

No. 2006-112

AN ACT

SB 1090

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," giving effect to Federal changes in wage rates; providing for preemption; and making editorial changes.

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

Section 1. Section 3 of the act of January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968, amended December 15, 1988 (P.L.1232, No.150) and December 21, 1998 (P.L.1290, No.168), is amended to read:

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

- (a) "Secretary" means the Secretary of Labor and Industry.
- (b) "Department" means the Department of Labor and Industry.
- (c) "Board" means the Minimum Wage Advisory Board created by this act.
- (d) "Wages" mean compensation due to any employe by reason of his *or her* 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 *or her* 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 an employer is required to pay a tipped employe, the amount paid such employe by his *or her* employer shall be an amount equal to: (i) the cash wage paid the employe which for the purposes

of the determination shall be not less than the cash wage required to be paid the employe on the date immediately prior to the effective date of this subparagraph; and (ii) an additional amount on account of the tips received by the employe which is equal to the difference between the wage specified in subparagraph (i) and the wage in effect under section 4 of this act. The additional amount on account of tips 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.

(e) "Occupation" means any industry, trade, business, service, or employment or class or group thereof in which individuals are gainfully employed.

(f) "Employe" includes to suffer or to permit to work.

(g) "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 any employe.

(h) "Employe" includes any individual employed by an employer.

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

Section 2. Sections 4 and 5 of the act, amended December 10, 1974 (P.L.916, No.303), July 1, 1978 (P.L.735, No.135), December 15, 1988 (P.L.1232, No.150) and July 9, 1990 (P.L.348, No.79), 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 *or her* 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].

(6) *Five dollars fifteen cents (\$5.15) an hour beginning September 1, 1997.*

(7) *Six dollars twenty-five cents (\$6.25) an hour beginning January 1, 2007.*

(8) *Seven dollars fifteen cents (\$7.15) an hour beginning July 1, 2007.*

(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*, 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.

(b) The secretary, to the extent necessary to prevent curtailment of employment opportunities, shall by regulations provide for the employment of learners 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 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 six 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 seven 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) Employees 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 hours in a workweek.

(d) An employe whose earning capacity is impaired by physical or mental deficiency or injury may be paid less than the applicable minimum wage if either a license specifying a wage rate commensurate with the employe's productive capacity has been obtained by the employer from the secretary or a Federal certificate is obtained under section 14(c) of the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 201 et seq.). A

license obtained from the secretary shall be granted only upon joint application of employer and employe.

(e) In lieu of the minimum wage prescribed in subsection (a) and section 5(c) and notwithstanding subsections (b) and (d), an employer may, during the first sixty calendar days when an employe under the age of twenty years is initially employed, pay the employe training wages at a rate of not less than the minimum wage set forth in section 6(a) of the Fair Labor Standards Act (29 U.S.C. § 206(a)). A person employed at the training wage under this subsection shall be informed of the amount of the training wage and the right to receive the full minimum wage, or a higher wage, upon completion of the training period. No employer may take any action to displace existing employes, including partial displacements such as reduction in the hours, wages or employment benefits of existing employes, for purposes of hiring individuals at the training wage authorized by this subsection.

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 *or her* workweek which he *or she* devotes to activities not directly or closely related to the performance of executive administrative activities, if less than forty percent of his *or her* 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-employe relationship does not in fact exist or where the services are rendered to such organization gratuitously;
- (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) In employment by an establishment which is a public amusement or recreational establishment, organized camp, or religious or nonprofit educational conference center, 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;

(10) Golf caddy;

(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;

(12) Employees 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 her*, or are appointed by him *or her* to serve on a policy-making level.

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

(1) Seaman;

(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;

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

(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;

(5) Any employe engaged in the processing of maple sap into sugar (other than refined sugar) or syrup;

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

(7) Any employe of a motor carrier with respect to whom the Federal Secretary of Transportation has power to establish qualifications and maximum hours of service under 49 U.S.C. § 3102(b)(1) and (2) (relating to requirements for qualifications, hours of service, safety and equipment standards).

(c) (1) Notwithstanding the provisions of section 4(a)(7) and (8), an employer unless otherwise exempt from the minimum wage provisions of section 4(a)(6) whose employe complement is composed of the equivalent of ten or less full-time employes to be calculated on a forty-hour workweek shall pay:

(i) Five dollars sixty-five cents (\$5.65) an hour beginning January 1, 2007.

(ii) Six dollars sixty-five cents (\$6.65) an hour beginning July 1, 2007.

(2) Such employer shall pay the full amount of the minimum wage under section 4(a)(8) beginning July 1, 2008.

Section 3. Sections 6, 7, 8 and 9 of the act are amended to read:

Section 6. Minimum Wage Advisory Board.—(a) There is hereby created in the Department of Labor and Industry a Minimum Wage Advisory Board consisting of nine members to be appointed by the secretary to assist him *or her* in carrying out his *or her* duties under this act, and for the purpose of conducting public hearings at the request of the secretary in order to recommend rules and regulations for the occupations covered within this act.

(b) Of the nine members, three shall be representatives of an established recognized association of labor organizations, three shall be representatives of an established recognized association of employers and three shall be members from the general public. The Secretary of Labor and Industry or his *or her* designated representative shall be chairman of the board.

(c) Each member of the board shall receive compensation of thirty dollars (\$30) per day plus necessary expenses, for each day actually spent in the performance of his *or her* duties. No employe of the Commonwealth shall receive any additional compensation or expenses on account of his *or her* services under this act.

(d) At least ten days' public notice shall be given in the manner prescribed by the board prior to any public hearing of the board. Five members of the board shall constitute a quorum.

