

Section 2. This act shall become effective immediately upon final enactment. When effective.

APPROVED—The 27th day of May, A. D. 1937.

GEORGE H. EARLE

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No. 248

AN ACT

For the protection of the health and welfare of women and minors by regulating under the police power the minimum fair wages which shall be paid by employers; providing for wage boards, and defining the powers and duties of such boards, and of the Department of Labor and Industry; imposing duties on employers; providing for directory and mandatory orders on employers, and the publication of the names of employers who do not comply with such orders; exempting certain persons from the provisions of this act; and providing penalties.

Be it enacted, &c., That,

Section 1. Factual Background.—Women and minors are employed in some occupations in trade and industry in the Commonwealth of Pennsylvania for wages unreasonably low and not fairly commensurate with the value of the services rendered. Such a condition is contrary to public interest and public policy commands its regulation. Women and minors employed in such industries are not as a class on a level of equality in bargaining with their employers in regard to minimum fair wage standards, and “freedom of contract” as applied to their relations with their employers is illusory. Judged by any reasonable standard, wages in such industries are often found to bear no relation to the fair value of the services rendered. Women and minors employed for gain in such occupations are peculiarly subject to the overreaching of inefficient, harsh or ignorant employers and under unregulated competition, where no adequate machinery exists for the effective regulation and maintenance of minimum fair wage standards, the standards such as exist tend to be set by the least conscientious employers. In the absence of any effective minimum fair wage rates for women and minors, the constant lowering of wages by unscrupulous employers constitutes a serious form of unfair competition against other employers, reduces the purchasing power of the workers and threatens the stability of industry. The evils of oppressive, unreasonable and unfair wages, as they affect women and minors employed in the Commonwealth of Pennsylvania, are such as to render imperative the exercise of the police power of the Commonwealth for the protection of industry, and of the women and minors employed therein, and of the public interest of the community at large in their health and well being.

Employment of
women and
children.

Definitions.

Section 2. Definitions.—As used in this act—

(1) “Secretary” shall mean the Secretary of Labor and Industry.

(2) “Department” shall mean the Department of Labor and Industry.

(3) “Wage board” shall mean a board created as provided in this act.

(4) “Women” shall mean a female of twenty-one years, or over.

(5) “Minor” shall mean a person of either sex under the age of twenty-one years.

(6) “Occupation” shall mean an industry, trade, business or class of work in which women or minors are gainfully employed, but shall not include domestic service in the home of the employer, or services in a religious community or charitable institution, or labor on a farm, or boys lawfully employed in the sale and delivery of newspapers and magazines.

(7) “A fair wage” shall mean a wage fairly and reasonably commensurate with the value of the service or class of service rendered.

Section 3. Powers of Investigation.—The department shall have power—

(1) To investigate and ascertain the wages of women and minors employed in any occupation in the Commonwealth.

(2) To enter the place of business or employment of any employer of women and minors in any occupation for the purpose of—

(a) Examining and inspecting any and all books, registers, payrolls and other records of any employer of women or minors that in any way appertain to or have a bearing upon the wages of any such women or minors; and

(b) Ascertaining whether the orders of the department have been and are being complied with.

(3) To require from such employer full and correct statements, in writing, at such times as the department may deem necessary, of the wages paid to all women and minors in his employment.

Section 4. Investigation of Occupation.—The department shall have power, and it shall be the duty of the department on the petition of fifty or more residents of the Commonwealth, to cause an investigation to be made by any duly authorized representative of the wages being paid to women or minors in any occupation to ascertain whether any substantial number of women or minors in such occupation are receiving wages which are less than sufficient to maintain their health or efficiency. If, on the basis of information in its possession, with or without a special investigation, the department is of the opinion that any substantial number of women or minors

in any occupation or occupations are receiving such wages, the secretary shall appoint a wage board to report upon the establishment of minimum fair wages for such women or minors in such occupation or occupations.

Section 5. Basis of Fair Wage.—In establishing a minimum fair wage for any service or class of service under this act, the secretary and the wage board, without being bound by any technical rules of evidence or procedure, may—

(1) Take into account the cost of living, and all other relevant circumstances affecting the value of the service or class of service rendered.

