

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1001 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 22-2-2-4, AS AMENDED BY P.L.165-2007,
- 4 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 5 JULY 1, 2012]: Sec. 4. (a) Every employer employing four (4) or more
- 6 employees during a work week shall:
- 7 (1) in any work week beginning on or after July 1, 1968, in which
- 8 the employer is subject to the provisions of this chapter, pay each
- 9 of the employer's employees wages of not less than one dollar and
- 10 twenty-five cents (\$1.25) per hour;
- 11 (2) in any work week beginning on or after July 1, 1977, in which
- 12 the employer is subject to this chapter, pay each of the employer's
- 13 employees wages of not less than one dollar and fifty cents
- 14 (\$1.50) per hour;
- 15 (3) in any work week beginning on or after January 1, 1978, in
- 16 which the employer is subject to this chapter, pay each of the
- 17 employer's employees wages of not less than one dollar and
- 18 seventy-five cents (\$1.75) per hour; and
- 19 (4) in any work week beginning on or after January 1, 1979, in
- 20 which the employer is subject to this chapter, pay each of the
- 21 employer's employees wages of not less than two dollars (\$2) per
- 22 hour.
- 23 (b) Except as provided in subsection (c), every employer employing
- 24 at least two (2) employees during a work week shall, in any work week

1 in which the employer is subject to this chapter, pay each of the
 2 employees in any work week beginning on and after July 1, 1990, and
 3 before October 1, 1998, wages of not less than three dollars and
 4 thirty-five cents (\$3.35) per hour.

5 (c) An employer subject to subsection (b) is permitted to apply a "tip
 6 credit" in determining the amount of cash wage paid to tipped
 7 employees. In determining the wage an employer is required to pay a
 8 tipped employee, the amount paid the employee by the employee's
 9 employer shall be an amount equal to:

10 (1) the cash wage paid the employee, which for purposes of the
 11 determination shall be not less than the cash wage required to be
 12 paid to employees covered under the federal Fair Labor Standards
 13 Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20,
 14 1996, which amount is two dollars and thirteen cents (\$2.13) an
 15 hour; and

16 (2) an additional amount on account of the tips received by the
 17 employee, which amount is equal to the difference between the
 18 wage specified in subdivision (1) and the wage in effect under
 19 subsections (b), (f), (g), ~~and~~ (h), **and (i).**

20 An employer is responsible for supporting the amount of tip credit
 21 taken through reported tips by the employees.

22 (d) No employer having employees subject to any provisions of this
 23 section shall discriminate, within any establishment in which
 24 employees are employed, between employees on the basis of sex by
 25 paying to employees in such establishment a rate less than the rate at
 26 which the employer pays wages to employees of the opposite sex in
 27 such establishment for equal work on jobs the performance of which
 28 requires equal skill, effort, and responsibility, and which are performed
 29 under similar working conditions, except where such payment is made
 30 pursuant to:

31 (1) a seniority system;

32 (2) a merit system;

33 (3) a system which measures earnings by quantity or quality of
 34 production; or

35 (4) a differential based on any other factor other than sex.

36 (e) An employer who is paying a wage rate differential in violation
 37 of subsection (d) shall not, in order to comply with subsection (d),
 38 reduce the wage rate of any employee, and no labor organization, or its
 39 agents, representing employees of an employer having employees
 40 subject to subsection (d) shall cause or attempt to cause such an
 41 employer to discriminate against an employee in violation of
 42 subsection (d).

43 (f) Except as provided in subsection (c), every employer employing
 44 at least two (2) employees during a work week shall, in any work week
 45 in which the employer is subject to this chapter, pay each of the
 46 employees in any work week beginning on or after October 1, 1998,

1 and before March 1, 1999, wages of not less than four dollars and
2 twenty-five cents (\$4.25) per hour.

3 (g) Except as provided in subsections (c) and ~~(j)~~; **(k)**, every
4 employer employing at least two (2) employees during a work week
5 shall, in any work week in which the employer is subject to this
6 chapter, pay each of the employees in any work week beginning on or
7 after March 1, 1999, and before July 1, 2007, wages of not less than
8 five dollars and fifteen cents (\$5.15) an hour.

9 (h) Except as provided in subsections (c) and ~~(j)~~; **(k)**, every
10 employer employing at least two (2) employees during a work week
11 shall, in any work week in which the employer is subject to this
12 chapter, pay each of the employees in any work week beginning on or
13 after June 30, 2007, **and before July 1, 2012**, wages of not less than
14 the minimum wage payable under the federal Fair Labor Standards Act
15 of 1938, as amended (29 U.S.C. 201 et seq.).

