

## No. 1988-150

## AN ACT

## SB 1222

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," increasing the minimum wage; and removing exceptions regarding coverage of the Federal law and persons who are employed by certain educational institutions.

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

Section 1. Section 3(d) and (h) of the act of January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968, amended July 1, 1978 (P.L.735, No.135), are 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 hourly 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 forty-five percent of the applicable minimum wage rate upon the effective date of this amendment[, until January 1, 1980 and thereafter forty percent of the applicable minimum wage rate]: Provided, That 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 rate 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.

\* \* \*

(h) "Employe" includes any individual employed by an employer. [but shall not include any individual to the extent that he is subject to the Federal Fair Labor Standards Act of June 25, 1938 (52 Stat. 1060), as amended, or subject to any other Federal minimum wage and hour legislation now in effect or to be hereinafter enacted into law: Provided, That this limitation shall not be deemed to exclude any individuals from entitlement to the amount of weekly wages due them (with respect to regular time pay and overtime pay where applicable) under any statute of the Commonwealth of Pennsylvania or under any valid regulation or order issued thereunder in effect on the effective date of this act.]

\* \* \*

Section 2. Section 4(a) of the act, amended July 1, 1978 (P.L.735, No.135), is amended and the section is amended by adding a subsection 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 for all hours worked at a rate of not less than:

(1) Two dollars sixty-five cents (\$2.65) an hour upon the effective date of this amendment.

(2) Two dollars ninety cents (\$2.90) an hour during the year beginning January 1, 1979.

(3) Three dollars ten cents (\$3.10) an hour during the year beginning January 1, 1980.

(4) Three dollars thirty-five cents (\$3.35) an hour after December 31, 1980.

(5) *Three dollars seventy cents (\$3.70) an hour beginning February 1, 1989, and thereafter.*

*(a.1) If the minimum wage set forth in the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 201 et seq.) is increased above three dollars thirty-five cents (\$3.35) an hour, the minimum wage required under this section shall be increased by the same amounts and effective the same date as the increases under the Fair Labor Standards Act, and the provisions of subsection (a) are suspended to the extent they differ from those set forth under the Fair Labor Standards Act.*

\* \* \*

Section 3. Section 5(a)(8) of the act is repealed.

Section 4. This act shall take effect February 1, 1989, or immediately, whichever is later.

APPROVED—The 15th day of December, A. D. 1988.

ROBERT P. CASEY