

**Committee Counsel: Ann Marie Maloney**

**House Bill 391**

**Labor and Employment - Minimum Wage - Increase**

**SPONSORS:**

(Delegate D. Davis, *et al.*)

**COMMITTEE RECOMMENDATION:**

**FAVORABLE**

As amended, HB 391 increases the minimum wage in Maryland from \$5.15 to \$6.15, effective 30 days from the date of passage by both houses.

**SUMMARY OF BILL:**

This bill requires replaces the federal minimum wage of \$5.15 per hour with a State minimum wage of \$6.15 per hour. The bill also increases the wage rate required to be paid to tipped employees from \$2.38 per hour to \$3.08 per hour.

The bill's original effective date was January 1, 2006. If passed by both houses, it will take effect 30 days from the date of final passage.

**FISCAL IMPACT:** The Department of Legislative Services estimated that HB 391 would cost approximately \$130,000 in fiscal 2006 (for administrative costs) and approximately \$200,000 annually thereafter. State contracting costs may also increase to the extent contractors employ minimum wage employees.

**LEGISLATIVE HISTORY:**

The House passed HB 391 (84-50) with three amendments that:

- 1) Made a technical change.
- 2) Clarified that the State minimum wage requirement would not prevent an employer from paying the federal training wage to eligible employees;
- 3) Mandated that the tip wage in Maryland be 50% of the State minimum wage; and

HB 391 passed the Senate 30-16 with no additional amendments and was vetoed by the Governor on May 20.

*Senate Bill 89:* SB 89 also proposed a \$1 increase in the minimum wage. The House approved SB 89 with the amendments described above and removed a Senate amendment that would have allowed for a reduction in the wage increase if the employer provided health insurance coverage. The House also amended SB 89 to apply the State minimum wage to local and State employees and passed it 87-48. No action was taken in the Senate after it passed the House on third reading.

## **VETO**

The Governor cited the following reasons for vetoing HB 391:

- Raising the minimum wage would most harm the least skilled and educated members of the workforce. Employers can only recover the increased costs by passing them onto consumers or firing employees.

Maryland small businesses will most likely have to fire employees because a) they don't have the resources to absorb increased costs and b) customers can choose products from cheaper competitors in neighboring states.

- Businesses would be at a “significant disadvantage” with neighboring states (VA, PA, West Va.) in competing for new business since those states still adopt the lower federal rate.
- By severing the State minimum wage from the federal, the bill “sets a dangerous precedent that disrupts the marketplace” as businesses will not know when the State or Congress will raise it again.

## **COUNTERPOINT TO VETO**

**Veto point 1** – People will lose their jobs, especially if they work for small business. Fewer opportunities for “gateway jobs” for high school or college age workers.

### **Answer:**

1) A very small (4%) portion of the State's workforce will be affected as most firms pay above the minimum wage so they can attract workers. Only about 55,000 workers are expected to benefit from this bill, including 24,000 who do not make above \$5.15 per hour. Further, the number of minimum wage workers in the U.S. has declined by 70% in the last 18 years and this decline is expected to continue.

2) Over 60% of these positions are in the hospitality industry, particularly food and drink establishments, which is a growth industry. Job growth in the national food and drink industry averaged 18,000 per month in 2005. In Maryland, this industry accounted for the 4<sup>th</sup> highest number of job gains in 2004. DLLR's annual workforce development report notes projects that fast food and other food service workers will account for the third highest number of openings between 2002 and 2012; wait staff will account for the 4<sup>th</sup> highest.

3) When any cost of business goes up, displacement is a risk. While there is a possibility that some workers will have to find additional or new work, most of them will benefit because they face rapidly increasing costs in basic life necessities (housing, medical care, and transportation) while their wages have remained stagnant. A dollar in 1997 had the purchasing power of \$1.23 – now, it has the purchasing power of 81 cents.

### **Veto Point 2** - Disadvantage in competition

**Answer:** Again, a nominal number of businesses will be affected and not all of them will be competing with neighboring states, particularly if they are providing a service that is location-oriented, such as a restaurant or hotel. It is well documented that the most common reasons that small businesses fail are not labor-related. The top 10 reasons include mismanagement, lack of experience, insufficient startup capital, poor marketing, and bad location. (Source: Dun and Bradstreet, Small Business Administration)

2), DC, Delaware, and New Jersey have a higher wage rate so not all nearby states pay a lower rate. New Jersey and Delaware both require \$6.15 per hour and DC businesses pay \$7. In 2006, New Jersey's will rise to \$7.15 per hour and in 2007, DC's rate will rise to \$7. Pennsylvania considered an increase in 2005 and may do so again this year.