(2) Be guided by like considerations as would guide a court in a suit for the reasonable value of services rendered where services are rendered at the request of an employer without contract as to the amount of the wage to be paid.

(3) Consider the wages paid in the Commonwealth for work of like or comparable character by employers who voluntarily maintain minimum fair wage standards.

Section 6. Wage Boards.—

(1) A wage board shall be composed of not more than three representatives of employers, an equal number of representatives of employes, and an equal number of disinterested persons representing the public, one of whom shall be designated by the secretary as chairman. The secretary shall appoint the members of such wage board, the representatives of the employers and employes to be selected so far as practicable from nominations submitted by employers or employer representatives for employer members, and by employes for employe members in such occupation or occupations. Two-thirds of the members of such wage board shall constitute a quorum, and the recommendations or report of such wage board shall require a vote of not less than a majority of all its members. The members of a wage board shall be entitled to compensation at the rate of not exceeding ten dollars per day for each meeting attended by them or each day actually spent in the work of the board. They shall also be paid their reasonable and necessary traveling and other expenses while engaged in performance of their duties. The department shall make and establish, from time to time, reasonable rules and regulations, not inconsistent with this act, governing the selection of a wage board and its mode of procedure.

(2) The department shall present to a wage board promptly upon its organization all the evidence and information in its possession relating to the wages of women and minor workers in the occupation or occupations for which the wage board was appointed and all

other information which is deemed relevant to the establishment of a minimum fair wage for such women and minors, and shall cause to be brought before the board any witnesses whom the department deems material. A wage board may summon other witnesses or call upon the department to furnish additional information to aid it in its deliberation.

(3) A wage board shall have power to administer oaths and to require by subpoena the attendance and testimony of witnesses and the production of all books, records, and other evidence relative to any matters under investigation. Such subpoenas shall be signed and issued by a member of the wage board, and shall be served and have the same effect as if issued by the department under the authority vested in it by the act, approved the ninth day of April, one thousand nine hundred twenty-nine (Pamphlet Laws, one hundred seventy-seven), and designated as the Administrative Code of one thousand nine hundred twenty-nine. A wage board shall have power to cause depositions of witnesses residing within or without the Commonwealth to be taken in the manner prescribed for like depositions in civil actions in the court of common pleas.

(4) Within sixty days of its organization, a wage board shall submit a report including its recommendations as to minimum fair wage standards for the women or minors in the occupation or occupations the wage standards of which the wage board was appointed to investigate. If its report is not submitted within such time, the secretary may appoint a new wage board as provided in clause (1) of this section.

(5) A wage board may classify employments in any occupation according to the nature of the service rendered, and recommend appropriate minimum fair wage rates for different classes of employment. A wage board may also recommend minimum fair wage rates varying with localities if, in the judgment of the wage board, conditions make such local differentiation proper and do not effect an unreasonable discrimination against any locality.

(6) A wage board may recommend a suitable scale of rates for learners and apprentices in any occupation or occupations, which scale of learners' and apprentices' rates may be less than the regular minimum fair wage rates recommended for experienced women or minor workers in such occupation or occupations.

(7) In addition to the report a wage board may recommend such reasonable regulations as it may deem appropriate to safeguard the minimum fair wage standards recommended in its report. Such regulations may, among other things, define and govern learners and apprentices, their rates, number, proportion or length of

service, piece rates or their relation to time rates, over-time or part-time rates, bonuses or special pay for special or extra work, deductions for board, lodging, apparel or other items or services supplied by the employer, and other special conditions or circumstances; and in view of the diversities and complexities of different occupations and the dangers of evasion and nullification, without departing from the basic minimum rates recommended by wage board, the board may provide for such modifications or reductions of, or additions to, such rates in or for such special cases or classes of cases as those herein enumerated as the board may find appropriate to safeguard the basic minimum rates established.

