

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WITHDRAWN	Noes _____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

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1267 be amended to read as follows:

- 1 Page 4, between lines 12 and 13, begin a new paragraph and insert:
- 2 "SECTION 8. IC 22-2-2-4 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) Every employer
- 4 employing four (4) or more employees during a work week shall:
- 5 (1) in any work week beginning on or after July 1, 1968, in which
- 6 ~~he the employer~~ is subject to the provisions of this chapter, pay
- 7 each of ~~his the employer's~~ employees wages of not less than one
- 8 dollar and twenty-five cents (\$1.25) per hour;
- 9 (2) in any work week beginning on or after July 1, 1977, in which
- 10 ~~he the employer~~ is subject to this chapter, pay each of ~~his the~~
- 11 ~~employer's~~ employees wages of not less than one dollar and fifty
- 12 cents (\$1.50) per hour;
- 13 (3) in any work week beginning on or after January 1, 1978, in
- 14 which ~~he the employer~~ is subject to this chapter, pay each of ~~his~~
- 15 ~~the employer's~~ employees wages of not less than one dollar and
- 16 seventy-five cents (\$1.75) per hour; and
- 17 (4) in any work week beginning on or after January 1, 1979, in
- 18 which ~~he the employer~~ is subject to this chapter, pay each of ~~his~~
- 19 ~~the employer's~~ employees wages of not less than two dollars (\$2)
- 20 per hour.
- 21 (b) Except as provided in subsection (c), every employer employing
- 22 at least two (2) employees during a work week shall, in any work week
- 23 in which the employer is subject to this chapter, pay each of the
- 24 employees in any work week beginning on and after July 1, 1990, and
- 25 before October 1, 1998, wages of not less than three dollars and

1 thirty-five cents (\$3.35) per hour.

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

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

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

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

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

28 (1) a seniority system;

29 (2) a merit system;

30 (3) a system which measures earnings by quantity or quality of  
31 production; or

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

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

40 (f) Except as provided in subsection (c), every employer employing  
41 at least two (2) employees during a work week shall, in any work week  
42 in which the employer is subject to this chapter, pay each of the  
43 employees in any work week beginning on or after October 1, 1998,  
44 and before March 1, 1999, wages of not less than four dollars and  
45 twenty-five cents (\$4.25) per hour.

46 (g) Except as provided in subsections (c) and ~~(i)~~, **(k)**, every  
47 employer employing at least two (2) employees during a work week

1 shall, in any work week in which the employer is subject to this  
 2 chapter, pay each of the employees in any work week beginning on or  
 3 after March 1, 1999, **and before September 1, 2006**, wages of not less  
 4 than five dollars and fifteen cents (\$5.15) an hour.

5 **(h) Except as provided in subsections (c) and (k), every employer**  
 6 **employing at least two (2) employees during a work week shall, in**  
 7 **any work week in which the employer is subject to this chapter,**  
 8 **pay each of the employees in any work week beginning on or after**  
 9 **September 1, 2006, wages of not less than six dollars and fifteen**  
 10 **cents (\$6.15) an hour.**

11 **(i) Except as provided in subsections (c) and (k), every employer**  
 12 **employing at least two (2) employees during a work week shall, in**  
 13 **any work week in which the employer is subject to this chapter,**  
 14 **pay each of the employees in any work week beginning on or after**  
 15 **September 1, 2007, wages of not less than seven dollars (\$7) an**  
 16 **hour.**

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

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

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

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

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

31 **(2) four dollars and seventy-five cents (\$4.75) per hour,**  
 32 **effective September 1, 2006; and**

33 **(3) six dollars and ten cents (\$6.10) per hour, effective**  
 34 **September 1, 2007.**

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

39 ~~(l)~~ **(l)** Except as otherwise provided in this section, no employer  
 40 shall employ any employee for a work week longer than forty (40)  
 41 hours unless the employee receives compensation for employment in  
 42 excess of the hours above specified at a rate not less than one and  
 43 one-half (1.5) times the regular rate at which ~~he~~ **the employee** is  
 44 employed.

