

6049

2015-2016 Regular Sessions

I N S E N A T E

September 11, 2015

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and
when printed to be committed to the Committee on Rules

AN ACT to amend the labor law, in relation to eliminating the wage
board; and to repeal subdivision 3 of section 651 and sections 655 and
656 of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 3 of section 651 and sections 655 and 656 of
2 the labor law are REPEALED.
3 S 2. Subdivisions 2 and 6 of section 652 of the labor law, subdivision
4 2 as amended by chapter 38 of the laws of 1990 and subdivision 6 as
5 added by section 1 of part P of chapter 57 of the laws of 2013, are
6 amended to read as follows:
7 2. Existing wage orders. The minimum wage orders in effect on the
8 effective date of this act shall remain in full force and effect, except
9 as modified in accordance with the provisions of this article.
10 Such minimum wage orders shall be modified by the commissioner to
11 increase all monetary amounts specified therein in the same proportion
12 as the increase in the hourly minimum wage as provided in subdivision
13 one of this section, including the amounts specified in such minimum
14 wage orders as allowances for gratuities, and when furnished by the
15 employer to its employees, for meals, lodging, apparel and other such
16 items, services and facilities. All amounts so modified shall be rounded
17 off to the nearest five cents. The modified orders shall be promulgated
18 by the commissioner without a public hearing[, and without reference to
19 a wage board,] and shall become effective on the effective date of such
20 increases in the minimum wage except as otherwise provided in this
21 subdivision, notwithstanding any other provision of this article.
22 6. Notwithstanding subdivision two of this section [and subdivision
23 two of section six hundred fifty-three of this article], a modification
24 in the hourly cash wage or meal and lodging credits as applied to food

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD11863-01-5

1 service workers and service employees paid in accordance with Part 146
2 of Title 12 of the New York state compilation of codes, rules and regu-
3 lations that would otherwise be based on the increases in the hourly
4 minimum wage that will become effective on December thirty-first, two
5 thousand thirteen, December thirty-first, two thousand fourteen and
6 December thirty-first, two thousand fifteen shall be made by a wage
7 order promulgated by the commissioner [pursuant to section six hundred
8 fifty-six of this article] and provided further that, for the purposes
9 of the modifications based on such increases provided for in subdivision
10 two of this section only, the maximum credit for tips in such wage order
11 shall be modified so that such credit, when combined with the cash wage,
12 is equal to the minimum wage. [Any time after the effective date of the
13 chapter of the laws of two thousand thirteen which added this subdivi-
14 sion, the commissioner shall appoint a wage board pursuant to the
15 provision of subdivision one of section six hundred fifty-five of this
16 article to inquire and report and recommend any changes to the wage
17 order governing wages payable to such food service workers and service
18 employees sufficient to provide adequate maintenance and to protect the
19 health and livelihood of employees subject to such a wage order. Such
20 wage board shall make such report and recommendations to the commission-
21 er within six months of its establishment. The commissioner shall act
22 upon such report and recommendations pursuant to the provisions of
23 section six hundred fifty-six of this article.]

24 S 3. Section 653 of the labor law, as amended by chapter 14 of the
25 laws of 2000, is amended to read as follows:

26 S 653. Investigation of adequacy of wages. [(1)] The commissioner
27 shall have power on his own motion to cause an investigation to be made
28 of the wages being paid to persons employed in any occupation or occupa-
29 tions to ascertain whether the minimum wages established in accordance
30 with the provisions of this article are sufficient to provide adequate
31 maintenance and to protect the health of the persons employed in such
32 occupation or occupations. The commissioner shall, on the petition of
33 fifty or more residents of the state engaged in or affected by an occu-
34 pation or occupations sought to be investigated, cause such an investi-
35 gation of such occupation or occupations to be conducted. [If, on the
36 basis of information in his possession with or without such an investi-
37 gation, the commissioner is of the opinion that any substantial number
38 of persons employed in any occupation or occupations are receiving wages
39 insufficient to provide adequate maintenance and to protect their
40 health, he shall appoint a wage board to inquire into and report and
41 recommend adequate minimum wages and regulations for employees in such
42 occupation or occupations.

43 (2) The commissioner shall, within six months after enactment of any
44 change in the statutory minimum wage set forth in subdivision one of
45 section six hundred fifty-two of this article, appoint a wage board to
46 inquire and report and recommend any changes to wage orders governing
47 wages payable to food service workers. Such wage board shall be estab-
48 lished consistent with the provisions of subdivision one of section six
49 hundred fifty-five of this article, except the representatives of the
50 employees shall be selected upon the nomination of the state American
51 Federation of Labor/Congress of Industrial Organizations; and provided,
52 further, that the representatives of the employers shall be selected
53 upon the nomination of the New York State Business Council. Any wage
54 order authorizing a lesser wage than the previously and statutorily
55 mandated minimum wage for such employees shall be reviewed by the wage
56 board to ascertain at what level such wage order is sufficient to

1 provide adequate maintenance and to protect the health and livelihood of
2 employees subject to such a wage order after a statutory increase in the
3 mandated minimum wage.]

