

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2136 Session of
1995

INTRODUCED BY PICCOLA, CONTI, DEMPSEY, TRUE, CHADWICK, HERMAN,
S. H. SMITH, FARGO, LEH, STERN, SATHER, MARSICO, BATTISTO,
HENNESSEY, E. Z. TAYLOR, M. N. WRIGHT, JOSEPHS, TULLI, MERRY,
BROWNE, ARMSTRONG, DENT, SAYLOR, MICHLOVIC, BUNT AND CLARK,
OCTOBER 23, 1995

REFERRED TO COMMITTEE ON LABOR RELATIONS, OCTOBER 23, 1995

AN ACT

1 Amending the act of January 17, 1968 (P.L.11, No.5), entitled
2 "An act establishing a fixed minimum wage and overtime rates
3 for employes, with certain exceptions; providing for minimum
4 rates for learners and apprentices; creating a Minimum Wage
5 Advisory Board and defining its powers and duties; conferring
6 powers and imposing duties upon the Department of Labor and
7 Industry; imposing duties on employers; and providing
8 penalties," changing the short title; providing for a minimum
9 income supplement; making an editorial change; and conferring
10 powers and duties on the Department of Revenue.

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

13 Section 1. Sections 1 and 2 of the act of January 17, 1968
14 (P.L.11, No.5), known as The Minimum Wage Act of 1968, are
15 amended to read:

16 Section 1. Declaration of Policy.--[Employes are employed in
17 some occupations in the Commonwealth of Pennsylvania for wages
18 unreasonably low and not fairly commensurate with the value of
19 the services rendered. Such a condition is contrary to public
20 interest and public policy commands its regulation. Employes

1 employed in such occupations are not as a class on a level of
2 equality in bargaining with their employers in regard to minimum
3 fair wage standards, and "freedom of contract" as applied to
4 their relations with their employers is illusory. Judged by any
5 reasonable standard, wages in such occupations are often found
6 to bear no relation to the fair value of the services rendered.
7 In the absence of effective minimum fair wage rates for
8 employes, the depression of wages by some employers constitutes
9 a serious form of unfair competition against other employers,
10 reduces the purchasing power of the workers and threatens the
11 stability of the economy. The evils of unreasonable and unfair
12 wages as they affect some employes employed in the Commonwealth
13 of Pennsylvania are such as to render imperative the exercise of
14 the police power of the Commonwealth for the protection of
15 industry and of the employes employed therein and of the public
16 interest of the community at large.] Economic research and
17 market experience indicate that a public policy of legislated
18 minimum wage rates is detrimental to the economy of this
19 Commonwealth and inimical to the interests of those individuals
20 whom the minimum wage was intended to help. Legislated minimum
21 wage rates above the wage rates set by the market decrease the
22 number of jobs otherwise available in our economy and increase
23 the unemployment of low-skilled, low-wage workers. Increases in
24 legislated minimum wage rates increase the cost of goods and
25 services in our economy without a corresponding increase in
26 productivity, thus reducing productivity and increasing economic
27 inflation, which, consequently, deprive low-income families of
28 needed food and clothing and other essential goods and services.
29 Demographic research further indicates that only a small
30 percentage of minimum wage workers live in families which are

1 classified below the recognized poverty level. The General
2 Assembly, therefore, finds and declares that increases in the
3 minimum wage have not met their intended public policy purpose
4 and that the market is best able to provide for employment with
5 wage compensation commensurate with the value of the work
6 available. The General Assembly further finds and declares that
7 there is a need to compensate employees who earn low wages and
8 who live in families classified below certain recognized poverty
9 levels in a manner that is effective, efficient and economically
10 prudent through a minimum income supplement. This minimum income
11 supplement is a necessary exercise of the police power for the
12 protection of the economic welfare of the citizens of this
13 Commonwealth.

14 Section 2. Short Title.--This act shall be known and may be
15 cited as "The Minimum [Wage Act of 1968] Income Act."

16 Section 2. Section 3 of the act, amended December 15, 1988
17 (P.L.1232, No.150), is amended to read:

18 Section 3. Definitions.--As used in this act:

19 (a) "Secretary" means the Secretary of Labor and Industry.

20 (b) "Department" means the Department of Labor and Industry.

21 (c) "Board" means the Minimum Wage Advisory Board created by
22 this act.

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

28 "Wage" paid to any employe includes the reasonable cost, as
29 determined by the secretary, to the employer for furnishing such
30 employe with board, lodging, or other facilities, if such board,

1 lodging, or other facilities are customarily furnished by such
2 employer to his employees: Provided, That the cost of board,
3 lodging, or other facilities shall not be included as a part of
4 the wage paid to any employee to the extent it is excluded
5 therefrom under the terms of a bona fide collective-bargaining
6 agreement applicable to the particular employee: Provided,
7 further, That the secretary is authorized to determine the fair
8 value of such board, lodging, or other facilities for defined
9 classes of employees and in defined areas, based on average cost
10 to the employer or to groups of employers similarly situated, or
11 average value to groups of employees, or other appropriate
12 measures of fair value. Such evaluations, where applicable and
13 pertinent, shall be used in lieu of actual measure of cost in
14 determining the wage paid to any employee.