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

46 (1) "Overtime compensation" means the compensation required by  
 47 subsection ~~(j)~~ **(l)**.

- 1 (2) "Compensatory time" and "compensatory time off" mean  
2 hours during which an employee is not working, which are not  
3 counted as hours worked during the applicable work week or  
4 other work period for purposes of overtime compensation, and for  
5 which the employee is compensated at the employee's regular rate.
- 6 (3) "Regular rate" means the rate at which an employee is  
7 employed is considered to include all remuneration for  
8 employment paid to, or on behalf of, the employee, but is not  
9 considered to include the following:
- 10 (A) Sums paid as gifts, payments in the nature of gifts made at  
11 Christmas time or on other special occasions, as a reward for  
12 service, the amounts of which are not measured by or  
13 dependent on hours worked, production, or efficiency.
- 14 (B) Payments made for occasional periods when no work is  
15 performed due to vacation, holiday, illness, failure of the  
16 employer to provide sufficient work, or other similar cause,  
17 reasonable payments for traveling expenses, or other expenses,  
18 incurred by an employee in the furtherance of ~~his~~ **the**  
19 employer's interests and properly reimbursable by the  
20 employer, and other similar payments to an employee which  
21 are not made as compensation for ~~his~~ **the employee's** hours of  
22 employment.
- 23 (C) Sums paid in recognition of services performed during a  
24 given period if:
- 25 (i) both the fact that payment is to be made and the amount  
26 of the payment are determined at the sole discretion of the  
27 employer at or near the end of the period and not pursuant to  
28 any prior contract, agreement, or promise causing the  
29 employee to expect the payments regularly;
- 30 (ii) the payments are made pursuant to a bona fide profit  
31 sharing plan or trust or bona fide thrift or savings plan,  
32 meeting the requirements of the administrator set forth in  
33 appropriately issued regulations, having due regard among  
34 other relevant factors, to the extent to which the amounts  
35 paid to the employee are determined without regard to hours  
36 of work, production, or efficiency; or
- 37 (iii) the payments are talent fees paid to performers,  
38 including announcers, on radio and television programs.
- 39 (D) Contributions irrevocably made by an employer to a  
40 trustee or third person pursuant to a bona fide plan for  
41 providing old age, retirement, life, accident, or health  
42 insurance or similar benefits for employees.
- 43 (E) Extra compensation provided by a premium rate paid for  
44 certain hours worked by the employee in any day or work  
45 week because those hours are hours worked in excess of eight  
46 (8) in a day or in excess of the maximum work week  
47 applicable to the employee under subsection ~~(j)~~ **(I)** or in excess

