1	SENATE BILL 899
2	47th legislature - STATE OF NEW MEXICO - FIRST SESSION, 2005
3	INTRODUCED BY
4	John Arthur Smith
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10	AN ACT
11	RELATING TO MINIMUM WAGES; CLARIFYING THE MINIMUM WAGE FOR
12	TIPPED EMPLOYEES.
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14	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:
15	Section 1. Section 50-4-22 NMSA 1978 (being Laws 1955,
16	Chapter 200, Section 3, as amended) is amended to read:
17	"50-4-22. MI NI MUM WAGES
18	A. An employer, except as provided in Section
19	50-4-21 NMSA 1978, shall pay the minimum wage rate of five
20	dollars fifteen cents (\$5.15) an hour, except that an employer
21	furnishing food, utilities, supplies or housing to an employee
22	who is engaged in agriculture may deduct the reasonable value
23	of such furnished items from any wages due to the employee.
24	[B. All employees covered by Subsection A of this
25	section who customarily and regularly receive more than thirty
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1	dollars (\$30.00) a month in tips shall be paid a minimum hourly
2	wage of two dollars twelve and one-half cents (\$2.125). The
3	employer may consider tips as part of wages, but such a wage
4	credit shall not exceed fifty percent of the minimum wage. All
5	tips received by such employees shall be retained by the
6	employee, except that nothing in this section shall prohibit
7	the pooling of tips among employees.]
8	<u>B. In determining the wage an employer is required</u>
9	to pay a tipped employee who customarily and regularly receives
10	more than thirty dollars (\$30.00) a month, the amount paid the
11	employee by the employer shall be an amount equal to:
12	(1) the cash wage paid the employee that for
13	purposes of such determination shall be not less than two
14	dollars thirteen cents (\$2.13) an hour; and
15	<u>(2) an additional amount on account of tips</u>
16	received by the employee, which amount is equal to the
17	<u>difference between the wage specified in Paragraph (1) of this</u>
18	subsection and the wage specified in Subsection A of this
19	<u>section.</u>
20	C. The additional amount on account of tips may not
21	exceed the value of the tips actually received by the employee.
22	The provisions of Subsection B of this section shall not apply
23	with respect to any tipped employee unless the employee has
24	been informed by the employer of the provisions of that
25	subsection and all tips received by the employee have been
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retained by the employee; provided that nothing in this subsection or Subsection B of this section shall be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

 $[C_{\cdot}]$ D. An employee covered by the provisions of Subsection A of this section shall not be required to work more 6 7 than forty hours in any week of seven days, unless he is paid 8 one and one-half times his regular hourly rate of pay for all 9 hours worked in excess of forty hours. For an employee who is 10 paid a fixed salary for fluctuating hours and who is employed by an employer a majority of whose business in New Mexico 12 consists of providing investigative services to the federal 13 government, the hourly rate may be calculated in accordance 14 with the provisions of the federal Fair Labor Standards Act of 1938 and [the regulations] rules pursuant to that act; provided 16 that in no case shall the hourly rate be less than the federal 17 minimum wage."

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