

*Section 304.1. The Secretary of Labor and Industry shall, within ninety (90) days after the effective date of this amendatory act, prepare a brochure of instructions setting forth the rights of an employe in the event of an accident and informing him of the time and manner in which claims should be filed. A copy of such brochure shall be provided each insurance company authorized to write insurance policies covering workmen's compensation under this act. Such insurance companies shall prepare at their own expense copies of said brochure for distribution to such insured employers. Each insurance company shall prepare the brochures immediately upon receipt of the sample brochure from the Secretary of Labor and Industry in such quantity as required by employers for distribution to each employe. The employers shall distribute such brochures to each employe at the time of hiring and to each existing employe within thirty (30) days after the receipt of the brochure.*

APPROVED—The 15th day of September, A. D. 1961.

DAVID L. LAWRENCE

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No. 582

### A SUPPLEMENT

To the act of May 27, 1937 (P. L. 917), entitled "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," concerning minimum wages, providing for a minimum wage for employes in this Commonwealth; providing a wage board procedure for establishing supplementary minimum wages; defining the powers and duties of the Department of Labor and Industry; and providing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

**The Minimum  
Wage Act of  
1961.**

Section 1. Factual Background.—Employes 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. Employes 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. In the absence of any effective minimum fair wage rates for employes, the depression of wages by some 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 employes 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 employes employed therein and of the public interest of the community at large in their health and well being.

Section 2.—This act shall be known and may be cited as "The Minimum Wage Act of 1961."

Short title.

Section 3. 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) "Employ" means to suffer or to permit to work.

(5) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting, directly or indirectly, in the interest of an employer in relation to an employe.

(6) "Employe" includes any individual employed by an employer, but shall not include any individual:

(a) Employed in a bona fide executive, administrative or professional capacity or as an outside salesman (as such terms are defined and delimited by regulations of the department).

(b) Employed by the United States or by the Commonwealth.

(c) Employed or working in or for a religious or charitable institution, which work is incidental to or in return for charitable aid conferred upon such individual and not under any express contract of hire, or engaged in activities where his services are rendered gratuitously and without expectation of any remuneration.

(d) Who is a student employed in a non-profit educational institution in which he is enrolled, or in a related non-profit facility, such as a fraternity, when the placement, wages and working conditions of such students are controlled by the institution, or by such related

non-profit facility, providing that when such student is engaged in activity which is not part of a school function or which is open to the public or a substantial portion thereof apart from the school community, this exemption shall not apply.

(e) Employed or working as a taxicab driver for a taxi firm holding a certificate of public convenience to transport as a common carrier persons upon call or demand from the Pennsylvania Public Utility Commission, which driver receives the majority of his income as a taxi driver from gratuities and commissions on receipts.

(f) Employed by amusement parks which operate on a seasonal basis.

(g) Employed by a resort hotel.

(h) Employed by a motion picture theatre.

(i) Seasonably employed by a non-profit health or welfare agency engaged in activity dealing with handicapped or exceptional children, or a person employed by a day or resident seasonal recreation camp for children under the age of eighteen years, which operates for a period of less than three months in any one year.

(j) Employed by a non-profit hospital or non-profit nursing home, a religious or charitable organization or an institution engaged in the care of the mentally deficient, the aged or infirm.

(k) Employed in a hotel or restaurant, except in cities of the first and second class.

(7) "Gratuities" means voluntary, monetary contributions received by an employe from a guest, patron or customer for services rendered.

(8) "Occupation" shall mean an industry, trade, business or class of work in which employes are gainfully employed, but shall not include domestic service in the home of the employer or labor on a farm or boys lawfully employed in the sale and delivery of newspapers and magazines.

(9) "Wages" means compensation due to an employe by reason of his employment payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges or allowances as may be permitted by regulations of the secretary under section 6.

(10) "Fair wage" means a wage fairly and reasonably commensurate with the criteria of section 7 of this act.

