



Senate

General Assembly

File No. 387

February Session, 2016

Senate Bill No. 391

Senate, March 31, 2016

The Committee on Human Services reported through SEN. MOORE, M. of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

***AN ACT CONCERNING THE RECOUPMENT OF STATE COSTS
ATTRIBUTABLE TO LOW WAGE EMPLOYERS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) As used in this section,
2 section 31-76n of the general statutes and sections 3 and 4 of this act:

3 (1) "Person" has the same meaning as provided in section 42-133e of
4 the general statutes, except "person" shall not include the state or any
5 department, agency or political subdivision thereof;

6 (2) "Franchise" has the same meaning as provided in section 42-133e
7 of the general statutes;

8 (3) "Franchisor" has the same meaning as provided in section 42-
9 133e of the general statutes;

10 (4) "Franchisee" has the same meaning as provided in section 42-
11 133e of the general statutes;

12 (5) "Employee" means any individual employed or permitted to
13 work by an employer, but does not include any individual employed
14 in any park, camp or resort that is open not more than six months of
15 the year;

16 (6) "Covered employer" means:

17 (A) Any person, firm, business or educational institution that
18 employs five hundred or more employees in the state in any one
19 quarter for quarters commencing on and after January 1, 2016, based
20 upon the wage information submitted to the Labor Commissioner
21 pursuant to subsection (j) of section 31-225a of the general statutes; or

22 (B) Any franchisor where the franchisor and its franchisees employ,
23 in the aggregate, five hundred or more employees in the state in any
24 one quarter for quarters commencing on and after January 1, 2016,
25 based upon the information submitted to the Labor Commissioner
26 pursuant to section 4 of this act;

27 (C) "Covered employer" does not include any private nonprofit
28 entity, the state, or any department, agency or political subdivision
29 thereof;

30 (7) "Low wage employer fee" means any fee assessed pursuant to
31 subsection (b) of this section and paid to the state in accordance with
32 this section; and

33 (8) "Wage" means compensation due to an employee by reason of
34 his or her employment.

35 (b) Any covered employer that employs, or whose franchisee
36 employs, any employee (1) who was listed on such covered employer's
37 or such franchisee's payroll for at least ninety calendar days prior to
38 the completion of the most recent calendar quarter, beginning with the
39 first calendar quarter of 2017, and (2) whose wages paid by the covered
40 employer, or the covered employer's franchisee, during the quarter
41 were on average less than fifteen dollars per hour, shall pay a fee to the
42 Labor Commissioner. The Labor Commissioner shall calculate the fee

43 by multiplying the fee rate by number of hours during the quarter that
44 such employee worked. The fee rate shall be equal to 0.004 dollars, or
45 four-tenths of one cent, multiplied by the number of employees in
46 excess of five hundred employed in the state by the covered employer
47 directly or in the aggregate with its franchisees; provided in no event
48 shall the fee rate be less than ten cents or greater than one dollar. The
49 fee shall be assessed quarterly based on employee hours worked
50 during the first calendar quarter of 2017 and thereafter.

51 (c) On January 1, 2023, and annually thereafter, "fifteen dollars" in
52 subsection (b) of this section shall be adjusted by an amount
53 corresponding to the prior year's increase, if any, in the Consumer
54 Price Index for All Urban Consumers (CPI-U), as released by the
55 Bureau of Labor Statistics of the United States Department of Labor, or
56 its successor.

57 (d) The Labor Commissioner shall deposit moneys collected
58 pursuant to subsection (b) of this section with the State Treasurer, who
59 shall deposit such moneys in the General Fund, and shall report the
60 amount of such deposits to the joint standing committees of the
61 General Assembly having cognizance of matters relating to education,
62 human services and appropriations and the budgets of state agencies.
63 Each legislative session, said committees may issue recommendations
64 concerning spending the moneys received to expand or improve
65 services under state programs supporting the quality of and access to
66 state-supported, consumer-directed services for elderly and disabled
67 persons, school readiness programs, the child care subsidy program
68 authorized pursuant to section 17b-749 of the general statutes, child
69 development centers, Head Start, Early Head Start, or other programs
70 to provide child care and early learning opportunities for the children
71 of low wage employees. In making their recommendations, the
72 committees shall consider any recommendations made by the
73 Connecticut Low Wage Employer Advisory Board established
74 pursuant to section 31-76n of the general statutes, as amended by this
75 act. For the purposes of improving quality of and access to services
76 pursuant to this subsection, moneys received may be appropriated for

77 use by state programs to recruit, retain and offer professional
78 development to a qualified workforce.

