

AMENDED IN ASSEMBLY MAY 30, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 387

Introduced by Assembly Member Thurmond

February 9, 2017

An act to ~~amend Section 1182.12 of~~ *add Section 1182.14 to* the Labor Code, relating to wages.

LEGISLATIVE COUNSEL’S DIGEST

AB 387, as amended, Thurmond. Minimum wage: health professionals: interns.

Existing law requires the minimum wage for all industries to not be less than specified amounts to be increased from January 1, 2017, to January 1, 2022, inclusive, for employers employing 26 or more employees and from January 1, 2018, to January 1, 2023, inclusive, for employers employing 25 or fewer employees, except when the scheduled increases are temporarily suspended by the Governor, based on certain determinations. Existing law defines an employer for purposes of those provisions to mean a person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of another person. Payment of less than the established minimum wage is a misdemeanor.

This bill would expand the definition of “employer” for purposes of these provisions to include a person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of a person engaged in a period of supervised work experience *longer than 100 hours* to satisfy requirements for licensure, registration, or certification as an allied health professional, as defined.

Because this bill would expand the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1182.12 of the Labor Code is amended~~
2 ~~to read:~~
3 ~~1182.12. (a) Notwithstanding any other provision of this part,~~
4 ~~on and after July 1, 2014, the minimum wage for all industries~~
5 ~~shall be not less than nine dollars (\$9) per hour, and on and after~~
6 ~~January 1, 2016, the minimum wage for all industries shall be not~~
7 ~~less than ten dollars (\$10) per hour.~~
8 ~~(b) Notwithstanding subdivision (a), the minimum wage for all~~
9 ~~industries shall not be less than the amounts set forth in this~~
10 ~~subdivision, except when the scheduled increases in paragraphs~~
11 ~~(1) and (2) are temporarily suspended under subdivision (d).~~
12 ~~(1) For any employer who employs 26 or more employees, the~~
13 ~~minimum wage shall be as follows:~~
14 ~~(A) From January 1, 2017, to December 31, 2017,~~
15 ~~inclusive, ten dollars and fifty cents (\$10.50) per hour.~~
16 ~~(B) From January 1, 2018, to December 31, 2018,~~
17 ~~inclusive, eleven dollars (\$11) per hour.~~
18 ~~(C) From January 1, 2019, to December 31, 2019,~~
19 ~~inclusive, twelve dollars (\$12) per hour.~~
20 ~~(D) From January 1, 2020, to December 31, 2020,~~
21 ~~inclusive, thirteen dollars (\$13) per hour.~~
22 ~~(E) From January 1, 2021, to December 31, 2021,~~
23 ~~inclusive, fourteen dollars (\$14) per hour.~~
24 ~~(F) From January 1, 2022, and until adjusted by subdivision~~
25 ~~(c) fifteen dollars (\$15) per hour.~~
26 ~~(2) For any employer who employs 25 or fewer employees, the~~
27 ~~minimum wage shall be as follows:~~

1 ~~(A) From January 1, 2018, to December 31, 2018,~~
2 ~~inclusive, ten dollars and fifty cents (\$10.50) per hour.~~

3 ~~(B) From January 1, 2019, to December 31, 2019,~~
4 ~~inclusive, eleven dollars (\$11) per hour.~~

5 ~~(C) From January 1, 2020, to December 31, 2020,~~
6 ~~inclusive, twelve dollars (\$12) per hour.~~

7 ~~(D) From January 1, 2021, to December 31, 2021,~~
8 ~~inclusive, thirteen dollars (\$13) per hour.~~

9 ~~(E) From January 1, 2022, to December 31, 2022,~~
10 ~~inclusive, fourteen dollars (\$14) per hour.~~

11 ~~(F) From January 1, 2023, and until adjusted by subdivision~~
12 ~~(e) fifteen dollars (\$15) per hour.~~

13 ~~(3) For purposes of this subdivision, “employer” means any~~
14 ~~person who directly or indirectly, or through an agent or any other~~
15 ~~person, employs or exercises control over the wages, hours, or~~
16 ~~working conditions of any person, including any person engaged~~
17 ~~in a period of supervised work experience to satisfy requirements~~
18 ~~for licensure, registration, or certification as an allied health~~
19 ~~professional. For purposes of this subdivision, “employer” includes~~
20 ~~the state, political subdivisions of the state, and municipalities.~~

21 ~~(4) For purposes of this subdivision, “allied health professional”~~
22 ~~has the same meaning as in Section 295p of Part F of Subchapter~~
23 ~~V of Chapter 6A of Title 42 of the United States Code.~~

24 ~~(5) Employees who are treated as employed by a single qualified~~
25 ~~taxpayer under subdivision (h) of Section 23626 of the Revenue~~
26 ~~and Taxation Code, as it read on the effective date of this section,~~
27 ~~shall be considered employees of that taxpayer for purposes of this~~
28 ~~subdivision.~~

