No. 64

STATE OF MICHIGAN

Journal of the Senate

99th Legislature

REGULAR SESSION OF 2018

Senate Chamber, Lansing, Wednesday, September 5, 2018.

10:00 a.m.

The Senate was called to order by the President, Lieutenant Governor Brian N. Calley.

The roll was called by the Secretary of the Senate, who announced that a quorum was present.

Ananich—present
Bieda—present
Booher—present
Brandenburg—present
Casperson—present
Colbeck—present
Conyers—present
Emmons—present
Green—present
Gregory—present
Hansen—present
Hertel—present
Hildenbrand—present
Hood—present
Hopgood—present
Horn—present
Hune—present
Jones—present
Knezek—present
Knollenberg—present
Kowall—present
MacGregor—present
Marleau—present
Meekhof—present
Nofs—present
O'Brien—present
Pavlov—present
Proos—present
Robertson—present
Rocca—present
Schmidt—present
Schuitmaker—present
Shirkey—present
Stamas—present
Warren—present
Young—present
Zorn—present

INITIATION OF LEGISLATION

An initiation of legislation to provide workers with the right to earn sick time for personal or family health needs, as well as purposes related to domestic violence and sexual assault and school meetings needed as the result of a child's disability, health issues or issues due to domestic violence and sexual assault; to specify the conditions for accruing and

using earned sick time; to prohibit retaliation against an employee for requesting, exercising, or enforcing rights granted in this act; to prescribe powers and duties of certain state departments, agencies, and officers; to provide for promulgation of rules; and to provide remedies and sanctions.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "earned sick time act."

Sec. 2. As used in this act:

(a) "Department" means the department of licensing and regulatory affairs.

(b) "Director" means the director of the department of licensing and regulatory affairs or his or her designee.

(c) "Domestic partner" means an adult in a committed relationship with another adult, including both same-sex and different-sex relationships. "Committed relationship" means one in which the employee and another individual share responsibility for a significant measure of each other's common welfare, such as any relationship between individuals of the same or different sex that is granted legal recognition by a state, political subdivision, or the District of Columbia as a marriage or analogous relationship, including, but not limited to, a civil union.

(d) "Domestic violence" has the same meaning as provided in section 1 of 1978 PA 389, MCL 400.1501.

(e) "Earned sick time" means time off from work that is provided by an employer to an employee, whether paid or unpaid, that can be used for the purposes described in subsection (1) of section 4 of this act.

(f) "Employee" means an individual engaged in service to an employer in the business of the employer, except that employee does not include an individual employed by the United States government.

(g) "Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs 1 or more individuals, except that employer does not include the United States government.

(h) "Family member" includes all of the following:

(*i*) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands in loco parentis.

(*ii*) A biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee was a minor child.

(*iii*) A person to whom the employee is legally married under the laws of any state or a domestic partner.

(*iv*) A grandparent.

(*v*) A grandchild.

(*vi*) A biological, foster, or adopted sibling.

(*vii*) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(i) "Health care professional" means any of the following:

(*i*) Any person licensed under federal law or the law of this state to provide health care services, including, but not limited to, nurses, doctors, and emergency room personnel.

(*ii*) A certified midwife.

(j) "Retaliatory personnel action" means any of the following:

(*i*) Denial of any right guaranteed under this act.

(*ii*) A threat, discharge, suspension, demotion, reduction of hours, or other adverse action against an employee or former employee for exercise of a right guaranteed under this act.

(*iii*) Sanctions against an employee who is a recipient of public benefits for exercise of a right guaranteed under this act.

(*iv*) Interference with, or punishment for, an individual's participation in any manner in an investigation, proceeding, or hearing under this act.

(k) "Sexual assault" means any act that constitutes a violation of section 520b, 520c, 520d, 520e, 520f, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, 750.520f, and 750.520g.

(*l*) "Small business" means an employer for which fewer than 10 individuals work for compensation during a given week. In determining the number of individuals performing work for compensation during a given week, all individuals performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including individuals made available to work through the services of a temporary services or staffing agency or similar entity. An employer is not a small business if it maintained 10 or more employees on its payroll during any 20 or more calendar workweeks in either the current or the preceding calendar year.

Sec. 3. (1) Each employer shall provide earned sick time to each of the employer's employees in this state.

(a) Employees of a small business shall accrue a minimum of one hour of earned sick time for every 30 hours worked but shall not be entitled to use more than 40 hours of paid earned sick time in a year unless the employer selects a higher limit. If an employee of a small business accrues more than 40 hours of earned

sick time in a calendar year, the employee shall be entitled to use an additional 32 hours of unpaid earned sick time in that year, unless the employer selects a higher limit. Employees of a small business must be entitled to use paid earned sick time before using unpaid earned sick time.