79 (e) Moneys received by the Labor Commissioner, pursuant to
80 subsection (b) of this section, may be used for the purpose of
81 administering and enforcing the provisions of subsection (b) of this
82 section.

83 (f) Not later than October 1, 2016, the Labor Commissioner shall
84 adopt regulations in accordance with the provisions of chapter 54 of
85 the general statutes for the determination and collection of fees
86 pursuant to subsection (b) of this section. Such regulations shall
87 include the establishment of reasonable penalties or other remedies for
88 failure to file timely reports and for delinquent or unpaid fees assessed
89 pursuant to this section.

90 Sec. 2. Subsections (a) and (b) of section 31-76n of the 2016
91 supplement to the general statutes are repealed and the following is
92 substituted in lieu thereof (*Effective from passage*):

93 (a) There is established the Connecticut Low Wage Employer
94 Advisory Board. Such board shall advise the Labor Commissioner, the
95 Departments of Social Services and Developmental Services and the
96 Office of Early Childhood on matters related to: (1) The causes and
97 effects of businesses paying low wages to residents of the state, (2)
98 public assistance usage among working residents of the state, (3)
99 minimum wage rates necessary to ensure working residents of the
100 state [may] can achieve an economically stable standard of living, (4)
101 improvement of the quality of public assistance programs affecting
102 such residents, (5) wages and working conditions for the workforce
103 delivering services to low-wage working families, [and] (6) reliance of
104 businesses on state-funded public assistance programs, and (7)
105 recommendations for using the moneys received from the low wage
106 employer fee.

107 (b) In advising the Labor Commissioner, the Departments of Social
108 Services and Developmental Services and the Office of Early

109 Childhood on the matters described in subdivisions (1) to [(6)] (7),
110 inclusive, of subsection (a) of this section, the board shall:

111 (1) Study and monitor (A) the causes and effects of businesses
112 paying low wages to residents of the state, including the impact of
113 such labor practices on workers' need for public assistance, (B) the
114 minimum wage rates necessary to enable working residents of the
115 state to meet basic needs, such as food, housing, health care and child
116 care without assistance from state-funded public assistance programs,
117 and (C) the benefits received by employers from the provision of
118 public assistance to the state workforce and solutions to associated
119 problems;

120 (2) Consider, suggest and review legislative and agency proposals
121 and actions regarding the matters described in subdivisions (1) to [(6)]
122 (7), inclusive, of subsection (a) of this section;

123 (3) Foster communication between working residents of the state
124 who provide or receive public assistance and employers and state
125 agencies for the purpose of improving the quality of state public
126 assistance programs serving lower-income residents; and

127 (4) Advise the Labor Commissioner, and other interested state
128 agencies or officials, on policies and procedures related to the board's
129 areas of study, including, but not limited to, public assistance usage
130 among lower-income working residents, the impact of public
131 assistance programs on workforce quality and stability, and the wages
132 and benefits necessary to maintain a stable and qualified workforce to
133 administer and provide services in connection with public assistance
134 programs.

135 Sec. 3. (NEW) (*Effective from passage*) (a) Any covered employer
136 aggrieved by the Labor Commissioner's determination of fees,
137 pursuant to subsection (b) of section 1 of this act, may file a complaint
138 with the commissioner. Upon receipt of the complaint, the
139 commissioner shall investigate such complaint and may conduct a
140 hearing in accordance with the provisions of chapter 54 of the general

141 statutes.

142 (b) The Labor Commissioner may request the Attorney General to
143 investigate any violation of subsection (b) of section 1 of this act. Any
144 information obtained pursuant to such investigation shall be exempt
145 from disclosure under section 1-210 of the general statutes. If the
146 Attorney General finds that a covered employer has violated or is
147 violating any provision of section 1 or 4 of this act, the Attorney
148 General may bring a civil action in the superior court for the judicial
149 district of Hartford in the name of the state against such covered
150 employer.

151 (c) Nothing in this section shall be construed to require a fee based
152 on the hourly pay of any employee whose pay was established by a
153 collective bargaining agreement executed prior to the effective date of
154 this section for the term of such agreement.

