

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 198 Session of 2015

INTRODUCED BY TARTAGLIONE, TEPLITZ, YUDICHAK, HUGHES, SCHWANK,  
COSTA AND FARNESE, JANUARY 28, 2015

REFERRED TO LABOR AND INDUSTRY, JANUARY 28, 2015

AN ACT

1 Amending the act of July 14, 1961 (P.L.637, No.329), entitled  
2 "An act relating to the payment of wages or compensation for  
3 labor or services; providing for regular pay days; conferring  
4 powers and duties upon the Department of Labor and Industry,  
5 including powers and duties with respect to the civil  
6 collection of wages; providing civil and criminal penalties  
7 for violations of the act; providing for their collection and  
8 disposition and providing for additional civil damages,"  
9 further providing for definitions; providing for duty of  
10 department to report; further providing for civil remedies  
11 and penalties, for liquidated damages and for criminal  
12 penalties; providing for employer liability; and establishing  
13 the Wage Enforcement Fund.

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

16 Section 1. The definition of "employer" in section 2.1 of  
17 the act of July 14, 1961 (P.L.637, No.329), known as the Wage  
18 Payment and Collection Law, added July 14, 1977 (P.L.82, No.30),  
19 is amended and the section is amended by adding a definition to  
20 read:

21 Section 2.1. Definitions.--The following words and phrases  
22 when used in this act shall have, unless the context clearly  
23 indicates otherwise, the meanings given to them in this section:

1 \* \* \*

2 "Employer." Includes the Commonwealth; any of its political  
3 subdivisions; any authority created by the General Assembly and  
4 any instrumentality or agency of the Commonwealth; every person,  
5 firm, partnership, association, corporation, receiver or other  
6 officer of a court of this Commonwealth and any agent or officer  
7 of any of the above-mentioned classes employing any person in  
8 this Commonwealth.

9 \* \* \*

10 "High violation industry." An industry that incurs at least  
11 25 violations over a two-year period.

12 \* \* \*

13 Section 2. The act is amended by adding a section to read:

14 Section 8.1. Duty of department to report.--(a) The  
15 department shall collect on a quarterly basis the following data  
16 categorized by industry: the number of violations; amount of  
17 finest collected; nature of violations; number of individual  
18 complaints filed; number of complaints resolved; amount of  
19 unpaid wages owed; amount of unpaid wages recovered; number of  
20 pending individual complaints; number of workplaces investigated  
21 from complaints and number of workplaces investigated  
22 proactively; number of workplaces reinvestigated following  
23 violations; and number of subsequent violations. On a semi-  
24 annual basis, the department shall prepare and submit a report  
25 of this data to the Chairman of the Labor and Industry Committee  
26 of the Senate and the Chairman of the Labor and Industry  
27 Committee of the House of Representatives and post the report on  
28 the department's publicly accessible Internet website.

29 (b) The secretary shall investigate high-violation  
30 industries no less than quarterly; train investigators to

1 recognize basic labor, health and safety violations; and engage  
2 in cross-agency referrals to protect workers' rights.

3 Section 3. Section 9.1(c) of the act, added July 14, 1977  
4 (P.L.82, No.30), is amended and the section is amended by adding  
5 a subsection to read:

6 Section 9.1. Civil Remedies and Penalties.--\* \* \*

7 (c) The employe or group of employes, labor organization or  
8 party to whom any type of wages is payable may, in the  
9 alternative, inform the secretary of the wage claim against an  
10 employer or former employer, and the secretary shall, unless the  
11 claim appears to be frivolous, immediately notify the employer  
12 or former employer of such claim by certified mail. If the  
13 employer or former employer fails to pay the claim or make  
14 satisfactory explanation to the secretary of his failure to do  
15 so within ten days after receipt of such certified notification,  
16 thereafter, the employer or former employer shall be liable for  
17 a penalty of [ten percent (10%) of that portion of the claim  
18 found to be justly due.] one thousand dollars (\$1,000) per  
19 violation of this act or the regulations or equal to twice the  
20 underpaid wages in damages to the employe, whichever is greater.  
21 Each week in which an employe is paid less than the applicable  
22 wage under this act and each employe who is paid less than the  
23 prescribed rate shall constitute a separate violation which  
24 shall be subject to a separate penalty. A good faith dispute or  
25 contest as to the amount of wages due or the good faith  
26 assertion of a right of set-off or counter-claim shall be deemed  
27 a satisfactory explanation for nonpayment of such amount in  
28 dispute or claimed as a set-off or counter-claim. The secretary  
29 [shall have a cause of action against the employer or former  
30 employer for recovery of such penalty and the same] may issue

