 30 HOURS PER WEEK,
9 WHICH GUARANTEE SHALL NOT EXCEED 2,080 HOURS. THE EMPLOYEE SHALL
10 RECEIVE COMPENSATION FOR ALL HOURS GUARANTEED OR WORKED AT RATES NOT
11 LESS THAN THOSE APPLICABLE UNDER THE AGREEMENT COVERING THE WORK
12 PERFORMED. FOR ALL HOURS IN EXCESS OF THE GUARANTY WHICH ARE ALSO IN
13 EXCESS OF THE MAXIMUM WORKWEEK APPLICABLE TO THE EMPLOYEE OR EXCEED
14 2,080, THE EMPLOYEE SHALL RECEIVE 1-1/2 TIMES THE REGULAR RATE AT
15 WHICH HE OR SHE IS EMPLOYED.

16 (H) AN EMPLOYEE AT A RETAIL OR SERVICE ESTABLISHMENT, IF THE
17 REGULAR RATE OF PAY OF THE EMPLOYEE EXCEEDS 1-1/2 TIMES THE MINIMUM
18 HOURLY RATE APPLICABLE UNDER SECTION 4 AND MORE THAN 1/2 OF THE
19 EMPLOYEE'S COMPENSATION FOR A REPRESENTATIVE PERIOD OF NOT LESS THAN 1
20 MONTH REPRESENTS COMMISSIONS ON GOODS OR SERVICES.

21 (I) AN EMPLOYEE OF AN EMPLOYER ENGAGED IN THE BUSINESS OF
22 OPERATING AN ELECTRIC RAILWAY, LOCAL TROLLEY, OR MOTORBUS CARRIER AS
23 TO THOSE HOURS OF EMPLOYMENT DURING WHICH THE EMPLOYEE IS EMPLOYED IN
24 CHARTER ACTIVITIES. THE EXCLUSION IN THIS SUBDIVISION APPLIES ONLY IF
25 THE EMPLOYEE'S EMPLOYMENT IN CHARTER ACTIVITY IS PURSUANT TO AN
26 AGREEMENT WITH THIS EMPLOYER ARRIVED AT BEFORE ENGAGING IN THE CHARTER
27 EMPLOYMENT AND THE CHARTER ACTIVITY IS NOT PART OF THE EMPLOYEE'S

1 REGULAR EMPLOYMENT.

2 (J) AN EMPLOYEE OF A PUBLIC AGENCY PERFORMING COURT REPORTING
3 TRANSCRIPT PREPARATION AS TO HOURS WORKED OUTSIDE OF THE HOURS
4 REGULARLY REQUIRED FOR THE EMPLOYEE'S ATTENDANCE. THE EXCLUSION IN
5 THIS SUBDIVISION APPLIES ONLY IF THE EMPLOYEE IS PAID AT A PER-PAGE
6 RATE THAT IS EITHER THE MAXIMUM RATE ESTABLISHED BY STATE LAW, LOCAL
7 ORDINANCE, OR JUDICIAL OFFICER OR IF THE RATE IS FREELY NEGOTIATED
8 BETWEEN THE EMPLOYEE AND THE PARTY REQUESTING THE TRANSCRIPT, OTHER
9 THAN THE PRESIDING JUDGE.

10 (K) AN OUTSIDE SALESPERSON.

11 (L) AN EMPLOYEE EMPLOYED IN CATCHING, TAKING, PROPAGATING,
12 HARVESTING, CULTIVATING, OR FARMING ANY KIND OF FISH, SHELLFISH, OR
13 OTHER AQUATIC ANIMAL OR VEGETABLE AND INCLUDING ALL OF THE FOLLOWING
14 PERFORMED BY THAT EMPLOYEE:

15 (i) THE FIRST PROCESSING, CANNING, OR PACKING INCIDENT TO THOSE
16 PRODUCTS WHILE AT SEA.

17 (ii) LOADING OR UNLOADING.

18 (iii) GOING TO AND RETURNING FROM WORK.

19 (M) AN EMPLOYEE DURING THE PERIOD THAT THE EMPLOYEE RECEIVES A
20 TRAINING WAGE UNDER AN EXCEPTION TO THE GENERAL MINIMUM HOURLY WAGE
21 ESTABLISHED IN SECTION 4.

