

---

SENATE BILL 6638

---

State of Washington 57th Legislature

2002 Regular Session

By Senators Stevens, Rossi, Morton, Sheahan, Benton, Deccio,  
Hochstatter, Horn, Swecker and Hale

Read first time 01/23/2002. Referred to Committee on Labor, Commerce  
& Financial Institutions.

1 AN ACT Relating to the payment of wages to tipped employees; and  
2 amending RCW 49.46.010 and 49.46.020.

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

4 **Sec. 1.** RCW 49.46.010 and 1997 c 203 s 3 are each amended to read  
5 as follows:

6 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

34 (f) Any newspaper vendor or carrier;

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

37 (h) Any individual engaged in forest protection and fire prevention  
38 activities;

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

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

10 (k) Any resident, inmate, or patient of a state, county, or  
11 municipal correctional, detention, treatment or rehabilitative  
12 institution;

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

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

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

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

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

28 (8) "Tipped employee" means an employee who customarily and  
29 regularly receives more than fifty dollars per month in tips.

30 **Sec. 2.** RCW 49.46.020 and 1999 c 1 s 1 are each amended to read as  
31 follows:

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

35 (2) Beginning January 1, 1999, and until January 1, 2000, every  
36 employer shall pay to each of his or her employees who has reached the  
37 age of eighteen years wages at a rate of not less than five dollars and  
38 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)(a) Except as provided in (c) of this subsection, beginning on  
6 January 1, 2001, and each following January 1st as set forth under (b)  
7 of this subsection, every employer shall pay to each of his or her  
8 employees who has reached the age of eighteen years wages at a rate of  
9 not less than the amount established under (b) of this subsection.

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

20 (c) Every employer shall pay to each of his or her tipped employees  
21 who has reached the age of eighteen years wages:

22 (i) At a rate not less than the rate specified in (a) of this  
23 subsection; or

24 (ii) At a rate of not less than: (A) Six dollars and seventy-two  
25 cents per hour; and (B) an additional amount on account of the tips  
26 received by such employee which amount is equal to the difference  
27 between the wage specified in (c)(ii)(A) of this subsection and the  
28 wage in effect under (a) of this subsection. The additional amount on  
29 account of tips may not exceed the value of the tips actually received  
30 by an employee.

31 (5) The director shall by regulation establish the minimum wage for  
32 employees under the age of eighteen years.

--- END ---