- 1 of the employee's normal working hours or regular working  
 2 hours, as the case may be.
- 3 (F) Extra compensation provided by a premium rate paid for  
 4 work by the employee on Saturdays, Sundays, holidays, or  
 5 regular days of rest, or on the sixth or seventh day of the work  
 6 week, where the premium rate is not less than one and one-half  
 7 (1.5) times the rate established in good faith for like work  
 8 performed in nonovertime hours on other days.
- 9 (G) Extra compensation provided by a premium rate paid to  
 10 the employee, in pursuance of an applicable employment  
 11 contract or collective bargaining agreement, for work outside  
 12 of the hours established in good faith by the contract or  
 13 agreement as the basic, normal, or regular workday (not  
 14 exceeding eight **(8)** hours) or work week (not exceeding the  
 15 maximum work week applicable to the employee under  
 16 subsection ~~(j)~~ **(I)**) where the premium rate is not less than one  
 17 and one-half (1.5) times the rate established in good faith by  
 18 the contract or agreement for like work performed during the  
 19 workday or work week.
- 20 ~~(j)~~ **(n)** No employer shall be considered to have violated subsection  
 21 ~~(j)~~ **(I)** by employing any employee for a work week in excess of that  
 22 specified in subsection ~~(j)~~ **(I)** without paying the compensation for  
 23 overtime employment prescribed therein if the employee is so  
 24 employed:
- 25 (1) in pursuance of an agreement, made as a result of collective  
 26 bargaining by representatives of employees certified as bona fide  
 27 by the National Labor Relations Board, which provides that no  
 28 employee shall be employed more than one thousand forty (1,040)  
 29 hours during any period of twenty-six (26) consecutive weeks; or  
 30 (2) in pursuance of an agreement, made as a result of collective  
 31 bargaining by representatives of employees certified as bona fide  
 32 by the National Labor Relations Board, which provides that  
 33 during a specified period of fifty-two (52) consecutive weeks the  
 34 employee shall be employed not more than two thousand two  
 35 hundred forty (2,240) hours and shall be guaranteed not less than  
 36 one thousand eight hundred forty (1,840) hours (or not less than  
 37 forty-six (46) weeks at the normal number of hours worked per  
 38 week, but not less than thirty (30) hours per week) and not more  
 39 than two thousand eighty (2,080) hours of employment for which  
 40 the employee shall receive compensation for all hours guaranteed  
 41 or worked at rates not less than those applicable under the  
 42 agreement to the work performed and for all hours in excess of the  
 43 guaranty which are also in excess of the maximum work week  
 44 applicable to the employee under subsection ~~(j)~~ **(I)** or two  
 45 thousand eighty (2,080) in that period at rates not less than one  
 46 and one-half (1.5) times the regular rate at which the employee is  
 47 employed.

1           ~~(m)~~ **(o)** No employer shall be considered to have violated subsection  
 2 ~~(j)~~ **(l)** by employing any employee for a work week in excess of the  
 3 maximum work week applicable to the employee under subsection ~~(j)~~  
 4 **(l)** if the employee is employed pursuant to a bona fide individual  
 5 contract, or pursuant to an agreement made as a result of collective  
 6 bargaining by representatives of employees, if the duties of the  
 7 employee necessitate irregular hours of work, and the contract or  
 8 agreement includes the following:

9           (1) Specifies a regular rate of pay of not less than the minimum  
 10 hourly rate provided in subsections (c), (f), (g), ~~and (h)~~, (i), ~~and~~  
 11 **(k)** (whichever is applicable) and compensation at not less than  
 12 one and one-half (1.5) times that rate for all hours worked in  
 13 excess of the maximum work week.

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

16           ~~(m)~~ **(p)** No employer shall be considered to have violated subsection  
 17 ~~(j)~~ **(l)** by employing any employee for a work week in excess of the  
 18 maximum work week applicable to the employee under that subsection  
 19 if, pursuant to an agreement or understanding arrived at between the  
 20 employer and the employee before performance of the work, the  
 21 amount paid to the employee for the number of hours worked by ~~him~~  
 22 **the employee** in the work week in excess of the maximum work week  
 23 applicable to the employee under that subsection:

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

28           (2) in the case of an employee performing two (2) or more kinds  
 29 of work for which different hourly or piece rates have been  
 30 established, is computed at rates not less than one and one-half  
 31 (1.5) times those bona fide rates applicable to the same work when  
 32 performed during nonovertime hours; or

33           (3) is computed at a rate not less than one and one-half (1.5) times  
 34 the rate established by the agreement or understanding as the basic  
 35 rate to be used in computing overtime compensation thereunder,  
 36 provided that the rate so established shall be substantially  
 37 equivalent to the average hourly earnings of the employee,  
 38 exclusive of overtime premiums, in the particular work over a  
 39 representative period of time;

40 and if the employee's average hourly earnings for the work week  
 41 exclusive of payments described in this section are not less than the  
 42 minimum hourly rate required by applicable law, and extra overtime  
 43 compensation is properly computed and paid on other forms of  
 44 additional pay required to be included in computing the regular rate.