22 (N) AN EMPLOYEE EMPLOYED IN CONNECTION WITH THE PUBLICATION OF A
23 WEEKLY, SEMIWEEKLY, OR DAILY NEWSPAPER WITH A CIRCULATION OF LESS THAN
24 4,000, THE MAJOR PART OF WHICH CIRCULATION IS WITHIN THE COUNTY OF
25 PUBLICATION OR COUNTIES CONTIGUOUS TO IT.

26 (O) A SWITCHBOARD OPERATOR EMPLOYED BY AN INDEPENDENTLY OWNED
27 PUBLIC TELEPHONE COMPANY WITH FEWER THAN 750 STATIONS.

1 (P) AN EMPLOYEE EMPLOYED ON A CASUAL BASIS IN DOMESTIC SERVICE
2 EMPLOYMENT TO PROVIDE COMPANIONSHIP SERVICES FOR AGED OR INFIRM
3 INDIVIDUALS WHO ARE UNABLE TO CARE FOR THEMSELVES OR AN EMPLOYEE UNDER
4 THE AGE OF 18, IF HE OR SHE IS EMPLOYED IN BABYSITTING OR SIMILAR
5 DOMESTIC SERVICES AT A PRIVATE HOME ON AN IRREGULAR OR INTERMITTENT
6 BASIS AND THAT WORK DOES NOT REGULARLY EXCEED 20 HOURS PER WEEK IN THE
7 AGGREGATE.

8 (Q) A CRIMINAL INVESTIGATOR WHO RECEIVES AVAILABILITY PAY UNDER 5
9 USC 5545A.

10 (R) AN EMPLOYEE WHO IS A COMPUTER SYSTEMS ANALYST, COMPUTER
11 PROGRAMMER, SOFTWARE ENGINEER, OR OTHER SIMILARLY SKILLED WORKER WHO
12 RECEIVES COMPENSATION AT A RATE OF NOT LESS THAN \$27.63 PER HOUR, AND
13 WHOSE PRIMARY DUTY IS 1 OF THE FOLLOWING:

14 (i) THE APPLICATION OF SYSTEMS ANALYSIS TECHNIQUES AND
15 PROCEDURES, INCLUDING CONSULTING WITH USERS, TO DETERMINE HARDWARE,
16 SOFTWARE, OR SYSTEM FUNCTIONAL SPECIFICATIONS.

17 (ii) THE DESIGN, DEVELOPMENT, DOCUMENTATION, ANALYSIS, CREATION,
18 TESTING, OR MODIFICATION OF COMPUTER SYSTEMS OR PROGRAMS, INCLUDING
19 PROTOTYPES, BASED ON AND RELATED TO USER OR SYSTEM DESIGN
20 SPECIFICATIONS.

21 (iii) THE DESIGN, DOCUMENTATION, TESTING, CREATION, OR MODIFICATION
22 OF COMPUTER PROGRAMS RELATED TO MACHINE OPERATING SYSTEMS.

23 (iv) A COMBINATION OF DUTIES DESCRIBED IN SUBPARAGRAPHS (i) TO
24 (iii) .

25 (S) AN EMPLOYEE FOR WHOM THE UNITED STATES SECRETARY OF
26 TRANSPORTATION HAS POWER TO ESTABLISH QUALIFICATION AND MAXIMUM HOURS
27 OF SERVICE.

1 (T) AN EMPLOYEE OF AN EMPLOYER ENGAGED IN THE OPERATION OF A RAIL
2 CARRIER SUBJECT TO 49 USC 10101 TO 11908.

3 (U) AN EMPLOYEE OF A CARRIER BY AIR SUBJECT TO THE PROVISIONS OF
4 45 USC 181 TO 188.

5 (V) AN INDIVIDUAL EMPLOYED AS AN OUTSIDE BUYER OF POULTRY, EGGS,
6 CREAM, OR MILK IN ITS RAW OR NATURAL STATE.

7 (W) AN EMPLOYEE EMPLOYED AS A SEAMAN.