(b) All other employees shall accrue a minimum of one hour of paid earned sick time for every 30 hours worked but shall not be entitled to use more than 72 hours of paid earned sick time per year, unless the employer selects a higher limit.

(c) Earned sick time shall carry over from year to year, but a small business is not required to permit an employee to use more than 40 hours of paid earned sick time and 32 hours of unpaid earned sick time in a single year, and other employers are not required to permit an employee to use more than 72 hours of paid earned sick time in a single year.

(2) Earned sick time as provided in this section shall begin to accrue on the effective date of this law, or upon commencement of the employee's employment, whichever is later. An employee may use accrued earned sick time as it is accrued, except that an employer may require an employee hired after April 1, 2019, to wait until the ninetieth calendar day after commencing employment before using accrued earned sick time.

(3) For purposes of subsection (1), "year" shall mean a regular and consecutive twelve-month period, as determined by an employer.

(4) For purposes of earned sick time accrual under this act, an employee who is exempt from overtime requirements under section 13(a)(1) of the Fair Labor Standards Act, 29 USC 213(a)(1), is assumed to work 40 hours in each workweek unless the employee's normal work week is less than 40 hours, in which case earned sick time accrues based upon that normal workweek.

(5) An employer other than an small business is in compliance with this section if the employer provides any paid leave in at least the same amounts as that provided under this act that may be used for the same purposes and under the same conditions provided in this act and that is accrued at a rate equal to or greater than the rate described in subsections (1) and (2). An employer that is a small business is in compliance with this section if the employer provides paid leave in at least the same amounts as that provided under this act that may be used for the same purposes and under the same conditions provided in this act and that is accrued at a rate equal to or greater than the rate described in subsections (1) and (2) provided further that that employees of the small business are entitled to use paid earned sick time before using unpaid earned sick time. For purposes of this subsection, "paid leave" includes but is not limited to paid vacation days, personal days, and paid time off.

(6) An employer shall pay each employee using paid earned sick time at a pay rate equal to the greater of either the normal hourly wage for that employee or the minimum wage established under the workforce opportunity wage act, 2014 PA 138, MCL 408.411 to 408.424, but not less than the minimum wage rate established in section 4 of the workforce opportunity wage act, 2014, PA 138, MCL 408.414. For any employee whose hourly wage varies depending on the work performed, the "normal hourly wage" means the average hourly wage of the employee in the pay period immediately prior to the pay period in which the employee used paid earned sick time.

(7) An employer shall not require an employee to search for or secure a replacement worker as a condition for using earned sick time.

Sec. 4. (1) An employer shall permit an employee to use the earned sick time accrued under section 3 for any of the following:

(a) The employee's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the employee's mental or physical illness, injury, or health condition; or preventative medical care for the employee.

(b) For the employee's family member's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the employee's family member's mental or physical illness, injury, or health condition; or preventative medical care for a family member of the employee.

(c) If the employee of the employee's family member is a victim of domestic violence or sexual assault, for medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate due to domestic violence or sexual assault; to obtain legal services; or to participate in any civil or criminal proceedings related to or resulting from the domestic violence or sexual assault.

(d) For meetings at a child's school or place of care related to the child's health or disability, or the effects of domestic violence or sexual assault on the child; or

(e) For closure of the employee's place of business by order of a public official due to a public health emergency; for an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or employee's family member's presence in the community would jeopardize the health of others because of the employee's or family member's exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease.

(2) If the employee's need to use earned sick time is foreseeable, an employer may require advance notice, not to exceed 7 days prior to the date the earned sick time is to begin, of the intention to use the earned sick time. If the employee's need for the earned sick time is not foreseeable, an employer may require the employee to give notice of the intention as soon as practicable.

(3) Earned sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences of use of other time.

(4) For earned sick time of more than 3 consecutive days, an employer may require reasonable documentation that the earned sick time has been used for a purpose described in subsection (1). Upon the employer's request, the employee must provide the documentation to the employer in a timely manner. The employer shall not delay the commencement of earned sick time on the basis that the employer has not yet received documentation. Documentation signed by a health care professional indicating that earned sick time is necessary is reasonable documentation for purposes of this subsection. In cases of domestic violence or sexual assault, one of the following types of documentation selected by the employee shall be considered reasonable documentation: (a) a police report indicating that the employee or the employee's family member was a victim of domestic violence or sexual assault; (b) a signed statement from a victim and witness advocate affirming that the employee or employee's family member is receiving services from a victim services organization; or (c) a court document indicating that the employee or employee's family member is involved in legal action related to domestic violence or sexual assault. An employer shall not require that the documentation explain the nature of the illness or the details of the violence. If an employer chooses to require documentation for earned sick time, the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation. If the employee does have health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer.