(11) "Resort hotel" means one that provides accommodations of a \*vacational and recreational nature and

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\* "vocational" in original.

meals and lodging to the public or to members or guests of members, and provides without charge on a weekly basis lodging accommodations and meals to the majority of its employes, and meets one of the three following criteria of seasonal operation:

(a) Operates for not more than seven months in any calendar year; or

(b) Being located in a rural community or in a city, borough, town or township of less than fifteen thousand population, increased its number of employe work days (including adult males) during any consecutive four-week period by at least one hundred per cent over the number of employe work days (including adult males) in any other consecutive four-week period within the preceding calendar year; or

(c) Being located in a rural community or in a city, borough, town or township of less than fifteen thousand population, increased its number of guest days during any consecutive four-week period at least one hundred per cent over the number of guest days in any other consecutive four-week period in the preceding calendar year.

Section 4. Powers of Investigation.—The department shall have power:

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

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

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

Section 5. Minimum Wage.—

(a) Every employer shall pay wages at a rate of not less than one dollar (\$1.00) an hour to every employe in any occupation, except as may otherwise be prescribed in this act.

(b) Every employer of an employe engaged in any occupation in which gratuities have customarily and usually constituted and have been recognized as part of

the remuneration for hiring purposes shall be entitled to an allowance of thirty-five cents (\$.35) an hour as part of the hourly wage rate provided in subsection (a) of this section for each such employe who (1) for not more than twenty-five per cent (25%) of the working day engages in duties that are not customarily part of such occupation, and (2) receives for hours worked thirty-five cents (\$.35) or more an hour in gratuities: Provided, That such allowance shall be twenty-six cents (\$.26) an hour for any such employe receiving twenty-six cents (\$.26) an hour or more in gratuities for whom the employer is entitled to a lower minimum wage rate applicable to learners under section 6 of this act or in effect under the act of May 27, 1937 (P. L. 917), or any order issued thereunder: And provided further, That he may be entitled to a proportionately higher allowance for gratuities in case overtime rates are provided for under section 6 of this act or in effect under the act of May 27, 1937 (P. L. 917).

(c) Every employer furnishing meals to an employe as part of remuneration for hiring purposes shall be entitled to a deduction for meals so furnished in an amount not exceeding fifty cents (\$.50) a meal, nor exceeding eight dollars (\$8.00) a week, except as provided in subsection (b) of section 17 of this act. Every employer furnishing lodging on a full time basis to an employe as part of remuneration for hiring purposes shall be entitled to a deduction for such lodging in an amount not exceeding five dollars (\$5.00) per week, except as provided in subsection (b) of section 17 of this act; providing, however, that such lodging must be adequate, decent and sanitary according to usual and customary standards.

(d) The minimum wage provided in subsections (a) and (b) of this section shall not affect the provisions of any minimum wage order established pursuant to the act enacted May 27, 1937 (P. L. 917) prior to the effective date of this section unless said wage order has been in effect for at least one year or more.

(e) Employers shall be entitled to employ learners at not less than eighty-five cents (\$.85) an hour in accordance with rules and regulations of the department on definitions of learner, proportion of learners to total employment, and length of service.

(f) The provisions of subsections (b), (c) and (e) of this section and of subsection (b) of section 17 may not be modified under the procedures set forth in subsection (a) of section 6 of this act.

(g) The provisions of section six (6) and section eight (8) shall not apply to subsection (6) of section 3.

Section 6. Supplementary Action by Wage Boards.—

(a) The department shall have power to cause an investigation to be made, by any duly authorized representative, of the wages being paid to employes in any occupation to ascertain whether any substantial number of employes 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 employes in any occupation or occupations are receiving such wages, or is of the opinion that the application of the minimum wage rate contained in section (5) (a) is causing or likely to cause a substantial curtailment of employment opportunities in any occupation or occupations, the secretary shall appoint a wage board, under the provisions of section 8 of this act, to investigate and to report upon the establishment of minimum fair wages for such employes in such occupation or occupations and to recommend regulations covering among other matters definitions, rates applicable to learners and apprentices, their number, proportion or length of service, also piece rates, or their relation to time rates, overtime or part-time rates, bonuses or special pay for special or extra work, deductions or allowances for board, lodging, apparel or other items or services supplied by the employer, and other special conditions or circumstances, and such other regulations as it may find appropriate to safeguard the established minimum wage. Nothing in section 5 of this act shall be deemed to prevent a wage board from recommending and the department from approving minimum wage rates in any amount found to be proper: Provided, That no recommended rate may be less than eighty-five cents (\$.85) per hour, or an equivalent weekly rate.