155 Sec. 4. (NEW) (*Effective from passage*) Not later than January 31, 2017,
156 and annually thereafter, each employer that submits wage information
157 to the Labor Commissioner pursuant to subsection (j) of section 31-
158 225a of the general statutes shall inform the commissioner if such
159 employer is a franchisee. If such employer is a franchisee, such
160 employer shall provide to the commissioner the name and address of
161 the franchisor that granted the franchise to such employer and any
162 other information the commissioner may require.

| | | |
|---|---------------------|-------------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>from passage</i> | New section |
| Sec. 2 | <i>from passage</i> | 31-76n(a) and (b) |
| Sec. 3 | <i>from passage</i> | New section |
| Sec. 4 | <i>from passage</i> | New section |

HS *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 17 \$ | FY 18 \$ |
|--|--------------------|---------------------|---------------------|
| Labor Dept. | GF - Revenue Gain | Up to 150.3 million | Up to 300.6 million |
| Labor Dept. | GF - Cost | 11 million | 14.6 million |
| State Comptroller - Fringe Benefits ¹ | GF - Cost | 3.4 million | 4.5 million |

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill establishes a quarterly fee on certain employers at a rate of up to \$1.00 per work hour for each hour worked by an employee paid on average less than \$15 per hour. This results in a General Fund revenue gain of up to \$150.3 million in FY 17 and up to \$300.6 million annually thereafter. This also results in a cost of approximately \$14.4 million in FY 17 and approximately \$19.2 million annually thereafter to the Department of Labor (DOL).

COST IMPACT

The bill requires the Labor Commissioner to adopt guidelines for determining and collecting fees by October 1, 2016, and to begin collecting fees during the first calendar quarter of 2017. Administration of this program is estimated to result in a cost of approximately \$19.2 million annually, including collections, data

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 39.94% of payroll in FY 17 and FY 18.

management, audit and all associated fringe benefit costs. The estimate is based on the current cost of agency management services under the unemployment insurance system.

The bill allows covered employers to file a complaint with the Labor Commissioner, who must investigate and hold a hearing. This is anticipated to result in a cost of approximately \$445,328 in FY 17 and \$593,771 annually thereafter for salary (\$106,076) and fringes (\$42,367) associated with the hiring of four Staff Attorneys.

There is no fiscal impact to the Judicial Department from allowing the Attorney General to file suit in Hartford Superior Court. The number of suits is not anticipated to be great enough to need additional resources. The court system disposes of over 500,000 cases annually.

REVENUE IMPACT

The revenue estimate assumes approximately 148,472 of the 752,255 employees who work for firms with at least 500 employees would be covered under the bill. Additionally, the estimate assumes that the average annual hours worked per covered employee is approximately 2,080, based on hourly and annual wage data by job category and percentile compiled by DOL. Under the bill, it is uncertain how certain types of income (overtime, bonus, etc.) would be treated. Consequently, no adjustments are made to account for how this income would be treated. Additionally, the estimate assumes no behavior change on the part of employers or employees.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation. The revenue gain described above would continue into the future subject to wage inflation and fluctuation in the number of jobs paying above and

below the wage threshold triggering the fee.²

Sources: *Labor Department Labor Market Information*
United States Census Bureau

² The bill includes a provision increasing the wage threshold at which the fee becomes payable beginning on January 1, 2023.

OLR Bill Analysis**SB 391*****AN ACT CONCERNING THE RECOUPMENT OF STATE COSTS ATTRIBUTABLE TO LOW WAGE EMPLOYERS.*****SUMMARY:**

This bill requires certain employers with over 500 employees in the state, and franchisors who, combined with their franchisees, collectively employ at least 500 employees in the state, to pay a quarterly fee (i.e., a “low wage employer fee”) to the labor commissioner, based on the number of hours worked by employees who were (1) on the employer’s or franchisee’s payroll for at least 90 days before the end of the most recent calendar quarter and (2) paid on average less than \$15 per hour during the quarter. Under the bill, the labor commissioner must assess the fee quarterly beginning with the first calendar quarter of 2017. Beginning January 1, 2023, the bill requires the average pay per hour threshold of \$15 to be adjusted annually by an amount corresponding to the prior year’s increase in the Consumer Price Index for All Urban Consumers, a measure of inflation published by the U.S. Department of Labor’s Bureau of Labor Statistics.

The bill allows the labor commissioner to ask the attorney general to investigate any violation of the requirement to pay the fee. Under the bill, information obtained during such an investigation is exempt from disclosure under the state's Freedom of Information Act. If the attorney general finds that a covered employer has violated the bill's provisions, he may sue the employer in Hartford Superior Court.

The bill also establishes a complaint process for employers and franchisors affected by the bill’s provisions (i.e., “covered employers”).

Under the bill, the labor commissioner must deposit in the General

Fund any funds collected through the fee and report the deposited amounts to the Appropriations, Education, and Human Services committees, which may make recommendations each legislative session on how to spend the money to expand or improve state services. The bill expands the duties of the Connecticut Low Wage Employer Advisory Board to include advising certain state agencies on recommendations for using funds received from the low wage employer fee and requires the legislative committees to consider the board's recommendations when making their own recommendations.