16 **(i) Except as provided in subsections (c) and (k), every employer**
17 **employing at least two (2) employees during a work week shall, in**
18 **any work week in which the employer is subject to this chapter,**
19 **pay each of the employees in any work week beginning on or after**
20 **June 30, 2012, wages of not less than ten dollars and forty cents**
21 **(\$10.40) per hour.**

22 ~~(j)~~ **(j)** This section does not apply if an employee:

23 (1) provides companionship services to the aged and infirm (as
24 defined in 29 CFR 552.6); and

25 (2) is employed by an employer or agency other than the family
26 or household using the companionship services, as provided in 29
27 CFR 552.109 (a).

28 ~~(j)~~ **(k)** This subsection applies only to an employee who has not
29 attained the age of twenty (20) years. Instead of the rates prescribed by
30 subsections (c), (f), (g), ~~and (h)~~, **and (i)**, an employer may pay an
31 employee of the employer, during the first ninety (90) consecutive
32 calendar days after the employee is initially employed by the employer,
33 a wage which is not less than:

34 (1) four dollars and twenty-five cents (\$4.25) per hour, effective
35 March 1, 1999; and

36 (2) the amount payable under the federal Fair Labor Standards
37 Act of 1938, as amended (29 U.S.C. 201 et seq.), during the first
38 ninety (90) consecutive calendar days after initial employment to
39 an employee who has not attained twenty (20) years of age,
40 effective July 1, 2007.

41 However, no employer may take any action to displace employees
42 (including partial displacements such as reduction in hours, wages, or
43 employment benefits) for purposes of hiring individuals at the wage
44 authorized in this subsection.

45 ~~(k)~~ **(l)** Except as otherwise provided in this section, no employer
46 shall employ any employee for a work week longer than forty (40)

1 hours unless the employee receives compensation for employment in
 2 excess of the hours above specified at a rate not less than one and
 3 one-half (1.5) times the regular rate at which the employee is
 4 employed.

5 ~~(h)~~ **(m)** For purposes of this section the following apply:

6 (1) "Overtime compensation" means the compensation required
 7 by subsection ~~(k)~~: **(l)**.

8 (2) "Compensatory time" and "compensatory time off" mean
 9 hours during which an employee is not working, which are not
 10 counted as hours worked during the applicable work week or
 11 other work period for purposes of overtime compensation, and for
 12 which the employee is compensated at the employee's regular
 13 rate.

14 (3) "Regular rate" means the rate at which an employee is
 15 employed is considered to include all remuneration for
 16 employment paid to, or on behalf of, the employee, but is not
 17 considered to include the following:

18 (A) Sums paid as gifts, payments in the nature of gifts made at
 19 Christmas time or on other special occasions, as a reward for
 20 service, the amounts of which are not measured by or
 21 dependent on hours worked, production, or efficiency.

22 (B) Payments made for occasional periods when no work is
 23 performed due to vacation, holiday, illness, failure of the
 24 employer to provide sufficient work, or other similar cause,
 25 reasonable payments for traveling expenses, or other expenses,
 26 incurred by an employee in the furtherance of the employer's
 27 interests and properly reimbursable by the employer, and other
 28 similar payments to an employee which are not made as
 29 compensation for the employee's hours of employment.

30 (C) Sums paid in recognition of services performed during a
 31 given period if:

32 (i) both the fact that payment is to be made and the amount
 33 of the payment are determined at the sole discretion of the
 34 employer at or near the end of the period and not pursuant
 35 to any prior contract, agreement, or promise causing the
 36 employee to expect the payments regularly;

37 (ii) the payments are made pursuant to a bona fide profit
 38 sharing plan or trust or bona fide thrift or savings plan,
 39 meeting the requirements of the administrator set forth in
 40 appropriately issued regulations, having due regard among
 41 other relevant factors, to the extent to which the amounts
 42 paid to the employee are determined without regard to hours
 43 of work, production, or efficiency; or

44 (iii) the payments are talent fees paid to performers,
 45 including announcers, on radio and television programs.