(5) An employer shall not require disclosure of details relating to domestic violence or sexual assault or the details of an employee's or an employee's family member's medical condition as a condition of providing earned sick time under this act. If an employer possesses health information or information pertaining to domestic violence or sexual assault about an employee or employee's family member, the employer shall treat that information as confidential and shall not disclose that information except to the affected employee or with the permission of the affected employee.

(6) This act does not require an employer to provide earned sick time for any purposes other than as described in this section.

Sec. 5. (1) If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the employee shall retain all earned sick time that was accrued at the prior division, entity, or location and may use all accrued earned sick time as provided in section 4. If an employee separates from employment and is rehired by the same employer within 6 months of the separation, the employer shall reinstate previously accrued, unused earned sick time and shall permit the reinstated employee to use that earned sick time and accrue additional earned sick time upon reinstatement.

(2) If a different employer succeeds or takes the place of an existing employer, the successor employer assumes the responsibility for the earned sick time rights that employees who remain employed by the successor employer accrued under the original employer. Those employees are entitled to use earned sick time previously accrued on the terms provided in this act.

(3) This act does not require an employer to provide financial or other reimbursement to an employee for accrued earned sick time that was not used upon the employee's termination, resignation, retirement, or other separation from employment.

Sec. 6. (1) An employer or any other person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this act.

(2) An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised a right protected under this act. Rights protected by this act include, but are not limited to, the right to use earned sick time pursuant to this act, the right to file a complaint or inform any person about any employer's alleged violation of this act, the right to cooperate with the department in its investigations of alleged violations of this act, and the right to inform any person of his or her rights under this act.

(3) An employer's absence control policy shall not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action.

(4) The protections in this section apply to any person who mistakenly but in good faith alleges a violation of this section.

(5) There is a rebuttable presumption of a violation of this section if an employer takes adverse personnel action against a person within 90 days after that person does any of the following:

(a) Files a complaint with the department or a court alleging a violation of this act.

(b) Informs any person about an employer's alleged violation of this act.

(c) Cooperates with the department or another person in the investigation or prosecution of any alleged violation of this act.

(d) Opposes any policy, practice, or act that is prohibited under this act.

(e) Informs any person of his or her rights under this act.

Sec. 7. (1) If an employer violates this act, the employee affected by the violation, at any time within 3 years after the violation or the date when the employee knew of the violation, whichever is later, may do any of the following:

(a) Bring a civil action for appropriate relief, including, but not limited to, payment for used earned sick time; rehiring or reinstatement to the employee's previous job; payment of back wages; reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been subjected to retaliatory personnel action or discrimination; and an equal additional amount as liquidated damages together with costs and reasonable attorney fees as the court allows.

(b) File a claim with the department, which shall investigate the claim. Filing a claim with the department is neither a prerequisite nor a bar to bringing a civil action.

(2) (a) The director shall enforce the provisions of this act. In effectuating such enforcement, the director shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this act and investigate complaints received by the department in a timely manner.

(b) Any person alleging a violation of this chapter shall have the right to file a complaint with the department. The department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation, provided, however, that with the authorization of such person, the department may disclose his or her name and identifying information as necessary to enforce this chapter or for other appropriate purposes.

(c) Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The department shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The department shall prescribe the form and wording of such notices of violation including any method of appealing the decision of the department.

(d) The department shall have the power to impose penalties and to grant an employee or former employee all appropriate relief including but not limited to payment of all earned sick time improperly withheld, any and all damages incurred by the complaint as the result of violation of this act, back pay and reinstatement in the case of job loss.

(3) If the director determines that there is reasonable cause to believe that an employer violated this act and the department is subsequently unable to obtain voluntary compliance by the employer within a reasonable time, the department shall bring a civil action as provided in subsection (1)(a) on behalf of the employee. The department may investigate and file a civil action under subsection (1)(a) on behalf of all employees that employer who are similarly situated at the same work site and who have not brought a civil action under subsection (1)(a). A contract or agreement between the employer and the employee or any acceptance by the employee of a paid or unpaid leave policy that provides fewer rights or benefits than provided by this act is void and unenforceable.

