2019 SENATE BILL 426

September 17, 2019 – Introduced by Senators LARSON, L. TAYLOR, SMITH, RINGHAND, JOHNSON and CARPENTER, cosponsored by Representatives BROSTOFF, SINICKI, ANDERSON, HEBL, C. TAYLOR, BOWEN, CROWLEY and FIELDS. Referred to Committee on Labor and Regulatory Reform.

1 AN ACT *to amend* 104.035 (3) (a) (intro.); and *to create* 104.035 (3) (c) of the

2 statutes; **relating to:** incentives for paying tipped employees the minimum

3 wage, not including tips.

Analysis by the Legislative Reference Bureau

This bill allows the employer of a tipped employee to retain the state sales taxes that the employer collects during any sales tax reporting period if, during that period, the employer establishes by the employer's payroll records that at least 5 percent of the wages that the employer pays to tipped employees is derived from tips and that the employer pays the tipped employees not less than the minimum wage of $7.25 per hour, not including tips. If the employer retains the taxes for any period for which the employer cannot establish the criteria for retaining the taxes, the employer must pay a penalty to the Department of Revenue equal to $500 for the first violation and 200 percent of the taxes for each subsequent violation. After the third violation, the employer is not eligible for retaining the taxes for 48 months following the date of the violation. The same penalties apply for any subsequent period of eligibility.

Under current law, generally, if an employer of a tipped employee establishes that, when adding the tips received by the tipped employee to the wages paid to the tipped employee, the tipped employee receives not less than the applicable minimum wage (generally $7.25 per hour), the minimum wage for the tipped employee is $2.33 per hour.

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For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1   SECTION 1. 104.035 (3) (a) (intro.) of the statutes is amended to read:

2   104.035 **(3)** (a) *Minimum rates.* (intro.) Except as provided in <u>par. (c) and</u> subs.

3 (4) to (8), if an employer of a tipped employee establishes by the employer's payroll

4 records that, when adding the tips received by the tipped employee in a week to the

5 wages paid to the tipped employee in that week, the tipped employee receives not less

6 than the applicable minimum wage specified in sub. (1), (2), or (2m), the minimum

7 wage for the tipped employee is as follows:

8   SECTION 2. 104.035 (3) (c) of the statutes is created to read:

9   104.035 **(3)** (c) *Sales tax retention program.* 1. An employer of a tipped

10 employee may retain the sales tax that the employer collects under s. 77.52 for the

11 applicable reporting period under s. 77.58 if the employer establishes by the

12 employer's payroll records that at least 5 percent of the wages that the employer pays

13 to tipped employees during that period is derived from tips and that the employer

14 pays the tipped employees not less than the minimum wage specified in sub. (1), not

15 including tips.

16   2. If the employer retains the taxes described under subd. 1. for any reporting

17 period for which the employer does not satisfy the conditions under subd. 1. for

18 retaining the taxes, the employer shall pay a penalty to the department of revenue

19 equal to $500 for the first violation of subd. 1. and an amount equal to 200 percent

20 of the taxes retained for any subsequent violation. After the 3rd violation, the

21 employer is not eligible for retaining the taxes as provided under subd. 1. for 48

1   months following the date of the violation. If the employer establishes eligibility

2   after the period of ineligibility, the penalties for 1st, 2nd, and 3rd violations apply to

3   subsequent violations.

4   **(END)**