3) Businesses of all sizes are competing *nationally* if their service or product can be marketed on the Internet. 18 of the states that businesses in Maryland may be competing with require \$6.15 per hour or higher. This number will grow. Last year, 38 state legislatures considered an increase in the minimum wage, and eight states enacted such an increase.

### **Veto Point 3** Disruption of marketplace - businesses can't plan

**Answer:** Given the slow pace of federal action - Congress has acted three times in 30 years to increase the minimum wage - constant fluctuations are very unlikely. If this is a concern at the State level, Maryland can enact a phased-in schedule for any future increases to give businesses time to plan.

2) Four of the eight states ranked highest in the U.S. for economic performance and business vitality in 2004 have State minimum wages above the federal. Connecticut, which has the 3<sup>rd</sup> highest minimum wage in the U.S., ranked first. Their marketplace

clearly isn't suffering. (Source: Annual Development Report Card for the States by CFED).

4) Volatility is part of doing business. Businesses that cannot adapt to new market conditions (new regulations, changes in customer demand, change in technology, etc..) will fail.

#### OTHER DISCUSSION POINTS

- The last increase in the federal minimum wage was nine years ago - 1997.
- A minimum wage earner working full-time (40% of all minimum wage earners) earns \$10,712 annually - barely above the federal poverty guideline for a one-person household, \$2,118 below the federal poverty guideline for a 2-person household and almost \$5,000 below the poverty threshold for a 3-person household.
- It is not realistic to expect one cost of business to remain stagnant for nine years while all other costs of all other inputs, such as materials, supplies, utilities, go up every year. A realistic business plan does not assume that labor rates will always remain the same. Businesses pay more in rent, utilities, supplies, and transportation than they did nine years ago – why should labor be different?
- In a recent state development report card, 2 of the states ranked in the top 10 for business competitiveness have above-federal minimum wages. Maryland, incidentally, scored very poorly in this area (it got a D). Clearly, competitiveness is not related to the minimum wage.
- Workers with disabilities, full-time students, student-learners, youth workers, and tipped employees can still be paid a lower wage under federal law, subject to certain conditions. Under federal and State law, employers can pay a training wage of \$4.25 an hour for employees under 20 years of age during their first consecutive 90 calendar days of employment.
- Currently, 18 states, including the District of Columbia, mandate a minimum wage higher than the federal minimum wage of \$5.15 an hour (\$10,712 annually for a full-time worker). This does not include Nevada, where voters approved (by approximately 68%) a November 2004 ballot initiative to increase the minimum wage, which must be approved by a second ballot initiative before it becomes effective.
- In a recent survey, the majority (62%) of Maryland citizens surveyed said they support increasing the minimum wage.

## QUESTIONS AND ANSWERS:

*Q. I hire full-time students/interns who live with their parents and don't need an increase.*

A. This bill won't affect students who only work for the summer if they work 90 days or less since they are covered by the federal training wage (\$4.25 per hour).

*Q. How many workers will be affected by this?*

A. Approximately 55,000, including 24,000 who are at the minimum wage now. This is 2.1% of all hourly workers in the State.

*Q. Who is NOT covered by the minimum wage?*

Non-covered (exempt) employees include commissioned sales employees; farm workers; seasonal amusement or recreational employees; and salaried executive, administrative, and professional employees.

*Q. Can you explain the tip credit?*

A. The employer of a tipped employee is allowed a "tip credit" that can be applied against the direct wages paid by the employer. The employee can be paid tipping wages if: (1) the wages plus the tips received equal at least the federal minimum wage, (2) the employee retains all tips, and (3) the employee customarily and regularly receives more than \$30 a month in tips. Maryland employers must pay a minimum of \$2.38 an hour in tipping wages, which is 25 cents above federal law.

Currently, employers receive a credit of \$2.77 per hour and pay tipped employees \$2.38 per hour to make up the difference between \$2.77 and the minimum wage (\$5.15). The bill would raise the amount an employer pays a tipped employee from \$2.38 to \$3.38 – the amendment will lower what the employer pays from \$3.38 to \$3.08 (half of \$6.15).

*Q. What about workers with disabilities – could this hurt their employment?*

A. State law allows work activities center or sheltered workshops that employ workers with disabilities to pay less than minimum wage for those certified by the Commissioner of Labor and Industry or the US Department of Labor. The bill doesn't affect that.