(b) The secretary or his representative shall, if he deems same necessary, hold hearings for the purpose of establishing regulations of the type enumerated in subsection (a) of this section. Such hearings shall be held upon at least ten (10) days public notice. Such hearings shall be held in accordance with procedures followed in courts of law in this Commonwealth in cases of assumpsit. The proposed regulations, the subject of such hearings, shall be made available to the public at the department by the secretary at least ten (10) days prior to such hearing.

Section 7. Basis of Fair Wage.—In establishing a minimum fair wage for any service or class of service as provided for in section 6 of this act, the secretary and the wage board, without being bound by any technical rules of evidence or procedure, shall:

(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 maintain minimum fair wage standards.

Section 8. Wage Boards.—

(a) 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 or employe representatives 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 twenty-five dollars (\$25.00) 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 performances 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.

(b) The department shall present to a wage board after its organization all the evidence and information in its possession relating to the wages of employes 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 standard for such employes, 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.

(c) 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.

(d) Within ninety days of its organization, a wage board shall submit a report, including its recommendations, as to minimum fair wage standards, together with any regulations, for the employes 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 reappoint this same wage board or appoint a new wage board as provided in subsection (a) of this section.

(e) A wage board may classify employments in any occupation or occupations 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.

#### Section 9. Action on Report of Wage Board.—

(a) A wage board shall submit its report to the department which shall, within fifteen days thereafter, accept or reject such report. During such fifteen days, the secretary or his representative may confer with the wage board which may make such changes in the report 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 subsection (a) of section eight. 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. At such



hearing, witnesses shall be sworn and all interested parties shall be entitled to representation by counsel and to the cross-examination of witnesses. The purpose of such hearing shall be to take evidence on the basis of which the department shall approve or disapprove the report as provided for in subsection (b) of this section.

(b) Within fifteen days after such hearings, the department shall approve or disapprove the report of the wage board. Such action shall be based only on facts based on competent evidence contained in the record of the hearing required in subsection (a) of this section. If the report is disapproved, the department may re-submit the matter to the same wage board or to a new wage board. If the report is approved, the department shall issue an order which shall establish such minimum fair wage rates in the occupation or occupations properly recommended in the report of the wage board, and shall include the regulations as approved by the department.

Section 10. Special Licenses.—For any occupation for which minimum fair wage rates have been established, the department may cause to be issued to an employe, 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 11. 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 order it may, on ten 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. The hearing shall be a public hearing, unless said employer requests \* the secretary, in writing, that the hearing shall not be public. After such hearing and the finding of non-observance of such order by the secretary or his representative, the department may cause to be published in a newspaper or newspapers published and circulated 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

\* "to" in original.

unless guilty of wilful misrepresentation. If the name of an employer is published under the provisions of this section, no action shall be taken under section 15 of this act as to those violations of this act cited in the publication.

Section 12. Reconsideration of Minimum Fair Wage Order and Regulations.—

(a) At any time after any wage order has been in effect for one year or more, the department may reconsider the minimum fair wage rates or regulations contained therein, and reconvene the same wage board or appoint a new wage board as provided in subsection (a) of section eight 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 9 of this act.

(b) The department may, from time to time, propose such modifications or additions to or deletions of any matters included in any 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, additions or deletions 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 ten days after such notice at which all persons may be heard in respect to such proposed modifications, additions or deletions. Such modifications, additions or deletions may concern any matter contained in an order resulting from a wage board report, including definitions of terms, overtime provisions, and provisions relating to the calculation of the applicable minimum wage on a daily or other periodic basis, and any other provision except the minimum wage rates themselves and the particular periods of time during which such minimum wage rates are in effect. After such hearing, the department may make an order putting into effect such of the proposed modifications of, additions to, or deletions from, the regulations as it may deem appropriate.

