

No. 303

AN ACT

SB 1749

Amending the act of January 17, 1968 (P.L.11, No.5), entitled "An act establishing a fixed minimum wage and overtime rates for employes, with certain exceptions; providing for minimum rates for learners and apprentices; creating a Minimum Wage Advisory Board and defining its powers and duties; conferring powers and imposing duties upon the Department of Labor and Industry; imposing duties on employers; and providing penalties," further amending the minimum wages and exemptions and exclusions from minimum wage and overtime provisions of the act, and increasing penalties.

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

Section 1. Subsection (d) of section 3, act of January 17, 1968 (P.L.11, No.5), known as "The Minimum Wage Act of 1968," is amended to read:

Section 3. Definitions.—As used in this act:

* * *

(d) "Wages" mean compensation due to any 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 9.

"Wage" paid to any employe includes the reasonable cost, as determined by the secretary, to the employer for furnishing such employe with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employes: Provided, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employe to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employe: Provided, further, That the secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employes and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employes, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employe.

In determining the wage of a tipped employe, the amount paid such employe by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of fifty percent of the applicable minimum wage rate, except that **[in the case of an employe who (either himself or acting through his representative) shows to the satisfaction of the secretary that the actual amount of tips received by him was less than the amount determined by**

the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid such employe by his employer shall be deemed to have been increased by such lesser amount.] *the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employe. The previous sentence shall not apply with respect to any tipped employe unless:*

(1) *Such employe has been informed by the employer of the provisions of this subsection;*

(2) *All tips received by such employe have been retained by the employe and shall not be surrendered to the employer to be used as wages to satisfy the requirement to pay the current hourly minimum wage in effect; where the gratuity is added to the charge made by the establishment, either by the management, or by the customer, the gratuity shall become the property of the employe; except that this subsection shall not be construed to prohibit the pooling of tips among employes who customarily and regularly receive tips.*

* * *

Section 2. Subsections (a), (b) and (c) of section 4 of the act are amended to read:

Section 4. Minimum Wages.—Except as may otherwise be provided under this act:

(a) Every employer shall pay to each of his employes wages at a rate of not less than:

(1) **[One dollar fifteen cents (\$1.15)] One dollar ninety cents (\$1.90)** an hour **[effective February 1, 1968] upon the effective date of this amendment.**

(2) **[One dollar thirty cents (\$1.30)] Two dollars (\$2.00)** an hour effective **[February 1, 1969] January 1, 1975.**

(3) **[One dollar forty-five cents (\$1.45)] Two dollars twenty cents (\$2.20)** an hour effective **[February 1, 1970] January 1, 1976.**

(4) **[One dollar sixty cents (\$1.60)] Two dollars thirty cents (\$2.30)** an hour effective **[February 1, 1971] January 1, 1977.**

(b) The secretary, to the extent necessary to prevent curtailment of employment opportunities, shall by regulations provide for the employment of learners [, **apprentices**] and students, under special certificates at wages lower than the minimum wage applicable under this section, and subject to such limitations as to number, proportion and length of service as the secretary shall prescribe: Provided, That the minimum wage prescribed under this subsection (b) shall not be less than **[one dollar (\$1) an hour] eighty-five percent of the otherwise applicable wage rate in effect under section 4. A special certificate issued under this subsection shall provide that for four or less students for whom it is issued shall, except during vacation periods, be employed on**

a part-time basis and not in excess of twenty hours in any workweek at a sub-minimum rate.

In the case of an employer who intends to employ five or more students, at a sub-minimum rate, the secretary may issue a special certificate only if the employer certifies to the secretary that employment of such students will not create a substantial probability of reducing the full-time employment opportunities for other workers.

(c) Employes shall be paid for overtime not less than one and one-half times the employe's regular rate as prescribed in regulations promulgated by the secretary: Provided, That students employed in seasonal occupations as defined and delimited by regulations promulgated by the secretary may, by such regulations, be excluded from the overtime provisions of this act: And provided further, That the secretary shall promulgate regulations with respect to overtime subject to the limitations that no pay for overtime in addition to the regular rate shall be required except for hours [in excess of forty-two hours in a workweek prior to February 1, 1969, and except for hours] in excess of forty hours in a workweek [after February 1, 1969].

* * *

Section 3. Section 5 of the act is amended to read:

Section 5. Exemptions.—(a) Employment in the following classifications shall be exempt from both the minimum wage and overtime provisions of this act:

- (1) Labor on a farm;
- (2) Domestic services in or about the private home of the employer;
- (3) Delivery of newspapers to the consumer;
- (4) In connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand, the major part of which circulation is within the county where published or counties contiguous thereto;
- (5) In a bona fide executive, administrative, or professional capacity (including any employe employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools) or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the secretary, except that an employe of a retail or service establishment shall not be excluded from the definition of employe employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive administrative activities, if less than forty percent of his hours worked in the workweek are devoted to such activities);
- (6) In the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does

not in fact exist or where the services are rendered to such organization gratuitously;

[(7) In the employ of the United States or the Commonwealth of Pennsylvania or any political subdivision or instrumentality of the Commonwealth of Pennsylvania;

(8)] (7) In seasonal employment, if the employe is under eighteen years of age, or if a student under twenty-four years of age, by a nonprofit health or welfare agency engaged in activities dealing with handicapped or exceptional children or by a nonprofit day or resident seasonal recreational camp for campers under the age of eighteen years, which operates for a period of less than three months in any one year;

[(9)] (8) In a nonprofit educational institution in which the employe is enrolled as a student, or by a related nonprofit facility, such as a fraternity, when the placement, wages and working conditions of such students are controlled by the institution, or by such related nonprofit facility: Provided, 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;

[(10)] (9) In employment by an establishment which is **[an] a public** amusement or recreational establishment, if (i) it does not operate for more than seven months in any calendar year, or (ii) during the preceding calendar year, its average receipts for any six months of such year were not more than thirty-three and one-third percent of its average receipts for the other six months of such year;

[(11)] (10) Golf caddy;

[(12) Employment in an establishment which is a motion picture theatre;

(13) In the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shell fish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea, as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employe;

[(14)] (11) In employment as a switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations;

[(15) As a seaman on a vessel other than an American vessel;

(16) In planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employes employed by his employer in such forestry or lumbering operations does not exceed eight;

(17) As an agricultural employe employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco.]