Section 7. Action on Report of Wage Board.—

(1) A wage board shall submit its report and recommendations to the department which shall within ten days thereafter accept or reject such report. During such ten days, the secretary or his representative may confer with the wage board which may make such changes in the report or recommendations as it may deem fit. If the report is rejected, the department shall resubmit the matter to the same wage board or to a new wage board to be appointed, as provided in clause (1) of section six. If the report is accepted, it shall be published, together with such of the regulations recommended by the board and with such modifications and amendments as the department may approve. The department shall give notice of a public hearing to be held by the secretary or his representative not sooner than fifteen nor later than thirty days after such publication at which all persons in favor of or opposed to the recommendations contained in such report or in such proposed regulations, may be heard.

(2) Within ten days after such hearing, the department shall approve or disapprove the report of the wage board. If the report is disapproved, the department may resubmit the matter to the same wage board or to a new wage board. If the report is approved, the department shall make a directory order which shall define minimum fair wage rates in the occupation or occupations as recommended in the report of the wage board and shall include the regulations as approved by the department.

Section 8. Special Licenses.—For any occupation for which minimum fair wage rates have been established, the department may cause to be issued to a woman or minor, including a learner or apprentice, whose earning capacity is impaired by age or physical or mental deficiency or injury, a special license authorizing employment at such wages less than such minimum fair wage rates and for such period of time as shall be fixed by the department and stated in the license.

Section 9. Order Made Mandatory.—If at any time after a directory minimum fair wage order has been in effect for three months, the department is of the opinion, based upon a statement of reasons in writing made by the department, that the persistent nonobservance of such order by one or more employers is a threat to the maintenance of fair minimum wage standards in any occupation or* occupations, the department may give notice of its intention to make such order mandatory and of a public hearing to be held not sooner than fifteen nor later than thirty days after such publication at which all persons in favor of or opposed to a mandatory order may be heard by the secretary or his representative. After such hearing, the department may make an order making the previous directory order or any part thereof mandatory and shall publish such order.

Section 10. Publication of Names of Employers Not Observing Order.—If the department has reason to believe that any employer is not observing the provisions of any directory or mandatory order, it may, on fifteen days' notice, summon such employer to appear before it to show cause why the name of such employer should not be published as having failed to observe the provisions of such order. After such hearing and the finding of nonobservance of such order by the secretary or his representative, the department may cause to be published in a newspaper or newspapers published and circulating within the Commonwealth or in such other manner as it may deem appropriate, the name of any such employer or employers as having failed in the respects stated to observe the provisions of such order of the department. Neither the secretary nor any authorized representative of the department, nor any newspaper publisher, proprietor, editor, nor any employe thereof, shall be liable to an action, civil or criminal, for publishing the name of any employer as provided for in this article, unless guilty of wilful misrepresentation.

Section 11. Reconsideration of Minimum Fair Wage Order.—(1) At any time after a minimum fair wage order has been in effect for one year or more, whether during such period it has been directory or mandatory, the department may on its own motion, and shall on a petition of fifty or more residents of the Commonwealth, reconsider the minimum fair wage rates set therein and reconvene the same wage board or appoint a new wage board, as provided in clause (1) of section six, to recommend whether or not the rate or rates contained in such order should be modified. The report of such wage board shall be dealt with in the manner prescribed in section seven of this act: Provided, That if the order under reconsideration has theretofore been made manda-

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* "of" in the original.

tory, in whole or in part by the department, then the department, in making any new order or confirming any old order, shall have power to declare to what extent such order shall be directory and to what extent mandatory.

(2) The department may from time to time propose such modifications of, or additions to, any regulations included in any directory or mandatory order of the department without reference to a wage board, as may be deemed appropriate to effectuate the purposes of this act, provided such proposed modifications or additions are reasonable and could legally have been included in the original order, and shall give notice of a public hearing to be held by the secretary or his representative not less than fifteen days after such publication at which all persons may be heard in respect to such proposed modifications or additions. After such hearing, the department may make an order putting into effect such of the proposed modifications of or additions to the regulations as it may deem appropriate, and if the order of which the regulations form a part has theretofore been made mandatory in whole or in part, then the department in making any new order shall have the power to declare to what extent such order shall be directory and to what extent mandatory.