46 (D) Contributions irrevocably made by an employer to a

- 1 trustee or third person pursuant to a bona fide plan for
 2 providing old age, retirement, life, accident, or health
 3 insurance or similar benefits for employees.
- 4 (E) Extra compensation provided by a premium rate paid for
 5 certain hours worked by the employee in any day or work
 6 week because those hours are hours worked in excess of eight
 7 (8) in a day or in excess of the maximum work week
 8 applicable to the employee under subsection ~~(k)~~ (l) or in
 9 excess of the employee's normal working hours or regular
 10 working hours, as the case may be.
- 11 (F) Extra compensation provided by a premium rate paid for
 12 work by the employee on Saturdays, Sundays, holidays, or
 13 regular days of rest, or on the sixth or seventh day of the work
 14 week, where the premium rate is not less than one and one-half
 15 (1.5) times the rate established in good faith for like work
 16 performed in nonovertime hours on other days.
- 17 (G) Extra compensation provided by a premium rate paid to
 18 the employee, in pursuance of an applicable employment
 19 contract or collective bargaining agreement, for work outside
 20 of the hours established in good faith by the contract or
 21 agreement as the basic, normal, or regular workday (not
 22 exceeding eight (8) hours) or work week (not exceeding the
 23 maximum work week applicable to the employee under
 24 subsection ~~(k)~~ (l) where the premium rate is not less than one
 25 and one-half (1.5) times the rate established in good faith by
 26 the contract or agreement for like work performed during the
 27 workday or work week.
- 28 ~~(m)~~ (n) No employer shall be considered to have violated subsection
 29 ~~(k)~~ (l) by employing any employee for a work week in excess of that
 30 specified in subsection ~~(k)~~ (l) without paying the compensation for
 31 overtime employment prescribed therein if the employee is so
 32 employed:
- 33 (1) in pursuance of an agreement, made as a result of collective
 34 bargaining by representatives of employees certified as bona fide
 35 by the National Labor Relations Board, which provides that no
 36 employee shall be employed more than one thousand forty (1,040)
 37 hours during any period of twenty-six (26) consecutive weeks; or
 38 (2) in pursuance of an agreement, made as a result of collective
 39 bargaining by representatives of employees certified as bona fide
 40 by the National Labor Relations Board, which provides that
 41 during a specified period of fifty-two (52) consecutive weeks the
 42 employee shall be employed not more than two thousand two
 43 hundred forty (2,240) hours and shall be guaranteed not less than
 44 one thousand eight hundred forty (1,840) hours (or not less than
 45 forty-six (46) weeks at the normal number of hours worked per
 46 week, but not less than thirty (30) hours per week) and not more

1 than two thousand eighty (2,080) hours of employment for which
 2 the employee shall receive compensation for all hours guaranteed
 3 or worked at rates not less than those applicable under the
 4 agreement to the work performed and for all hours in excess of
 5 the guaranty which are also in excess of the maximum work week
 6 applicable to the employee under subsection ~~(k)~~ (l) or two
 7 thousand eighty (2,080) in that period at rates not less than one
 8 and one-half (1.5) times the regular rate at which the employee is
 9 employed.

10 ~~(n)~~ (o) No employer shall be considered to have violated subsection
 11 ~~(k)~~ (l) by employing any employee for a work week in excess of the
 12 maximum work week applicable to the employee under subsection ~~(k)~~
 13 (l) if the employee is employed pursuant to a bona fide individual
 14 contract, or pursuant to an agreement made as a result of collective
 15 bargaining by representatives of employees, if the duties of the
 16 employee necessitate irregular hours of work, and the contract or
 17 agreement includes the following:

18 (1) Specifies a regular rate of pay of not less than the minimum
 19 hourly rate provided in subsections (c), ~~(h)~~; (i), and ~~(j)~~ (k)
 20 (whichever is applicable) and compensation at not less than one
 21 and one-half (1.5) times that rate for all hours worked in excess
 22 of the maximum work week.

23 (2) Provides a weekly guaranty of pay for not more than sixty (60)
 24 hours based on the rates so specified.

25 ~~(o)~~ (p) No employer shall be considered to have violated subsection
 26 ~~(k)~~ (l) by employing any employee for a work week in excess of the
 27 maximum work week applicable to the employee under that subsection
 28 if, pursuant to an agreement or understanding arrived at between the
 29 employer and the employee before performance of the work, the
 30 amount paid to the employee for the number of hours worked by the
 31 employee in the work week in excess of the maximum work week
 32 applicable to the employee under that subsection:

33 (1) in the case of an employee employed at piece rates, is
 34 computed at piece rates not less than one and one-half (1.5) times
 35 the bona fide piece rates applicable to the same work when
 36 performed during nonovertime hours;

37 (2) in the case of an employee performing two (2) or more kinds
 38 of work for which different hourly or piece rates have been
 39 established, is computed at rates not less than one and one-half
 40 (1.5) times those bona fide rates applicable to the same work
 41 when performed during nonovertime hours; or

42 (3) is computed at a rate not less than one and one-half (1.5) times
 43 the rate established by the agreement or understanding as the
 44 basic rate to be used in computing overtime compensation
 45 thereunder, provided that the rate so established shall be
 46 substantially equivalent to the average hourly earnings of the