(e) The board shall have the power and duty to:

(1) consult with the secretary concerning any matter arising under the administration of this act and advise and assist him *or her* in carrying out the duties prescribed for him *or her* by section 8 of this act;

(2) conduct public hearings at the request of the secretary in order to develop rules and regulations in accordance with section 9 of this act, in which hearings due process of law shall be observed and any person may appear and be heard or file statements in support of his *or her* position;

(3) the board shall submit its report including recommendations for the promulgation of rules and regulations to the secretary, who shall within thirty days thereafter accept such report or refer it to the board for further consideration and consultation. If the report is referred to the board for further consideration, the secretary shall, in consultation with the board, modify, amend, or otherwise act upon such report within sixty days thereafter. Rules and regulations developed and promulgated hereunder shall be published and any person aggrieved thereby, shall have a right of review as set forth in section 10 of this act[.];

(4) submit an annual report to the General Assembly by March 1 of each year detailing, to the maximum extent possible, data on the previous

calendar year's demographics of those workers who are paid the minimum wage or below. The board may include any other relevant facts that it believes necessary into the content of such report; and

(5) make recommendations to the General Assembly by September 1, 2007, as to changes that it recommends be made to this act.

Section 7. Investigations.—(a) The secretary or his *or her* representative shall have authority to investigate and ascertain the wages of persons employed in any occupation in the Commonwealth; enter and inspect the place of business or employment of any employer of employes in any occupation in the Commonwealth at any reasonable time, for the purpose of examining and inspecting any records of any such employer that in any way relate to wages, hours, or other conditions of employment of any such employes; copy any or all of such records as **[he] the secretary** or **[his] an** authorized representative may deem necessary or appropriate; require from such employer full and accurate statements in writing, at such times as the secretary may deem necessary, of the wages paid to all employes in his *or her* employment; and interrogate such persons for the purpose of ascertaining whether the provisions of this act and the regulations issued thereunder have been and are being complied with.

Section 8. Duty of Employer.—Every employer of employes shall keep a true and accurate record of the hours worked by each employe and the wages paid to each, and shall furnish to the secretary or his *or her* duly authorized representative, upon demand, a sworn statement of the same. Such records shall be open to inspection by any duly authorized representative of the secretary at any reasonable time and shall be preserved for a period of three years. Every employer subject to this act shall keep a summary of this act and any regulations issued thereunder applicable to him *or her*, posted in a conspicuous place where employes normally pass and can read it. Employers shall, upon request, be furnished copies of such summaries without charge. Employers shall permit any duly authorized representative of the secretary to interrogate any employe in the place of employment and during work hours with respect to the wages paid to and the hours worked by such employe or other employes.

Section 9. Enforcement; Rules and Regulations.—The secretary shall enforce this act. **[He] The secretary** shall make and, from time to time, revise regulations, with the assistance of the board, when requested by **[him] the secretary**, which shall be deemed appropriate to carry out the purposes of this act and to safeguard the minimum wage rates thereby established. Such regulations may include, but are not limited to, regulations defining and governing bona fide executive, administrative, or professional employes and outside **[salesmen] salespersons**, learners and apprentices, their number, proportion, length of learning period, and other working conditions; handicapped workers; part-time pay; overtime standards; bonuses; allowances for board, lodging, apparel, or other facilities or services customarily furnished by employers to employes; allowances for gratuities;

or allowances for such other special conditions or circumstances which may be incidental to a particular employer-employee relationship.

Section 4. Section 12 of the act, amended December 10, 1974 (P.L.916, No.303), is amended to read:

Section 12. Penalties.—(a) Any employer and his *or her* agent, or the officer or agent of any corporation, who discharges or in any other manner discriminates against any employe because such employe has testified or is about to testify before the secretary or his *or her* representative in any investigation or proceeding under or related to this act, or because such employer believes that said employe may so testify shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), 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 ninety days.

(b) Any employer or the officer or agent of any corporation who pays or agrees to pay any employe less than the rates applicable to such employe under this act shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than seventy-five dollars (\$75) nor more than three hundred dollars (\$300) or to undergo imprisonment of not less than ten nor more than sixty days, or both. Each week in which such employe is paid less than the rate applicable to him *or her* under this act and for each employe who is paid less than the prescribed rate, a separate offense shall be deemed to occur. Any agreement between the employer and the employe to work for less than the applicable wage rate shall be no defense to action by the Commonwealth under this section.

(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 one hundred dollars (\$100) nor more than five hundred dollars (\$500), and each day of such failure to comply with this act or regulation, shall constitute a separate offense.

Section 5. The act is amended by adding a section to read:

Section 14.1. Preemption.—(a) Except as set forth in subsection (b), this act shall preempt and supersede any local ordinance or rule concerning the subject matter of this act.

(b) This section does not prohibit local regulation pursuant to an ordinance which was adopted by a municipality prior to January 1, 2006, and which remained in effect on January 1, 2006.

Section 6. All acts and parts of acts are repealed insofar as they are inconsistent with the addition of section 14.1 of the act.

Section 7. This act shall apply as follows:

(1) The addition of section 14.1 of the act shall not invalidate any ordinance, charter provision, resolution, rule or regulation in effect on the effective date of this section.

(2) The following provisions shall apply to contracts entered into or renewed on or after the effective date of this section:

- (i) The addition of section 14.1 of the act.
- (ii) Section 7 of this act.

Section 8. This act shall take effect immediately.

APPROVED—The 9th day of July, A.D. 2006.

EDWARD G. RENDELL