29 ~~(e) (1) Following the implementation of the minimum wage~~
30 ~~increase specified in subparagraph (F) of paragraph (2) of~~
31 ~~subdivision (b), on or before August 1 of that year, and on or before~~
32 ~~each August 1 thereafter, the Director of Finance shall calculate~~
33 ~~an adjusted minimum wage. The calculation shall increase the~~
34 ~~minimum wage by the lesser of 3.5 percent and the rate of change~~
35 ~~in the averages of the most recent July 1 to June 30, inclusive,~~
36 ~~period over the preceding July 1 to June 30, inclusive, period for~~
37 ~~the United States Bureau of Labor Statistics nonseasonally adjusted~~
38 ~~United States Consumer Price Index for Urban Wage Earners and~~
39 ~~Clerical Workers (U.S. CPI-W). The result shall be rounded to the~~
40 ~~nearest ten cents (\$0.10). Each adjusted minimum wage increase~~

1 calculated under this subdivision shall take effect on the following
2 January 1.

3 (2) ~~If the rate of change in the averages of the most recent July~~
4 ~~1 to June 30, inclusive, period over the preceding July 1 to June~~
5 ~~30, inclusive, period for the United States Bureau of Labor~~
6 ~~Statistics nonseasonally adjusted U.S. CPI-W is negative, there~~
7 ~~shall be no increase or decrease in the minimum wage pursuant to~~
8 ~~this subdivision on the following January 1.~~

9 (3) (A) ~~Notwithstanding the implementation timing described~~
10 ~~in paragraph (1) of this subdivision, if the rate of change in the~~
11 ~~averages of the most recent July 1 to June 30, inclusive, period~~
12 ~~over the preceding July 1 to June 30, inclusive, period for the~~
13 ~~United States Bureau of Labor Statistics nonseasonally adjusted~~
14 ~~U.S. CPI-W exceeds 7 percent in the first year that the minimum~~
15 ~~wage specified in subparagraph (F) of paragraph (1) of subdivision~~
16 ~~(b) is implemented, the indexing provisions described in paragraph~~
17 ~~(1) of this subdivision shall be implemented immediately, such~~
18 ~~that the indexing will be effective on the following January 1.~~

19 (B) ~~If the rate of change in the averages of the most recent July~~
20 ~~1 to June 30, inclusive, period over the preceding July 1 to June~~
21 ~~30, inclusive, period for the United States Bureau of Labor~~
22 ~~Statistics nonseasonally adjusted U.S. CPI-W exceeds 7 percent~~
23 ~~in the first year that the minimum wage specified in subparagraph~~
24 ~~(F) of paragraph (1) of subdivision (b) is implemented,~~
25 ~~notwithstanding any other law, for employers with 25 or fewer~~
26 ~~employees the minimum wage shall be set equal to the minimum~~
27 ~~wage for employers with 26 or more employees, effective on the~~
28 ~~following January 1, and the minimum wage increase specified in~~
29 ~~subparagraph (F) of paragraph (2) of subdivision (b) shall be~~
30 ~~considered to have been implemented for purposes of this~~
31 ~~subdivision.~~

32 (d) (1) ~~On or before July 28, 2017, and on or before every July~~
33 ~~28 thereafter until the minimum wage is fifteen dollars (\$15) per~~
34 ~~hour pursuant to paragraph (1) of subdivision (b), to ensure that~~
35 ~~economic conditions can support a minimum wage increase, the~~
36 ~~Director of Finance shall annually make a determination and certify~~
37 ~~to the Governor and the Legislature whether each of the following~~
38 ~~conditions is met:~~

39 (A) ~~Total nonfarm employment for California, seasonally~~
40 ~~adjusted, decreased over the three-month period from April to~~

June, inclusive, prior to the July 28 determination. This calculation shall compare seasonally adjusted total nonfarm employment in June to seasonally adjusted total nonfarm employment in March, as reported by the Employment Development Department.

(B) Total nonfarm employment for California, seasonally adjusted, decreased over the six-month period from January to June, inclusive, prior to the July 28 determination. This calculation shall compare seasonally adjusted total nonfarm employment in June to seasonally adjusted total nonfarm employment in December, as reported by the Employment Development Department.

(C) Retail sales and use tax cash receipts from a 3.9375-percent tax rate for the July 1 to June 30, inclusive, period ending one month prior to the July 28 determination is less than retail sales and use tax cash receipts from a 3.9375-percent tax rate for the July 1 to June 30, inclusive, period ending 13 months prior to the July 28 determination. The calculation for the condition specified in this subparagraph shall be made as follows:

(i) The State Board of Equalization shall publish by the 10th of each month on its Internet Web site the total retail sales (sales before adjustments) for the prior month derived from their daily retail sales and use tax reports.

(ii) The State Board of Equalization shall publish by the 10th of each month on its Internet Web site the monthly factor required to convert the prior month's retail sales and use tax total from all tax rates to a retail sales and use tax total from a 3.9375-percent tax rate.

(iii) The Department of Finance shall multiply the monthly total from clause (i) by the monthly factor from clause (ii) for each month.