(4) In addition to liability for civil remedies described in this section, an employer who fails to provide earned sick time in violation of this act or takes retaliatory personnel action against an employee or former employee is subject to a civil fine of not more than $1,000.00

(5) An employer that willfully violates a notice or posting requirement of section 8 is subject to a civil fine of not more than $100.00 for each separate violation.

Sec. 8. (1) An employer subject to this act shall provide written notice to each employee at the time of hiring or by April 1, 2019, whichever is later, including, but not limited to, all of the following:

(a) The amount of earned sick time required to be provided to an employee under this act.

(b) The employer's choice of how to calculate a "year" according to subsection 3 of section 3.

(c) The terms under which earned sick time may be used.

(d) That retaliatory personnel action by the employer against an employee for requesting or using earned sick time for which the employee is eligible is prohibited.

(e) The employee's right to bring a civil action or file a complaint with the department for any violation of this act.

(2) The notice required under subsection (1) shall be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce, as long as the department has translated the notice into such language.

(3) An employer shall display a poster at the employer's place of business, in a conspicuous place that is accessible to employees, that contains the information in subsection (1). The poster displayed should be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce, as long as the department has translated the poster into such language.

(4) The department shall create and make available to employers notices and posters that contain the information required under subsection (1) for employers' use in complying with this section. The department shall provide such notices and posters in English, Spanish, and any other languages deemed appropriate by the department.

Sec. 9. The department shall develop and implement a multilingual outreach program to inform employees, parents, and persons who are under the care of a health care provider about the availability of earned sick time under this act. This program must include distribution of notices and other written material in English and in other languages to child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers.

Sec. 10. An employer shall retain for not less than 3 years records documenting the hours worked and earned sick time taken by employees. To monitor compliance with the requirements of this act, an employer shall allow the department access to those records, with appropriate notice and at a mutually agreeable time. If a question arises as to whether an employer has violated an employee's right to earned sick time under this act and the employer does not maintain or retain adequate records documenting the hours worked and earned sick time taken by the employee or does not allow the department reasonable access to those records, there is a presumption that the employer has violated the act, which can be rebutted only by clear and convincing evidence.

Sec. 11. (1) This act provides minimum requirements pertaining to earned sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard, including a collective bargaining agreement, that provides for greater accrual or use of time off, whether paid or unpaid, or that extends other protections to employees.

(2) This act does not do any of the following:

(a) Prohibit an employer from providing more earned sick time than is required under this act.

(b) Diminish any rights provided to any employee under a collective bargaining agreement.

(c) Subject section 12, preempt or override the terms of any collective bargaining agreement in effect prior to the effective date of this act.

(d) Prohibit an employer from establishing a policy that permits an employee to donate unused accrued earned sick time to another employee.

Sec. 12. If an employer's employees are covered by a collective bargaining agreement in effect on the effective date of this act, this act applies beginning on the stated expiration date in the collective bargaining agreement, notwithstanding any statement in the agreement that it continues in force until a future date or event or the execution of a new collective bargaining agreement.

Sec. 13. The director may promulgate rules in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as necessary to administer this act.

Sec. 14. If any portion of this act or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect, impair, or invalidate the other portions or applications of the act that can be given effect without the invalid portion or application, and to this end the provisions of this act are declared to be severable.

CERTIFICATION OF PETITION TO INITIATE LEGISLATION

We, the undersigned members of the Michigan Board of State Canvassers, hereby certify that on July 27, 2018, the legislative initiative petition filed with the Secretary of State on May 29, 2018 by MI Time to Care was certified to contain at least the minimum number of valid signatures required under Article 2, Section 9, of the Constitution of the State of Michigan of 1963. The minimum number of valid signatures required is 252,523.

Julie Matuzak
Vice-Chairperson

Colleen Pero
Member

Jeanette Bradshaw
Member

The initiative petition was received in the Senate on July 30, 2018, at 9:12 a.m.

The communication was referred to the Secretary for record.

The following communication was received and read:

Department of State

August 27, 2018

I, Sally Williams, Director of the Bureau of Elections, Michigan Department of State, certify that the attached proposed law appeared on the legislative initiative petition filed with the Secretary of State on May 21, 2018 by Michigan One Fair Wage, P.O. Box 35174, Detroit, Michigan 48235. I further certify that on August 24, 2018, the Michigan Board of State Canvassers determined that said initiative petition contains "at least the minimum number of valid signatures required under Article 2, Section 9, of the Constitution of the State of Michigan of 1963." I therefore submit to the Michigan State Legislature said legislative proposal for consideration as provided under Article 2, Section 9, of the Constitution of 1963.