(12) Employes not subject to civil service laws who hold elective office or are on the personal staff of such an officeholder, are immediate advisers to him, or are appointed by him to serve on a policy-making level.

(b) Employment in the following classifications shall be exempt from the overtime provisions of this act:

[(1) By an establishment which is a hotel (including a resort hotel) or a motel;

(2) By an establishment which is a restaurant;

(3) Primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb service, to the public, to employes, or to members or guests of members of clubs;

(4)] (1) Seaman;

[(5) Any person who is employed by any employer engaged in the business of operating an intercity, local, suburban or interurban bus carrier, street, suburban or interurban electric railway, or local trolley or subway carrier subject to the jurisdiction of the Pennsylvania Public Utility Commission or the Interstate Commerce Commission, or by a municipal transportation authority;

(6)] (2) Any salesman, partsman, or mechanic primarily engaged in selling and servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers;

[(7) Any person who (i) is employed by an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective, who reside on the premises and (ii) receive compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed;

(8)] (3) Any driver employed by an employer engaged in the business of operating taxicabs;

[(9) Any employe of a bowling establishment if such employe receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed;

(10) Any employe with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935;

(11) Any employe of an employer subject to the provisions of Part I of the Interstate Commerce Act;

(12) Any employe of a carrier by air subject to the provisions of Title II of the Railway Labor Act;

(13) Any employe employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any by-product thereof;

(14) Any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(15)] (4) Any employe employed as an announcer, news editor, or chief engineer by a radio or television station, the major studio of which is located (i) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (ii) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least forty airline miles from the principal city in such area;

[(16) Any employe employed within the area of production by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employes are employed in the establishment in such operations;

(17)] (5) Any employe engaged in [ginning of cotton for market, in any place of employment located in a county where cotton is grown in commercial quantities or in] the processing of [sugar beets, sugar-beet molasses, sugarcane, or] maple sap into sugar (other than refined sugar) or syrup;

[(18) Any employe engaged (i) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the State, or (ii) in transportation, whether or not performed by the farmer, between the farm and any point within the state of persons employed or to be employed in the harvesting of fruits or vegetables.]

(6) *Employment by an establishment which is a motion picture theatre.*

(c) *Employment in the following classifications shall be compensated for overtime in the manner hereinafter set out:*

(1) *Employes of hotels, motels and restaurants (other than maids and custodial workers in hotels and motels);*

Upon effective date of amendment *overtime after 48 hours*
May 1, 1975 *overtime after 46 hours,*
and thereafter.

(2) Maids and custodial workers in motels and hotels;

Upon effective date of amendment *overtime after 48 hours*
May 1, 1975 *overtime after 46 hours*
May 1, 1976 *overtime after 44 hours*
May 1, 1977 *overtime after 40 hours*

(3) Primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb service, to the public, to employees, or to members or guests of members of clubs (other than hotels, motels and restaurants);

Upon effective date of amendment *overtime after 48 hours*
May 1, 1975 *overtime after 44 hours*
May 1, 1976 *overtime after 40 hours*

(4) Any employe of a bowling establishment;

Upon effective date of amendment *overtime after 48 hours*
May 1, 1975 *overtime after 44 hours*
May 1, 1976 *overtime after 40 hours*

Section 4. Subsection (c) of section 12 of the act is amended to read:
 Section 12. Penalties.—* * *

(c) Any employer or the officer or agent of any corporation who violates any other provision of this act or of any regulation issued thereunder shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than [twenty-five dollars (\$25)] *one hundred dollars (\$100)* nor more than [one hundred dollars (\$100)] *five hundred dollars (\$500)*, and each day of such failure to comply with this act or regulation, shall constitute a separate offense.

Section 5. Section 14 of the act is amended to read:

Section 14. Repealer.—Any acts or parts of acts inconsistent with this act are repealed. **[Provided, however, That in the case of any person in a job classification in which wages are regulated by the act of May 27, 1937 (P.L.917, No.248), as supplemented by the act of September 15, 1961 (P.L.1313, No.582), or by any regulation or wage order thereunder in effect on the effective date of this act, all of the provisions of such laws, regulations and wage orders (including those relating to deductions for tips, board and lodging), shall continue to be followed in computing the total weekly pay due (regular time pay plus overtime-pay where applicable) to such persons until such time as their total weekly pay under this act at the rates established herein or hereunder (and applying the deductions for tips, board and lodging as established by or under this act) shall be equal to or greater than the total weekly pay that would otherwise be due when computed as aforesaid. At such time as the total weekly amount of pay due under the standards set forth in this act**

equals or exceeds an employe's earnings under an existing minimum wage order determined as aforesaid, further pay for such employe shall be determined only under the provisions of this act.]

Section 6. Section 15 of the act is amended to read:

Section 15. Effective Date.—This act shall take effect immediately except [as follows:

(a) **The] *that the* minimum wage rates for employes under section 4 of this act shall take effect on the dates provided therein.**

[(b) The overtime provisions of section 4 of this act shall take effect on February 1, 1968.]

APPROVED—The 10th day of December, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 303.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style.

Secretary of the Commonwealth.