(iv) The Department of Finance shall sum the monthly totals calculated in clause (iii) to calculate the 12-month July 1 to June 30, inclusive, totals needed for the comparison in this subparagraph.

(2) (A) On or before July 28, 2017, and on or before every July 28 thereafter until the minimum wage is fifteen dollars (\$15) per hour pursuant to paragraph (1) of subdivision (b), to ensure that the state General Fund fiscal condition can support the next scheduled minimum wage increase, the Director of Finance shall annually make a determination and certify to the Governor and the Legislature whether the state General Fund would be in a deficit

1 in the current fiscal year, or in either of the following two fiscal
2 years.

3 (B) For purposes of this subdivision, deficit is defined as a
4 negative balance in the Special Fund for Economic Uncertainties,
5 as provided for in Section 16418 of the Government Code, that
6 exceeds, in absolute value, 1 percent of total state General Fund
7 revenue and transfers, based on the most recent Department of
8 Finance estimates required by Section 12.5 of Article IV of the
9 California Constitution. For purposes of this subdivision, the
10 estimates shall include the assumption that only the minimum
11 wage increases scheduled for the following calendar year pursuant
12 to subdivision (b) will be implemented.

13 (3) (A) (i) If, for any year, the condition in either subparagraph
14 (A) or (B) of paragraph (1) is met, and if the condition in
15 subparagraph (C) of paragraph (1) is met, the Governor may, on
16 or before August 1 of that year, notify the Legislature of an initial
17 determination to temporarily suspend the minimum wage increases
18 scheduled pursuant to subdivision (b) for the following year.

19 (ii) If the Director of Finance certifies under paragraph (2) that
20 the state General Fund would be in a deficit in the current fiscal
21 year, or in either of the following two fiscal years, the Governor
22 may, on or before August 1 of that fiscal year, notify the
23 Legislature of an initial determination to temporarily suspend the
24 minimum wage increases scheduled pursuant to subdivision (b)
25 for the following year.

26 (B) If the Governor provides notice to the Legislature pursuant
27 to subparagraph (A), the Governor shall, on September 1 of any
28 such year, make a final determination whether to temporarily
29 suspend the minimum wage increases scheduled pursuant to
30 subdivision (b) for the following year. The determination to
31 temporarily suspend the minimum wage increases scheduled
32 pursuant to subdivision (b) for the following year shall be made
33 by proclamation.

34 (C) The Governor may temporarily suspend scheduled minimum
35 wage increases pursuant to clause (ii) of subparagraph (A) no more
36 than two times.

37 (D) If the Governor makes a final determination to temporarily
38 suspend the scheduled minimum wage increases pursuant to
39 subdivision (b) for the following year, all dates specified in

1 ~~subdivision (b) that are subsequent to the September 1 final~~
2 ~~determination date shall be postponed by an additional year.~~

3 *SECTION 1. Section 1182.14 is added to the Labor Code, to*
4 *read:*

5 *1182.14. (a) For purposes of Section 1182.12, an “employer”*
6 *as defined in paragraph (3) of subdivision (b) of Section 1182.12,*
7 *also means any person who directly or indirectly, or through an*
8 *agent or any other person, employs or exercises control over the*
9 *wages, hours, or working conditions of any person engaged in a*
10 *period of supervised work experience of longer than 100 hours to*
11 *satisfy hourly requirements for licensure, registration, or*
12 *certification as an allied health professional.*

13 *(b) For purposes of subdivision (a), “allied health professional”*
14 *has the same meaning as in Section 295p of Part F of Subchapter*
15 *V of Chapter 6A of Title 42 of the United States Code.*

16 *(c) The definitions contained in subdivisions (a) and (b) do not*
17 *apply to either of the following:*

18 *(1) An employer offering supervised work experience if the*
19 *employer employs 25 or fewer allied health professionals.*

20 *(2) A primary care clinic that is licensed under subparagraph*
21 *(A) of paragraph (1) of subdivision (a) of Section 1204 of the*
22 *Health and Safety Code, and meets the definition of a health center*
23 *pursuant to Section 330 of the Public Health Service Act (42 U.S.C.*
24 *Sec. 254b(a)).*

25 *(d) This section shall not be construed to apply to the*
26 *educational institution at which a person is enrolled to fulfill the*
27 *educational requirements for licensure, registration, or*
28 *certification as an allied health professional. Nothing in this*
29 *subdivision shall relieve hospitals or clinics or other medical*
30 *facilities licensed under Section 1250 of the Health and Safety*
31 *Code that are affiliated with or operated by educational institutions*
32 *from application of this section.*

33 *SEC. 2. No reimbursement is required by this act pursuant to*
34 *Section 6 of Article XIII B of the California Constitution because*
35 *the only costs that may be incurred by a local agency or school*
36 *district will be incurred because this act creates a new crime or*
37 *infraction, eliminates a crime or infraction, or changes the penalty*
38 *for a crime or infraction, within the meaning of Section 17556 of*
39 *the Government Code, or changes the definition of a crime within*

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O