Sincerely,
Sally Williams
Director of Elections

INITIATION OF LEGISLATION

An initiation of legislation to enact the Improved Workforce Opportunity Wage Act which would fix minimum wages for employees within this state; prohibit wage discrimination; provide for a wage deviation board; provide for the administration and enforcement of the act; prescribe penalties for the violation of the act; and supersede certain acts and parts of acts including 2014 PA 138.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1.

This act shall be known and may be cited as the "improved workforce opportunity wage act".

Sec. 2.

As used in this act:

(a) "Commissioner" means the director of the department of licensing and regulatory affairs.

(b) "Employ" means to engage, suffer, or permit to work.

(c) "Employee" means an individual not less than 16 years of age employed by an employer on the premises of the employer or at a fixed site designated by the employer, and includes a minor employed subject to section 15(1) of the youth employment standards act, 1978 PA 90, MCL 409.115.

(d) "Employer" means a person, firm, or corporation, including this state and its political subdivisions, agencies, and instrumentalities, and a person acting in the interest of the employer, who employs 2 or more employees at any 1 time within a calendar year. An employer is subject to this act during the remainder of that calendar year. Except as specifically provided in the franchise agreement, as between a franchisee and franchisor, the franchisee is considered the sole employer of workers for whom the franchisee provides a benefit plan or pays wages.

Sec. 3.

An employer shall not pay any employee at a rate this is less than prescribed in this act.

Sec. 4. (1). Subject to the exceptions specified in this act, the minimum hourly wage rate is:

a. Beginning January 1, 2019, $10.00.

b. Beginning January 1, 2020, $10.65.

c. Beginning January 1, 2021, $11.35.

d. Beginning January 1, 2022, $12.00.

(2) Every October beginning in October, 2022, the state treasurer shall calculate an adjusted minimum wage rate. The adjustment shall increase the minimum wage by the rate of inflation. The increase shall be calculated by multiplying the otherwise applicable minimum wage by the 12-month percentage increase, if any, in the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, as published by the bureau of labor statistics of the United States department of labor, based upon the most recent 12-month period for which data are available. The adjusted minimum wage rate shall be published by November 1 of the year it is calculated and shall be effective beginning January 1 of the succeeding year.

(3) An increase in the minimum hourly wage rate as prescribed in subsection (2) does not take effect if the unemployment rate determined by the bureau of labor statistics, United States department of labor, for this state is 8.5% or greater for the year preceding the year of the prescribed increase.

Sec.4a.

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

(2) This state or a political subdivision, agency, or instrumentality of this state does not violate subsection (1) with respect to the employment of an employee in fire protection activities or an employee in law enforcement activities, including security personnel in correctional institutions, if any of the following apply:

(a) In a work period of 80 consecutive days, the employee receives for tours of duty, which in the aggregate exceed 216 hours, compensation for those hours in excess of 216 at a rate not less than 1-1/2 times the regular rate at which the employee is employed. The employee's regular rate shall be not less than the statutory minimum hourly rate.

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

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

(3) This state or a political subdivision, agency, or instrumentality of this state engaged in the operation of a hospital or an establishment that is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or developmentally disabled who reside on the premises does not violate subsection (1) if both of the following conditions are met:

(a) Pursuant to a written agreement or written employment policy arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted instead of the workweek of 7 consecutive days for purposes of overtime computation.

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

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

(a) An employee employed in a bona fide executive, administrative, or professional capacity, including an employee employed in the capacity of academic administrative personnel or teacher in an elementary or secondary school. However, an employee of a retail or service establishment is not excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in the employee's workweek that the employee devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40% of the employee's hours in the workweek are devoted to those activities.

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

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

(d) An employee employed by an establishment that is an amusement or recreational establishment, if the establishment does not operate for more than 7 months in a calendar year.

(e) An employee employed in agriculture, including farming in all its branches, which among other things includes: cultivating and tilling soil; dairying; producing, cultivating, growing, and harvesting agricultural or horticultural commodities; raising livestock, bees, fur-bearing animals, or poultry; and a practice, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market, delivery to storage, or delivery to market or to a carrier for transportation to market or processing or preserving perishable farm products.

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

(5) The director of the department of licensing and regulatory affairs shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to define the terms used in subsection (4).