- 1 employee, exclusive of overtime premiums, in the particular work
 2 over a representative period of time;
 3 and if the employee's average hourly earnings for the work week
 4 exclusive of payments described in this section are not less than the
 5 minimum hourly rate required by applicable law, and extra overtime
 6 compensation is properly computed and paid on other forms of
 7 additional pay required to be included in computing the regular rate.
- 8 ~~(p)~~ **(q)** Extra compensation paid as described in this section shall be
 9 creditable toward overtime compensation payable pursuant to this
 10 section.
- 11 ~~(q)~~ **(r)** No employer shall be considered to have violated subsection
 12 ~~(k)~~ **(l)** by employing any employee of a retail or service establishment
 13 for a work week in excess of the applicable work week specified
 14 therein, if:
- 15 (1) the regular rate of pay of the employee is in excess of one and
 16 one-half (1.5) times the minimum hourly rate applicable to the
 17 employee under section 2 of this chapter; and
 18 (2) more than half of the employee's compensation for a
 19 representative period (not less than one (1) month) represents
 20 commissions on goods or services.
- 21 In determining the proportion of compensation representing
 22 commissions, all earnings resulting from the application of a bona fide
 23 commission rate shall be considered commissions on goods or services
 24 without regard to whether the computed commissions exceed the draw
 25 or guarantee.
- 26 ~~(r)~~ **(s)** No employer engaged in the operation of a hospital or an
 27 establishment which is an institution primarily engaged in the care of
 28 the sick, the aged, or individuals with a mental illness or defect who
 29 reside on the premises shall be considered to have violated subsection
 30 ~~(k)~~ **(l)** if, pursuant to an agreement or understanding arrived at between
 31 the employer and the employee before performance of the work, a work
 32 period of fourteen (14) consecutive days is accepted in lieu of the work
 33 week of seven (7) consecutive days for purposes of overtime
 34 computation and if, for the employee's employment in excess of eight
 35 (8) hours in any workday and in excess of eighty (80) hours in that
 36 fourteen (14) day period, the employee receives compensation at a rate
 37 not less than one and one-half (1.5) times the regular rate at which the
 38 employee is employed.
- 39 ~~(s)~~ **(t)** No employer shall employ any employee in domestic service
 40 in one (1) or more households for a work week longer than forty (40)
 41 hours unless the employee receives compensation for that employment
 42 in accordance with subsection ~~(k)~~ **(l)**.
- 43 ~~(t)~~ **(u)** In the case of an employee of an employer engaged in the
 44 business of operating a street, a suburban or interurban electric railway,
 45 or a local trolley or motorbus carrier (regardless of whether or not the
 46 railway or carrier is public or private or operated for profit or not for

1 profit), in determining the hours of employment of such an employee
 2 to which the rate prescribed by subsection ~~(k)~~ (l) applies, there shall be
 3 excluded the hours the employee was employed in charter activities by
 4 the employer if both of the following apply:

5 (1) The employee's employment in the charter activities was
 6 pursuant to an agreement or understanding with the employer
 7 arrived at before engaging in that employment.

8 (2) If employment in the charter activities is not part of the
 9 employee's regular employment.

10 ~~(t)~~ (v) Any employer may employ any employee for a period or
 11 periods of not more than ten (10) hours in the aggregate in any work
 12 week in excess of the maximum work week specified in subsection ~~(k)~~
 13 (l) without paying the compensation for overtime employment
 14 prescribed in subsection ~~(k)~~; (l), if during that period or periods the
 15 employee is receiving remedial education that:

16 (1) is provided to employees who lack a high school diploma or
 17 educational attainment at the eighth grade level;

18 (2) is designed to provide reading and other basic skills at an
 19 eighth grade level or below; and

20 (3) does not include job specific training.

21 ~~(v)~~ (w) Subsection ~~(k)~~ (l) does not apply to an employee of a motion
 22 picture theater.

23 ~~(w)~~ (x) Subsection ~~(k)~~ (l) does not apply to an employee of a
 24 seasonal amusement or recreational establishment, an organized camp,
 25 or a religious or nonprofit educational conference center that is exempt
 26 under the federal Fair Labor Standards Act of 1938, as amended (29
 27 U.S.C. 213).".

28 Page 1, line 4, delete "Right to Work" and insert "**Labor**
 29 **Organization Membership**".

30 Page 2, delete lines 41 through 42, begin a new paragraph and
 31 insert:

32 "**Sec. 7. A person may not require an individual to become or**
 33 **remain a member of a labor organization.**

34 **Sec. 8. Nothing in this chapter shall be construed to prohibit**
 35 **collective bargaining agreements that require the payment of**
 36 **representation fees.**".

- 1 Delete page 3.
- 2 Page 4, delete lines 1 through 4.
- 3 Renumber all SECTIONS consecutively.
(Reference is to HB 1001 as printed January 12, 2012.)

Representative VanDenburgh