8 (X) AN EMPLOYEE EMPLOYED AS AN ANNOUNCER, NEWS EDITOR, OR CHIEF
9 ENGINEER BY A RADIO OR TELEVISION STATION, IF THE MAJOR STUDIO OF THE
10 STATION IS LOCATED IN EITHER OF THE FOLLOWING:

11 (i) A CITY OR TOWN OF 100,000 OR FEWER PEOPLE, EXCEPT IF THE CITY
12 OR TOWN IS PART OF A STANDARD METROPOLITAN STATISTICAL AREA THAT HAS A
13 TOTAL POPULATION GREATER THAN 100,000.

14 (ii) A CITY OR TOWN OF 25,000 OR FEWER PEOPLE THAT IS AT LEAST 40
15 MILES FROM THE PRINCIPAL CITY IN A STANDARD METROPOLITAN STATISTICAL
16 AREA.

17 (Y) A SALESMAN, PARTSMAN, OR MECHANIC SELLING OR SERVICING
18 AUTOMOBILES, TRUCKS, OR FARM IMPLEMENTS, IF EMPLOYED BY A
19 NONMANUFACTURING ESTABLISHMENT PRIMARILY ENGAGED IN THE BUSINESS OF
20 SELLING THOSE VEHICLES OR IMPLEMENTS TO ULTIMATE PURCHASERS.

21 (Z) A SALESMAN PRIMARILY ENGAGED IN SELLING TRAILERS, BOATS, OR
22 AIRCRAFT, IF EMPLOYED BY A NONMANUFACTURING ESTABLISHMENT PRIMARILY
23 ENGAGED IN THE BUSINESS OF SELLING THOSE ITEMS TO ULTIMATE PURCHASERS.

24 (AA) AN EMPLOYEE EMPLOYED AS A DRIVER OR DRIVER'S HELPER MAKING
25 LOCAL DELIVERIES AND COMPENSATED FOR THAT EMPLOYMENT ON THE BASIS OF
26 TRIP RATES OR ANOTHER DELIVERY PAYMENT PLAN THAT THE DEPARTMENT OF
27 LABOR AND ECONOMIC GROWTH DETERMINES HAS THE GENERAL PURPOSE AND

1 EFFECT OF REDUCING HOURS WORKED TO AT OR BELOW THE MAXIMUM WORKWEEK
2 APPLICABLE UNDER THIS ACT.

3 (BB) AN EMPLOYEE EMPLOYED IN CONNECTION WITH THE OPERATION OR
4 MAINTENANCE OF DITCHES, CANALS, RESERVOIRS, OR WATERWAYS THAT ARE
5 EITHER NOT OPERATED FOR PROFIT OR OPERATED ON A SHARECROP BASIS AND
6 THAT ARE USED EXCLUSIVELY FOR SUPPLYING OR STORING WATER, IF AT LEAST
7 90% OF THE WATER WAS DELIVERED FOR AGRICULTURAL PURPOSES DURING THE
8 PRECEDING CALENDAR YEAR.

9 (CC) AN EMPLOYEE WHO IS PRIMARILY EMPLOYED IN AGRICULTURE BY A
10 FARMER, NOTWITHSTANDING OTHER EMPLOYMENT THE EMPLOYEE HAS IN
11 CONNECTION WITH LIVESTOCK AUCTIONS OPERATIONS IN WHICH THE FARMER
12 IS ENGAGED AS AN ADJUNCT TO RAISING LIVESTOCK, EITHER ON THE
13 FARMER'S OWN ACCOUNT OR IN CONJUNCTION WITH OTHER FARMERS, IF THE
14 EMPLOYEE IS PAID AN HOURLY WAGE RATE NOT LESS THAN PRESCRIBED IN
15 SECTION 4.

16 (DD) AN EMPLOYEE WORKING IN THE AREA OF PRODUCTION FOR AN
17 ESTABLISHMENT THAT IS A COUNTRY ELEVATOR, INCLUDING A COUNTRY
18 ELEVATOR THAT SELLS PRODUCTS AND SERVICES USED IN FARM OPERATIONS,
19 IF NO MORE THAN 5 EMPLOYEES OF THAT ESTABLISHMENT ARE EMPLOYED IN
20 THOSE OPERATIONS.