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

(7) The legislature shall annually appropriate from the general fund to each political subdivision affected by subsection (2) an amount equal to the difference in direct labor costs before and after the effective date of this act arising from any change in existing law that results from the enactment of subsection (2) and incurred by the political subdivision.

(8) In lieu of monetary overtime compensation, an employee subject to this act may receive compensatory time off at a rate that is not less than 1-1/2 hours for each hour of employment for which overtime compensation is required under this act, subject to all of the following:

(a) The employer must allow employees a total of at least 10 days of leave per year without loss of pay and must provide the compensatory time to the employee under either of the following:

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

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

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

(c) The employee is not required as a condition of the employment to accept or request compensatory time. An employer shall not directly or indirectly intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce an employee for the purpose of interfering with the employee's rights under this section to request or not request compensatory time off in lieu of payment of overtime compensation for overtime hours, or requiring an employee to use compensatory time. In assigning overtime hours, an employer shall not discriminate among employees based upon an employee's choice to request or not request compensatory time off in lieu of overtime compensation. An employer who violates this subsection is subject to a civil fine of not more than $1,000.00.

(d) An employee may not accrue more than a total of 240 hours of compensatory time. An employer shall do both of the following:
(*i*) Maintain in an employee's pay record a statement of compensatory time earned by that employee in the pay period that the pay record identifies.
(*ii*) Provide an employee with a record of compensatory time earned by or paid to the employee in a statement of earnings for the period in which the compensatory time is earned or paid.

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

(f) An employee who has earned compensatory time authorized under this subsection shall, upon the voluntary or involuntary termination of employment or upon expiration of this subsection, be paid unused compensatory time at a rate of compensation not less than the regular rate earned by the employee at the time the employee performed the overtime work. A terminated employee's receipt of or eligibility to receive monetary compensation for earned compensatory time shall not be used by either of the following:
(*i*) The employer to oppose an employee's application for unemployment compensation under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.
(*ii*) The state to deny unemployment compensation or diminish an employee's entitlement to unemployment compensation benefits under the Michigan employment security act, 1936 (Ex Sess) MCL 421.1 to 421.75.

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

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

(i) As used in this subsection:
(*i*) "Compensatory time" and "compensatory time off" mean hours during which an employee is not working and for which the employee is compensated in accordance with this subsection in lieu of monetary overtime compensation.
(*ii*) "Overtime assignment" means an assignment of hours for which overtime compensation is required under this act.
(*iii*) "Overtime compensation" means the compensation required under this section.

Sec. 4b.

(1) An employer may pay a new employee who is less than 20 years of age a training hourly wage of $4.25 for the first 90 days of that employee's employment. The hourly wage authorized under this subsection is in lieu of the minimum hourly wage otherwise prescribed by this act.

(2) Except as provided in subsection (1), the minimum hourly wage for an employee who is less than 18 years of age is 85% of the general minimum hourly wage established in section 4.

(3) An employer shall not displace an employee to hire an individual at the hourly wage authorized under this section. As used in this subsection, "displace" includes termination of employment or any reduction of hours, wages, or employment benefits.

(4) A person who violates subsection (3) is subject to a civil fine of not more than $1,000.00

Sec. 4c.

On petition of a party in interest or on his or her own initiative, the commissioner shall establish a suitable scale of rates for apprentices, learners, and persons with physical or mental disabilities who are clearly unable to meet normal production standards. The rates established under this section may be less than the regular minimum wage rate for workers who are experienced and who are not disabled.

Sec. 4d.

(1) The minimum hourly wage rate of an employee shall be as established under subsection (2) if all of the following occur:

(a) The employee receives gratuities in the course of his or her employment.

(b) The gratuities described in subdivision (a) equal or exceed the difference between the minimum hourly wage rate established under subsection (2) and the minimum hourly wage established under section 4.

(c) The gratuities are proven gratuities as indicated by the employee's declaration for purposes of the federal insurance contribution act, 26 USC 3101 to 3128.

(d) The entirety of the gratuities are retained by the employee who receives them, except as voluntarily shared with other employees who are directly or indirectly part of the chain of service and whose duties are not primarily managerial or supervisory.

(e) The employee was informed by the employer of the provisions of this section in writing, at or before the time of hire, and gave written consent.

(2) For purposes of subsection (1) the minimum hourly wage rate of an employee shall be 48% of the minimum hourly wage rate established under section 4 effective January 1, 2019; beginning January 1, 2020, it shall be 60% of the minimum hourly wage rate established under section 4; beginning January 1, 2021, it shall be 70% of the minimum hourly wage rate established under section 4; beginning January 1, 2022, it shall be 80% of the minimum hourly wage rate established under section 4; beginning January 1, 2023, it shall be 90% of the minimum hourly wage rate established under section 4; and beginning January 1, 2024 and thereafter, it shall be 100% of the minimum hourly wage rate established under section 4.