4 S 4. Section 654 of the labor law, as added by chapter 619 of the laws
5 of 1960, is amended to read as follows:

6 S 654. Basis of changes in minimum wage. In establishing minimum
7 wages and regulations for any occupation or occupations [pursuant to the
8 provisions of the following sections of this article], [the wage board
9 and] the commissioner shall consider the amount sufficient to provide
10 adequate maintenance and to protect health and, in addition, [the wage
11 board and] the commissioner shall consider the value of the work or
12 classification of work performed, and the wages paid in the state for
13 work of like or comparable character.

14 S 5. Subdivisions 1 and 2 of section 657 of the labor law, subdivision
15 1 as added by chapter 619 of the laws of 1960 and subdivision 2 as
16 amended by chapter 102 of the laws of 1968, are amended to read as
17 follows:

18 1. Finality. Any minimum wage order and regulation issued by the
19 commissioner pursuant to this article shall, unless appealed from as
20 provided in this section, be final. The findings of the commissioner as
21 to the facts shall be conclusive on any appeal from an order of the
22 commissioner issued pursuant to [sections] SECTION six hundred fifty-
23 two[, six hundred fifty-six,] or six hundred fifty-nine.

24 2. Review by board of standards and appeals. Any person in interest,
25 including a labor organization or employer association, in any occupa-
26 tion for which a minimum wage order or regulation has been issued under
27 the provisions of this article who is aggrieved by such order or regu-
28 lation may obtain review before the board of standards and appeals by
29 filing with said board, within forty-five days after the date of the
30 publication of the notice of such order or regulation, a written peti-
31 tion requesting that the order or regulation be modified or set aside. A
32 copy of such petition shall be served promptly upon the commissioner. On
33 such appeal, the commissioner shall certify and file with the board of
34 standards and appeals a transcript of the entire record, including the
35 testimony and evidence upon which such order or regulation was made [and
36 the report of the wage board]. The board of standards and appeals, upon
37 the record certified and filed by the commissioner, shall, after oral
38 argument, determine whether the order or regulation appealed from is
39 contrary to law. Within forty-five days after the expiration of the time
40 for the filing of a petition, the board of standards and appeals shall
41 issue an order confirming, amending or setting aside the order or regu-
42 lation appealed from. The appellate jurisdiction of the board of stand-
43 ards and appeals shall be exclusive and its order final except that the
44 same shall be subject to an appeal taken directly to the appellate divi-
45 sion of the supreme court, third judicial department, within sixty days
46 after its order is issued. The commissioner shall be considered an
47 aggrieved party entitled to take an appeal from an order of the board of
48 standards and appeals.

49 S 6. Section 658 of the labor law, as amended by chapter 443 of the
50 laws of 1981, is amended to read as follows:

51 S 658. Appeals from compliance orders. An appeal pursuant to section
52 two hundred eighteen or two hundred nineteen of this chapter from an
53 order issued by the commissioner directing compliance with any provision
54 of this article or with any minimum wage order or regulation promulgated
55 thereunder, shall not bring under review any minimum wage order or regu-
56 lation promulgated under this article. The provisions of [subdivision

1 two of section six hundred fifty-seven relating to appeals from determi-
2 nations of the board and the provisions of] subdivisions three through
3 seven of section six hundred fifty-seven shall apply to an appeal from a
4 compliance order.

5 S 7. Section 659 of the labor law, as added by chapter 619 of the laws
6 of 1960, is amended to read as follows:

7 S 659. Reconsideration of wage orders and regulations. [1. By wage
8 board. At any time after a minimum wage order has been in effect for six
9 months or more, the commissioner, on his own motion or on a petition of
10 fifty or more residents of the state engaged in or affected by the occu-
11 pation or occupations to which an order is applicable, may reconvene the
12 same wage board or appoint a new wage board to recommend whether or not
13 the minimum wage and regulations prescribed by such order should be
14 modified, and the provisions of section six hundred fifty-five through
15 six hundred fifty-seven shall thereafter apply.

16 2. By commissioner.] The commissioner[, without referral to the wage
17 board,] may, at any time after public hearing, by order propose such
18 modifications of or additions to any regulations as he may deem appro-
19 priate to effectuate the purposes of this article. Notice of hearing and
20 promulgation of any such order shall be published [in accordance with
21 the provisions contained in section six hundred fifty-six]. Such order
22 shall be effective thirty days after such publication and section six
23 hundred fifty-seven shall thereafter apply.

24 S 8. This act shall take effect immediately.