Section 12. Review of Orders.—

(1) All questions of fact arising under this act, except as otherwise herein provided, shall be decided by the secretary or his representative, and there shall be no appeal from the decision on any such question of fact, but there shall be a right of review by the court of common pleas from any order, ruling or holding on any question of law included or embodied in any decision of the secretary or his representative or order of the department.

(2) Any such review shall be by the court of common pleas of Dauphin County. Any person aggrieved by the decision of the secretary or his representative or by any order of the department may petition said court for such a review within thirty days after notice of such decision or order. A copy of such petition shall be filed with the department, which filing shall constitute service. Within thirty days after service of the petition, the department shall file with the prothonotary of said court a transcript of the record of the proceedings duly certified over the seal of the department, which record shall include all papers on file and all evidence taken, including stenographic notes of testimony. The cost of said transcript at twenty-five cents per folio and one dollar for certification shall be entered as part of the record costs to be paid as the court may direct.

(3) The court, upon application of either party, shall

fix a time and place for argument. After argument and review of the record and testimony, the court may sustain, modify or reverse the decision of the secretary or his representative or the order of the department as in its judgment the law may warrant.

Section 13. Duty of Employer.—Every employer of women and minor workers shall keep a true and accurate record of the hours worked by each and the wages paid by him to each, and shall furnish to the department or its duly authorized agent, upon demand, a sworn statement of the same. Such records shall be open to inspection by any duly authorized agent of the department at any reasonable time. Every employer subject to a minimum fair wage order, whether directory or mandatory, shall keep a copy of such order posted in a conspicuous place in every room in which women or minors are employed. Employers shall on request be furnished copies of the order without charge. Employers shall permit any duly authorized agent of the department to question any employe of such employer in the place of employment and during work hours in respect to the wages paid to and the hours worked by such employe or other employe.

Section 14. Penalties.—

(1) Any employer and his agent, or the officer or agent of any corporation, who discharges or in any other manner discriminates against any employe because such employe has served or is about to serve on a wage board or has testified or is about to testify before any wage board or in any other investigation or proceeding under or related to this act, or because such employer believes that said employe may serve on any wage board or may testify before any wage board or in any investigation or proceeding under this act, shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than fifty nor more than one hundred dollars, and in default of the payment of such fine and costs, shall be sentenced to imprisonment for not less than ten days nor more than thirty days.

(2) Any employer or the officer or agent of any corporation who pays or agrees to pay to any woman or minor employe less than the rates applicable to such woman or minor under a mandatory minimum fair wage order, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than fifty nor more than two hundred dollars, or to undergo imprisonment of not less than ten nor more than ninety days, or both such fine and imprisonment, and each week in any day of which such employe is paid less than the rate applicable to him under a mandatory minimum fair wage order and each employe who paid less, shall constitute a separate offense.

(3) Any employer or the officer or agent of any corporation who fails to keep the records required under this act, or to furnish such records or any information required to be furnished under this act to the department, the secretary or any authorized representative of the department upon request, shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than twenty-five nor more than one hundred dollars, and each day of such failure to keep the records requested under this act, or to furnish such records or information, shall constitute a separate offense.

Section 15. Civil Action.—If any woman or minor worker is paid by his or her employer less than the minimum fair wage to which such worker is entitled under or by virtue of a mandatory minimum fair wage order, such worker may recover in a civil action the full amount of such minimum wage less any amount actually paid to the worker by the employer, together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between the employer and the worker to work for less than such mandatory minimum fair wage shall be no defense to such action. At the request of any woman or minor worker paid less than the minimum wage to which such worker was entitled under a mandatory order, the department may take an assignment of such wage claim in trust for the assigning worker and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

Section 16. Act Not to Apply to Certain Persons.—The provisions of this act shall not apply to any person or persons subject to the provisions of the Federal Railway Labor Act.

Section 17. Unconstitutionality.—If any provisions of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of such provisions to other persons or circumstances shall not be affected thereby.

Section 18. Effective Date.—This act shall become effective immediately upon its final enactment.

Application of
the act.

Constitutional
provision.

When effective.

APPROVED—The 27th day of May, A. D. 1937.

GEORGE H. EARLE