(3) As used in this section, "gratuities" means tips or voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered to that guest, patron, or customer and that the employee reports to the employer for purposes of the federal insurance contributions act, 26 USC 3101 to 3128.

(4) Gratuities will remain property of the employee who receives them, except pursuant to a valid and voluntary tip sharing agreement outlined in subsection (1)(d) above, regardless of whether the employer pays the lower tipped hourly wage described in subsection (2) or the full minimum hourly rate established under section 4. Gratuities and service charges paid to an employee are in addition to, and may not count towards, wages due to the employee.

(5) Employers must provide employees and consumers written notice of their plan to distribute service charges.

(6) Employer shall keep records showing compliance with provisions of Section 4d for no less than 3 years from the date of employee's last pay period.

Sec. 5.

(1) The governor shall appoint, with the advice and consent of the senate, a wage deviation board composed of 3 representatives of the employers, 3 representatives of the employees, and 3 persons representing the public. One of the 3 persons representing the public shall be designated as chairperson. Members shall serve for terms of 3 years, except that of the members first appointed, 1 from each group shall be appointed for 1 year, 1 for 2 years, and 1 for 3 years. The commissioner shall be secretary of the wage deviation board.

(2) A majority of the members of the board constitute a quorum, and the recommendation or report of the board requires a vote of not less than a majority of its members. The business which the wage deviation board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by that act.

(3) A writing prepared, owned, used, in the possession of, or retained by the wage deviation board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(4) The per diem compensation of the board and the schedule for reimbursement of expenses shall be established annually by the legislature.

(5) The wage deviation board may request data of any employer, subject to the provisions of this act, as to the wages paid and hours worked by the employer's employees and may hold hearings as necessary in the process of obtaining this information.

(6) The wage deviation board shall submit its report to the commissioner, who shall file it in his or her office as a public record together with the regulations established by the board.

(7) At any time after a deviated wage rate has been in effect for 6 months or more, the wage deviation board may reconsider the rate.

Sec. 6.

The commissioner may promulgate rules necessary for administration of this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 7.

An employer who is subject to this act or any regulation or order issued under this act shall furnish each employee with a statement of the hours worked by the employee and of the wages paid to the employee, listing deductions made each pay period. The employer shall furnish the commissioner, upon demand, a sworn statement of the wage information. The records shall be open to inspection by the commissioner, his or her deputy, or any authorized agent of the department at any reasonable time. An employer subject to this act or any regulation or order issued under this act shall keep a copy of this act and regulations and orders promulgated under this act posted in a conspicuous place in the workplace that is accessible to employees. The commissioner shall furnish copies of this act and the regulations and orders to employee without charge.

Sec 8.

The commissioner shall administer and enforce this act and, at the request of the wage deviation board, may investigate and ascertain the wages of employees of an employer subject to this act. The commissioner and the commissioner's employees shall not reveal facts or information obtained in the course of official duties, except as when required by law, to report upon or take official action or testify in proceedings regarding the affairs of an employer subject to this act.

Sec. 9.

(1) If an employer violates this act, the employee affected by the violation, at any time within 3 years, may do any of the following:

(a) Bring a civil action for the recovery of the difference between the amount paid and the amount that, but for the violation, would have been paid the employee under this act and an equal additional amount as liquidated damages together with costs and reasonable attorney fees as are allowed by the court.

(b) File a claim with the commissioner who shall investigate the claim.

(2) If the commissioner determines there is reasonable cause to believe that the employer has violated this act and the commissioner is subsequently unable to obtain voluntary compliance by the employer within a reasonable period of time, the commissioner shall bring a civil action under subsection (1)(a). The commissioner may investigate and file a civil action under subsection (1)(a) on behalf of all employees of that employer who are similarly situated at the same work site and who have not brought a civil action under subsection (1)(a). A contract or agreement between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action.

(3) In addition to bearing liability for civil remedies described in this section, an employer who fails to pay the minimum hourly wage in violation of this act, or who violates a provision of section 4a governing an employee's compensatory time, is subject to a civil fine of not more than $1,000.00.

Sec. 10.

(1) This act does not apply to an employer that is subject to the minimum wage provisions of the fair labor standards act of 1938, 29 USC 201 to 219, unless those federal minimum wage provisions would result in a lower minimum hourly wage than provided in this act. Each of the following exceptions applies to an employer who is subject to this act only by application of this subsection:

(a) Section 4a does not apply.