Section 13. Review of Orders.—

(a) All questions of fact arising under this act, except as otherwise herein provided, shall be decided by the Industrial Board 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 Industrial Board.

(b) Any such review shall be by the court of common pleas of Dauphin County. Any person aggrieved by

the decision of the Industrial Board 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 Industrial Board, which filing shall constitute service. Within thirty days after service of the petition, the Industrial Board 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 (\$.25) per page and one dollar (\$1.00) for certification shall be entered as part of the record costs to be paid as the court may direct.

(c) 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 Industrial Board as in its judgment the law may warrant.

Section 14. Duty of Employer.—Every employer of employes 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 this act shall keep a summary of this law, any order applicable to him, and such other applicable laws as required by the department, posted in a conspicuous place where employes normally pass and can read it. Employers shall, on request, be furnished copies of such summary 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 15. Penalties.—

(a) 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 five hundred dollars (\$500.00) nor

more than one thousand dollars (\$1000.00), and in default of the payment of such fine and costs, shall be sentenced to imprisonment for not less than ten (10) days nor more than thirty (30) days.

(b) Any employer or the officer or agent of any corporation who pays or agrees to pay to any employe less than the rates applicable to such employe under this act or under any minimum wage order shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00) or to undergo imprisonment of not less than ten nor more than ninety days, or both, and each week in which such employe is paid less than the rate applicable to him under this act or under a minimum wage order, and each employe who is paid less, shall constitute a separate offense.

(c) Any employer or the officer or agent of any corporation who fails to keep the records required under this act, to furnish upon request to the secretary or any authorized representative of the department such records or any information required to be furnished under this act to the department, or to comply with any requirements of this act or any order issued under the authority of this act except in so far as the penalties of subsections (a) and (b) of this section are applicable, shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), and each day of such failure to keep the records requested under this act, to furnish such records or information, or to comply with this act or such order, shall constitute a separate offense.

Section 16. Civil Action.—If any employe is paid by his or her employer less than the minimum wage provided by section 5 of this act or the minimum wage to which such worker is entitled under or by virtue of a minimum 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 minimum wage shall be no defense to such action. At the request of any employe paid less than the minimum wage to which such employe was entitled under this act or a minimum wage 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 cost and such reasonable attorney's fees as may be allowed by the court.

Section 17. Relation to Other Laws.—(a) Any standards relating to minimum wages, maximum hours, overtime compensation, or other working conditions in effect under the act of May 27, 1937 (P. L. 917), or any other law of this Commonwealth, or the regulations and orders issued thereunder, on the effective date of this act, which are more favorable to employes than those applicable to such employes under this act or the regulations and orders issued hereunder, shall not be deemed to be amended, rescinded or otherwise affected by this act, but shall continue in full force and effect and may be enforced as provided by law unless and until they are rescinded or specifically superseded by standards more favorable to such employes by operation of or in accordance with this act or regulations or orders issued under this act; (b) no allowance for board, lodging or other items or services supplied by the employer to employes as contained in any minimum wage order under the act of May 27, 1937 (P. L. 917), shall be superseded during the first twelve months following the date on which section 5 becomes effective. This paragraph shall apply only to those wage orders which were in effect as of the effective date of this act. Any such allowances shall be applied to male adults as well as to women and minors during the said twelve (12) month period.

Section 18. 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 19. Effective Date.—This act shall take effect immediately except that section 5 shall not be effective until January 1, 1962.

APPROVED—The 15th day of September, A. D. 1961.

DAVID L. LAWRENCE

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No. 583

AN ACT

Amending the act of April 12, 1951 (P. L. 90), entitled "An act relating to alcoholic liquors, alcohol and malt and brewed beverages; amending, revising, consolidating and changing the laws relating thereto; regulating and restricting the manufacture, purchase, sale, possession, consumption, importation, transportation, furnishing, holding in bond, holding in storage, traffic in and use of alcoholic liquors, alcohol and malt and brewed beverages and the persons engaged or employed therein; defining the powers and duties of the Pennsylvania Liquor Control Board; providing for the establishment and operation of State liquor stores, for the payment of certain license fees to