EFFECTIVE DATE: Upon passage

COVERED EMPLOYERS

Employers

An employer subject to the bill's provisions is any person, firm, business, or educational institution that employs at least 500 employees in the state in any one quarter, beginning with the quarter that started January 1, 2016, based on the quarterly wage information employers submit to the labor commissioner for unemployment tax purposes. It does not include any private nonprofit entity, the state, or the state's departments, agencies, or political subdivisions.

Franchisors

The bill subjects franchisors to the bill's provisions if the franchisor and their franchisees employ, in the aggregate, at least 500 employees in the state in any one quarter, beginning with the quarter that started January 1, 2016. A franchisor is an entity that grants a franchise to another entity, including the authority to use a trademark, trade name, service mark, or other identifying symbol or name under a franchise. A franchisee is the entity to which a franchise is granted by the franchisor.

Beginning January 31, 2017, the bill requires employers submitting their quarterly wage reports for unemployment tax purposes to inform the labor commissioner whether they are a franchisee, and if so, provide their franchisor's contact information and any other

information the commissioner requests. (Though the bill’s requirements apply earlier to franchisors these reporting requirements appear to give the commissioner time to impose a fee if necessary.)

In general, franchisors are not considered employers of the employees who work in a franchise. Instead, because the franchisee who owns the franchise controls the hiring, firing, wage, and scheduling decisions for these workers, the franchisee is typically considered their employer under wage, unemployment, workers' compensation, and other labor-related laws. Thus, it is unclear whether a franchisor could be held financially liable for wage and hour decisions over which it does not have control.

LOW WAGE EMPLOYER FEE

Calculation

The bill requires the labor commissioner to calculate the low wage employer fee for each covered employer. He must do so by first calculating the number of hours worked by employees (1) who were listed on a covered employer or franchisee’s payroll for at least 90 days before the end of the most recent calendar quarter and (2) whose wages during the quarter were on average less than \$15 per hour. He then must multiply that number of hours by the fee rate. Under the bill, the fee rate varies depending on the total number of employees in the state (regardless of their wages) employed by the covered employer and, if applicable, its franchisees in aggregate as shown in Table 1.

Table 1: Fee Rate

| <i>Number of Employees</i> | <i>Fee Rate</i> |
|----------------------------|-------------------------------------|
| 500 to 525 | \$0.10 |
| 526 to 749 | (Number of employees – 500) X 0.004 |
| 750 or greater | \$1.00 |

Implementation

The bill requires the labor commissioner to assess the low wage employer fee quarterly beginning with the first calendar quarter of 2017. By October 1, 2016, the labor commissioner must adopt regulations on how to determine and collect the fees, including penalties or other remedies for (1) failure to file timely reports and (2) delinquent or unpaid fees.

EXEMPTIONS

Under the bill, the low wage employer fee does not apply to any employee whose pay was established through a collective bargaining agreement executed before the bill's effective date. The bill's requirements also do not apply to employees of parks, camps, or resorts that are open six months per year or less.

USE OF FUNDS***Expansion or Improvement of Services***

Under the bill, the labor commissioner must (1) deposit funds collected through the low wage employer fee with the state treasurer, who must deposit the funds in the General Fund and (2) report the amount to the Appropriations, Education, and Human Services committees. The committees may make recommendations each legislative session on how to spend the money on expansion or improvement of services under the following programs or types of programs:

1. state programs supporting the quality of and access to state-supported consumer-directed services for elderly people or individuals with disabilities,
2. Care 4 Kids,
3. child development centers,
4. Head Start,

5. Early Head Start, or
6. other programs to provide child care and early learning opportunities for low wage employees' children

To improve the quality of and access to these services, the bill allows the funds to be used for recruiting, retaining, and offering professional development to a qualified workforce.

Other Uses

Under the bill, the labor commissioner may also use the funds to administer and support the collection, assessment, and calculation of the fee.

The bill requires the committees to also consider any recommendations made by the Connecticut Low Wage Employer Advisory Board. Under the bill, the advisory board must make recommendations on how to use funds generated through the low wage employer fee to the labor commissioner, the Department of Social Services, the Department of Developmental Services, and the Office of Early Childhood.

COMPLAINT PROCESS

The bill allows any aggrieved covered employer to file a complaint with the labor commissioner about his determination of the fees. When he receives a complaint, the bill requires him to investigate it and allows him to conduct a hearing, in accordance with the Uniform Administrative Procedure Act.

COMMITTEE ACTION

Human Services Committee

Joint Favorable

Yea 10 Nay 8 (03/15/2016)