15 In determining the hourly wage of a tipped employee, the
16 amount paid such employee by his employer shall be deemed to be
17 increased on account of tips by an amount determined by the
18 employer, but not by an amount in excess of forty-five percent
19 of the applicable minimum wage rate upon the effective date of
20 this amendment: Provided, That the amount of the increase on
21 account of tips determined by the employer may not exceed the
22 value of tips actually received by the employee. The previous
23 sentence shall not apply with respect to any tipped employee
24 unless:

25 (1) Such employee has been informed by the employer of the
26 provisions of this subsection;

27 (2) All tips received by such employee have been retained by
28 the employee and shall not be surrendered to the employer to be
29 used as wages to satisfy the requirement to pay the current
30 hourly minimum rate in effect; where the gratuity is added to

1 the charge made by the establishment, either by the management,
2 or by the customer, the gratuity shall become the property of
3 the employee; except that this subsection shall not be construed
4 to prohibit the pooling of tips among employees who customarily
5 and regularly receive tips.

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

9 (f) "[Employee] Employ" includes to suffer or to permit to
10 work.

11 (g) "Employer" includes any individual, partnership,
12 association, corporation, business trust, or any person or group
13 of persons acting, directly or indirectly, in the interest of an
14 employer in relation to any employee.

15 (h) "Employee" includes any individual employed by an
16 employer.

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

20 (j) "Annual minimum income" means forty percent of the
21 product of fifty-two multiplied by the Statewide average weekly
22 wage rate under section 404(e)(3) of the act of December 5, 1936
23 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the "Unemployment
24 Compensation Law."

25 (k) "Dependent child" means a child or grandchild, by
26 consanguinity, affinity or adoption, for whom an eligible
27 claimant provides more than one-half of the support during the
28 tax year in which the minimum income supplement is claimed and
29 who, during the tax year in which the minimum income supplement
30 is claimed, is under nineteen years of age or is enrolled in

1 school for at least five months.

2 (l) "Minimum income supplement" means the payment available
3 to a low-income worker under section 4.1.

4 (m) "Eligible claimant" means an individual who maintains a
5 household in this Commonwealth which is, for more than six
6 months during the tax year in which the minimum income
7 supplement is claimed, the principal place of residence of the
8 individual and the individual's dependent child and who is
9 ineligible for aid to families with dependent children under
10 section 432(1) of the act of June 13, 1967 (P.L.31, No.21),
11 known as the "Public Welfare Code."

12 (n) "Support" has the meaning given in section 152 of the
13 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
14 152).

15 (o) "Total income" includes all classes of income under
16 section 303 of the act of March 4, 1971 (P.L.6, No.2), known as
17 the "Tax Reform Code of 1971."

18 Section 3. The act is amended by adding a section to read:

19 Section 4.1. Minimum Income Supplement.--(a) An eligible
20 claimant shall receive from the Department of Revenue a minimum
21 income supplement for a tax year as follows:

22 (1) If the eligible claimant has one dependent child,
23 thirteen percent of the total income of the eligible claimant
24 that does not exceed the annual minimum income.

25 (2) If the eligible claimant has two dependent children,
26 twenty-six percent of the total income of the eligible claimant
27 that does not exceed the annual minimum income.

28 (3) If the eligible claimant has three dependent children,
29 twenty-eight percent of the total income of the eligible
30 claimant that does not exceed the annual minimum income.

1 (4) If the eligible claimant has more than three dependent
2 children, thirty percent of the total income of the eligible
3 claimant that does not exceed the annual minimum income.

4 (5) The minimum income supplement shall be reduced for an
5 eligible claimant whose total income exceeds the annual minimum
6 income by ten percent for each one thousand dollars (\$1,000) in
7 excess of the annual minimum income.

8 (b) An eligible claimant must prove ineligibility for an
9 earned income tax credit under section 32 of the Internal
10 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 32) or
11 report the amount of that credit to the Department of Revenue.
12 The minimum income supplement shall be reduced by the amount of
13 the earned income tax credit under section 32 of the Internal
14 Revenue Code of 1986.

15 (c) The minimum income supplement must be taken for the
16 current tax year and may not be carried over to another tax
17 year.

18 (d) An eligible claimant may receive the minimum income
19 supplement in advance throughout the tax year by filing with the
20 Department of Revenue an estimated tax return on a form
21 promulgated by the Department of Revenue. The Department of
22 Revenue shall reconcile discrepancies between the estimated tax
23 return and the actual tax return for purposes of the minimum
24 income supplement.

25 Section 4. The Department of Revenue shall promulgate the
26 form necessary to administer section 4.1(d) of the act.

27 Section 5. The amendment or addition of sections 1, 3 and
28 4.1 of the act shall apply to tax years beginning after December
29 31, 1992.

30 Section 6. This act shall take effect immediately.