45           ~~(o)~~ **(q)** Extra compensation paid as described in this section shall be  
 46 creditable toward overtime compensation payable pursuant to this  
 47 section.

1           ~~(p)~~ **(r)** No employer shall be considered to have violated subsection  
 2 ~~(j)~~ **(l)** by employing any employee of a retail or service establishment  
 3 for a work week in excess of the applicable work week specified  
 4 therein, if:

5           (1) the regular rate of pay of the employee is in excess of one and  
 6 one-half (1.5) times the minimum hourly rate applicable to the  
 7 employee under section 2 of this chapter; and

8           (2) more than half of the employee's compensation for a  
 9 representative period (not less than one (1) month) represents  
 10 commissions on goods or services.

11 In determining the proportion of compensation representing  
 12 commissions, all earnings resulting from the application of a bona fide  
 13 commission rate shall be considered commissions on goods or services  
 14 without regard to whether the computed commissions exceed the draw  
 15 or guarantee.

16           ~~(q)~~ **(s)** No employer engaged in the operation of a hospital or an  
 17 establishment which is an institution primarily engaged in the care of  
 18 the sick, the aged, or the mentally ill or defective who reside on the  
 19 premises shall be considered to have violated subsection ~~(j)~~ **(l)** if,  
 20 pursuant to an agreement or understanding arrived at between the  
 21 employer and the employee before performance of the work, a work  
 22 period of fourteen (14) consecutive days is accepted in lieu of the work  
 23 week of seven (7) consecutive days for purposes of overtime  
 24 computation and if, for ~~his~~ **the employee's** employment in excess of  
 25 eight (8) hours in any workday and in excess of eighty (80) hours in  
 26 that fourteen (14) day period, the employee receives compensation at  
 27 a rate not less than one and one-half (1.5) times the regular rate at  
 28 which the employee is employed.

29           ~~(r)~~ **(t)** No employer shall employ any employee in domestic service  
 30 in one (1) or more households for a work week longer than forty (40)  
 31 hours unless the employee receives compensation for that employment  
 32 in accordance with subsection ~~(j)~~ **(l)**.

33           ~~(s)~~ **(u)** In the case of an employee of an employer engaged in the  
 34 business of operating a street, a suburban or ~~an~~ **a** interurban electric  
 35 railway, or a local trolley or motorbus carrier (regardless of whether or  
 36 not the railway or carrier is public or private or operated for profit or  
 37 not for profit), in determining the hours of employment of such an  
 38 employee to which the rate prescribed by subsection ~~(j)~~ **(l)** applies,  
 39 there shall be excluded the hours the employee was employed in charter  
 40 activities by the employer if both of the following apply:

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

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

46           ~~(t)~~ **(v)** Any employer may employ any employee for a period or  
 47 periods of not more than ten (10) hours in the aggregate in any work

1 week in excess of the maximum work week specified in subsection ~~(j)~~  
2 **(l)** without paying the compensation for overtime employment  
3 prescribed in subsection ~~(j)~~; **(l)**, if during that period or periods the  
4 employee is receiving remedial education that:

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

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

9 (3) does not include job specific training.

10 ~~(u)~~ **(w)** Subsection ~~(j)~~ **(l)** does not apply to an employee of a motion  
11 picture theater.

12 ~~(v)~~ **(x)** Subsection ~~(j)~~ **(l)** does not apply to an employee of a seasonal  
13 amusement or recreational establishment, an organized camp, or a  
14 religious or nonprofit educational conference center that is exempt  
15 under the federal Fair Labor Standards Act of 1938, as amended (29  
16 U.S.C. 213).".

17 Renumber all SECTIONS consecutively.

(Reference is to HB 1267 as printed January 26, 2006.)

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Representative Day