21 (EE) AN EMPLOYEE ENGAGED IN TRANSPORTING OR PREPARING FRUITS
22 OR VEGETABLES FOR TRANSPORT FROM THE FARM TO A PLACE OF FIRST
23 PROCESSING OR FIRST MARKETING.

24 (FF) A DRIVER EMPLOYED BY AN EMPLOYER ENGAGED IN THE BUSINESS
25 OF OPERATING TAXICABS.

26 (GG) AN EMPLOYEE WHO IS EMPLOYED TO PROVIDE DOMESTIC SERVICE
27 OTHER THAN CHILD CARE IN A HOUSEHOLD AND RESIDES IN THE HOUSEHOLD

1 OF THE SERVICE RECIPIENT.

2 (HH) AN EMPLOYEE WHO, ALONG WITH HIS OR HER SPOUSE, IS
3 EMPLOYED BY A NONPROFIT EDUCATIONAL INSTITUTION TO SERVE AS A
4 PARENT TO ORPHANS OR TO CHILDREN WHOSE PARENT IS DECEASED OR TO
5 CHILDREN WHO ARE ENROLLED IN AND RESIDE IN RESIDENTIAL FACILITIES
6 OF THE INSTITUTION. THE EXCEPTION IN THIS SUBDIVISION APPLIES ONLY
7 IF THE EMPLOYEE AND SPOUSE RESIDE IN THE INSTITUTIONAL FACILITIES,
8 RECEIVE BOARD AND LODGING WITHOUT COST, AND ARE COMPENSATED ON A
9 CASH BASIS AT AN ANNUAL RATE OF LESS THAN \$10,000.00.

10 (II) AN EMPLOYEE EMPLOYED BY A MOTION PICTURE THEATER.

11 (JJ) IF THE NUMBER OF EMPLOYEES EMPLOYED BY THE EMPLOYER IN
12 FORESTRY OR LUMBERING OPERATIONS IS 8 OR FEWER, AN EMPLOYEE
13 EMPLOYED IN PLANTING OR TENDING TREES; CRUISING, SURVEYING, OR
14 FELLING TIMBER; OR PREPARING OR TRANSPORTING LOGS OR OTHER FORESTRY
15 PRODUCTS TO THE MILL, PROCESSING PLANT, RAILROAD, OR OTHER
16 TRANSPORTATION TERMINAL.

17 (KK) AN EMPLOYEE ENGAGED IN NEWSPAPER DELIVERY TO THE CONSUMER
18 OR A HOME WORKER ENGAGED IN MAKING WREATHS COMPOSED PRIMARILY OF
19 NATURAL HOLLY, PINE, CEDAR, OR OTHER EVERGREENS AND INCLUDING
20 HARVESTING THE MATERIALS FOR MAKING THE WREATHS.

21 (LL) AN EMPLOYEE AS TO THOSE HOURS IN A WORKWEEK THAT SERVICES
22 ARE PERFORMED OUTSIDE OF THE UNITED STATES.

23 (MM) AN EMPLOYEE ENGAGED IN PROCESSING SUGAR BEETS, SUGAR BEET
24 MOLASSES, OR SUGAR CANE INTO SUGAR OR SYRUP DURING A PERIOD OF NOT
25 MORE THAN 14 WORKWEEKS IN ANY 52 CONSECUTIVE WEEKS, IF THE EMPLOYEE
26 RECEIVES COMPENSATION AT A RATE NOT LESS THAN 1-1/2 TIMES THE
27 REGULAR RATE AT WHICH HE OR SHE IS EMPLOYED FOR HOURS EXCEEDING 10

1 IN ANY WORKDAY AND FOR HOURS EXCEEDING 48 IN ANY WORKWEEK.

2 (5) THE REQUIREMENT IN SUBSECTION (1) DOES NOT APPLY TO THE
3 FIRST 10 HOURS IN EXCESS OF 40 HOURS PER WEEK FOR AN EMPLOYEE IF
4 ALL OF THE FOLLOWING APPLY:

5 (A) THE EMPLOYER IS PROVIDING REMEDIAL EDUCATION TO THE
6 EMPLOYEE THAT DOES NOT INCLUDE JOB SPECIFIC TRAINING DURING THOSE
7 HOURS.