(b) This act does not apply to an employee who is exempt from the minimum wage requirements of the fair labor standards act of 1938, 29 USC 201 to 219.

(2) Notwithstanding subsection (1), an employee shall be paid in accordance with the minimum wage and overtime compensation requirements of sections 4 and 4a if the employee meets either of the following conditions:

(a) He or she is employed in domestic service employment to provide companionship services as defined in 29 CFR 552.6 for individuals who, because of age or infirmity, are unable to care for themselves and is not a live-in domestic service employee as described in 29 CFR 552.102.

(b) He or she is employed to provide child care, but is not a live-in domestic service employee as described in 29 CFR 552.102. However, the requirements of sections 4 and 4a do not apply if the employee meets all the following conditions:

(*i*) He or she is under the age of 18.

(*ii*) He or she provides services on a casual basis as defined in 29 CFR 552.5.

(*iii*) He or she provides services that do not regularly exceed 20 hours per week, in the aggregate.

(3) This act does not apply to persons employed in summer camps for not more than 4 months or to employees who are covered under section 14 of the fair labor standards act of 1938, 29 USC 214.

(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 used for harvesting, until the board has acquired sufficient data to determine an adequate basis to establish a scale of piecework and determines a scale equivalent to the prevailing minimum wage for that employment. The piece rate scale shall be equivalent to the minimum hourly wage in that, if the payment by unit of production is applied to a worker of average ability and diligence in harvesting a particular commodity, he or she receives an amount not less than the hourly minimum wage.

(5) Notwithstanding any other provision of this act, subsection (1)(a) and (b) and subsection (2) do not deprive an employee or any class of employees of any right that existed on September 30, 2006 to receive overtime compensation or to be paid the minimum wage.

Sec. 11.

An employer that discharges or in any other manner discriminates against an employee because the employee has served or is about to serve on the wage deviation board or has testified or is about to testify before the board, or because the employer believes that the employee may serve on the board or may testify before the board or in any investigation under this act, and any person who violates any provision of this act or of any regulation or order issued under this act, is guilty of a misdemeanor.

Sec. 12.

Any employer that consistently discharges employees within 10 weeks of their employment and replaces the discharged employees without work stoppage is presumed to have discharged them to evade payment of the wage rates established in this act and is guilty of a misdemeanor.

Sec. 13.

(1) An employer having employees subject to this act shall not discriminate between employees within and establishment on the basis of sex by paying wages to employees in the establishment at a rate less than the rate at which

the employer pays wages to employees of the opposite sex for equal work on jobs, the performance of which requires equal skill, effort, and responsibility and that is performed under similar working conditions, except if the payment is made under 1 or more of the following:

(a) A seniority system.

(b) A merit system.

(c) A system that measures earning by quantity or quality of production.

(d) A differential based on a factor other than sex.

(2) An employer that is paying a wage differential in violation of this section shall not reduce the wage rate of an employee to comply with this section.

(3) For purposes of administration and enforcement, any amount owing to an employee that has been withheld in violation of this section is considered unpaid minimum wages under this act.

Sec. 14.

An employer operating a massage establishment as defined in section 2 of former 1974 PA 251 that violates this act is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

Sec. 15.

(1) Except as provided in subsection (2), this act shall supersede any acts or parts of acts inconsistent with or in conflict with this act, but only to the extent of such inconsistency or conflict.

(2) This act does not repeal, abrogate, amend, limit, modify, supersede, or otherwise affect Act No. 166 of the Public Acts of 1965, as amended, being sections 408.551 to 408.558 of the Michigan Compiled Laws, or any other prevailing wage law.

(3) Any reference in any law to 2014 Public Act 138, the Workforce Opportunity Wage Act, or to the state minimum wage law shall be considered a reference to this act.

CERTIFICATION OF PETITION TO INITIATE LEGISLATION

We, the undersigned members of the Michigan Board of State Canvassers, hereby certify that on August 24, 2018, the legislative initiative petition filed with the Secretary of State on May 21, 2018 by Michigan One Fair Wage was certified to contain at least the minimum number of valid signatures required under Article 2, Section 9, of the Constitution of the State of Michigan of 1963. The minimum number of valid signatures required is 252,523.

Norman D. Shinkle
Chairperson

Julie Matuzak
Vice-Chairperson

Colleen Pero
Member

The initiative petition was received in the Senate on August 27, 2018, at 9:09 a.m.