8 (B) THE EMPLOYEE LACKS A HIGH SCHOOL DIPLOMA OR EDUCATIONAL
9 ATTAINMENT AT THE EIGHTH GRADE LEVEL.

10 (6) ~~—(5)—~~ The director of the department of ~~consumer and~~
11 ~~industry services~~ **LABOR AND ECONOMIC GROWTH** shall promulgate rules
12 ~~pursuant to~~ **UNDER** the administrative procedures act of 1969, 1969
13 PA 306, MCL 24.201 to 24.328, to define the terms used in
14 ~~subsection (4)~~ **SUBSECTIONS (4) AND (5).**

15 (7) ~~—(6)—~~ For purposes of administration and enforcement, an
16 amount owing to an employee that is withheld in violation of this
17 section is unpaid minimum wages under this act.

18 (8) ~~—(7)—~~ The legislature shall annually appropriate from the
19 general fund to each political subdivision affected by subsection
20 (2) an amount equal to the difference in direct labor costs before
21 and after January 4, 1979 ~~which~~ **THAT** arises from any change in
22 existing law resulting from the enactment of subsection (2) and
23 incurred by each such political subdivision.

24 (9) ~~—(8)—~~ In lieu of monetary overtime compensation, an
25 employee subject to this act may receive compensatory time off at a
26 rate of not less than 1-1/2 hours for each hour of employment for
27 which overtime compensation is required under this act, subject to

1 all of the following:

2 (a) The employer allows employees a total of at least 10 days
3 of leave per year without loss of pay and provides the compensatory
4 time to the employee only pursuant to either of the following:

5 (i) Applicable provisions of a collective bargaining agreement,
6 memorandum of understanding, or any other written agreement between
7 the employer and representative of the employee.

8 (ii) If employees are not represented by a collective
9 bargaining agent or other representative designated by the
10 employee, a plan adopted by the employer and provided in writing to
11 its employees that provides employees with a voluntary option to
12 receive compensatory time off for overtime work when there is an
13 express, voluntary written request to the employer by an individual
14 employee for compensatory time off in lieu of overtime pay before
15 the performance of any overtime assignment.

16 (b) The employee has not earned compensatory time in excess of
17 the applicable limit prescribed by subdivision (d).

18 (c) The employee is not required as a condition of employment
19 to accept or request compensatory time. An employer shall not
20 directly or indirectly intimidate, threaten, or coerce or attempt
21 to intimidate, threaten, or coerce an employee for the purpose of
22 interfering with the employee's rights under this section to
23 request or not request compensatory time off in lieu of payment of
24 overtime compensation for overtime hours, or requiring an employee
25 to use compensatory time. In assigning overtime hours, an employer
26 shall not discriminate among employees based upon an employee's
27 choice to request or not request compensatory time off in lieu of

1 overtime compensation. An employer who violates this subsection is
2 subject to a civil fine of not more than \$1,000.00.

3 (d) An employee may not accrue more than a total of 240 hours
4 of compensatory time. An employer shall do both of the following:

5 (i) Maintain in an employee's pay record a statement of
6 compensatory time earned by that employee in the pay period that
7 the pay record identifies.

8 (ii) Provide an employee with a record of compensatory time
9 earned by or paid to the employee in a statement of earnings for
10 the period in which the compensatory time is earned or paid.

11 (e) Upon the request of an employee who has earned
12 compensatory time, the employer shall, within 30 days following the
13 request, provide monetary compensation for that compensatory time
14 at a rate not less than the regular rate earned by the employee at
15 the time the employee performed the overtime work.

16 (f) An employee who has earned compensatory time authorized
17 under this subsection shall, upon the voluntary or involuntary
18 termination of employment or upon expiration of this subsection, be
19 paid unused compensatory time at a rate of compensation not less
20 than the regular rate earned by the employee at the time the
21 employee performed the overtime work. A terminated employee's
22 receipt of or eligibility to receive monetary compensation for
23 earned compensatory time shall not be used by either of the
24 following:

25 (i) The employer to oppose an employee's application for
26 unemployment compensation under the Michigan employment security
27 act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.

1 (ii) ~~The~~ **THIS** state to deny unemployment compensation or
 2 diminish an employee's entitlement to unemployment compensation
 3 benefits under the Michigan employment security act, 1936 (Ex Sess)
 4 PA 1, MCL 421.1 to 421.75.

5 (g) An employee shall be permitted to use any compensatory
 6 time accrued under this subsection for any reason unless use of the
 7 compensatory time for the period requested will unduly disrupt the
 8 operations of the employer.

9 (h) Unless prohibited by a collective bargaining agreement, an
 10 employer may terminate a compensatory time plan upon not less than
 11 60 days' notice to employees.

12 (i) As used in this subsection:

13 (i) "Overtime compensation" means the compensation required
 14 under **THIS** section. ~~4a.~~

15 (ii) "Compensatory time" and "compensatory time off" mean hours
 16 during which an employee is not working and for which the employee
 17 is compensated in accordance with this subsection in lieu of
 18 monetary overtime compensation.

19 (iii) "Overtime assignment" means an assignment of hours for
 20 which overtime compensation is required under this act.

21 **(10) THE AMENDATORY ACT THAT ADDED THIS SUBSECTION DOES NOT**
 22 **DEPRIVE AN EMPLOYEE OR ANY CLASS OF EMPLOYEES OF ANY RIGHT TO**
 23 **RECEIVE OVERTIME COMPENSATION OR TO BE PAID THE MINIMUM HOURLY WAGE**
 24 **THAT EXISTED BEFORE THE EFFECTIVE DATE OF THAT AMENDATORY ACT.**

25 Sec. 14. (1) ~~This~~ **EXCEPT AS PROVIDED IN SUBSECTION (2), THIS**
 26 act does not apply to an employer who is subject to the minimum
 27 wage provisions of the fair labor standards act of 1938, ~~chapter~~

~~676, 52 Stat. 1060, 29 U.S.C. 29 USC 201 to 216 and 217 to 219,~~
 unless application of those federal minimum wage provisions would
 result in a lower minimum **HOURLY** wage than provided in this act.

~~Additionally, this~~

(2) BEGINNING OCTOBER 1, 2006, THIS ACT'S REQUIREMENTS
 CONCERNING COMPENSATION FOR EMPLOYMENT IN A WORKWEEK IN EXCESS OF
 40 HOURS APPLY TO AN EMPLOYER WHO IS SUBJECT TO THE MINIMUM WAGE
 PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938, 29 USC 201 TO
 219.

(3) **THIS** act does not apply to persons employed in summer
 camps for not more than 4 months ~~—~~ **OR** to employees with
 disabilities who are covered by a blanket deviation certificate or
 other special certificate issued under section ~~14(e)~~ **14** of the
 fair labor standards act of 1938, ~~chapter 676, 52 Stat. 1068, 29~~
~~U.S.C. 29 USC 214. —or~~

(4) **THIS ACT DOES NOT APPLY** to agricultural fruit growers,
 pickle growers and tomato growers, or other agricultural employers
 who traditionally contract for harvesting on a piecework basis, as
 to those employees ~~of such employers~~ used for ~~such~~ harvesting
 until the board ~~shall have~~ **HAS** acquired sufficient data to
 determine an adequate basis ~~for the establishment of~~ **TO ESTABLISH**
 a scale of piecework and ~~shall determine such~~ **DETERMINES** a scale
 equivalent to the prevailing minimum wage for ~~such~~ **THAT**
 employment. ~~—, which determination shall occur no later than May 1,~~
~~1967. Such~~ **THE** piece rate scale shall be equivalent to the minimum
 hourly wage in that, ~~when~~ **IF** the payment by unit of production is
 applied to a worker of average ability and diligence in harvesting

1 a particular commodity, he or she ~~shall receive~~ **RECEIVES** an
2 amount not less than the hourly minimum wage.

3 Enacting section 1. Section 7a of the minimum wage law of
4 1964, 1964 PA 154, MCL 408.387a, is repealed.

5 Enacting section 2. This amendatory act takes effect October
6 1, 2006.