1 orders and levy the civil penalty only after affording the  
2 accused party the opportunity for a hearing as provided in 2  
3 Pa.C.S. (relating to administrative law and procedure). Such  
4 penalty may be included in any subsequent action by the  
5 secretary on said wage claim or may be exercised separately  
6 after adjustment of such wage claim without court action. At the  
7 request of an employe, the department shall assign that portion  
8 of the money due that constitutes wages, wage supplements,  
9 interest on wages or wage supplements, and liquidated damages  
10 due that employe, to that employe and file an order in that  
11 amount in the name of that employe with the county clerk of the  
12 county where the employer resides or has a place of business.  
13 The filing of such order shall have the full force and effect of  
14 a judgment duly docketed in the office of such clerk.

15 \* \* \*

16 (h) Any employer and his or her agent, or the officer or  
17 agent of any corporation, who discharges or in any other manner  
18 discriminates against any employe who has filed or submitted a  
19 complaint under this act, cooperated with the secretary or the  
20 secretary's representative, submitted evidence, testified or is  
21 about to testify before the secretary or the secretary's  
22 representative in any investigation or proceeding under or  
23 related to this act, or because such employer believes that said  
24 employe may take these actions, or has exercised any right under  
25 this act or any regulation implementing its provisions, or  
26 because such employe provides assistance or information to  
27 another employe about this act shall, upon conviction thereof,  
28 be sentenced to pay a fine of not less than five hundred dollars  
29 (\$500) nor more than one thousand dollars (\$1,000), and in  
30 default of the payment of such fine and costs, shall be

1 sentenced to imprisonment for not less than ten days nor more  
2 than 90 days. A first offense under this subsection shall be  
3 graded as a summary offense. A second or subsequent offense  
4 under this subsection, committed within a five-year period of  
5 the prior offense, shall be graded as a misdemeanor of the third  
6 degree and shall be punishable by a fine of not less than one  
7 thousand dollars (\$1,000) nor more than three thousand dollars  
8 (\$3,000) or to imprisonment of not less than ten nor more than  
9 100 days. Each day of such failure to comply with this  
10 subsection or its regulations and each employee who is discharged  
11 or in any other manner discriminated against shall constitute a  
12 separate offense subject to a separate penalty. Any employer and  
13 his or her agent, or the officer or agent of any corporation,  
14 may also be required to pay the employee an amount set by the  
15 court sufficient to compensate the employee and deter future  
16 violations.

17 Section 4. Sections 10 and 11.1 of the act, amended or added  
18 July 14, 1977 (P.L.82, No.30), are amended to read:

19 Section 10. Liquidated Damages.--Where wages remain unpaid  
20 for thirty days beyond the regularly scheduled payday, or, in  
21 the case where no regularly scheduled payday is applicable, for  
22 sixty days beyond the filing by the employee of a proper claim or  
23 for sixty days beyond the date of the agreement, award or other  
24 act making wages payable, or where shortages in the wage  
25 payments made exceed five percent (5%) of the gross wages  
26 payable on any two regularly scheduled paydays in the same  
27 calendar quarter, and no good faith contest or dispute of any  
28 wage claim including the good faith assertion of a right of set-  
29 off or counter-claim exists accounting for such non-payment, the  
30 employee shall be entitled to claim, in addition, as liquidated

1 damages an amount equal to [twenty-five percent (25%) of the  
2 total amount of wages due, or five hundred dollars (\$500),  
3 whichever is greater.] twice the underpaid wages due or one  
4 thousand dollars (\$1,000), whichever is greater. Each week in  
5 which an employee is paid less than the applicable wage under  
6 this act shall constitute a separate violation which shall be  
7 subject to a separate penalty.

8 Section 11.1. Criminal Penalties.--(a) The secretary or any  
9 employee, group of employees, labor organization or party to whom  
10 any type of wages is payable may institute prosecutions under  
11 this act.

12 (b) In addition to any other penalty or punishment otherwise  
13 prescribed by law, any employer who violates any provisions of  
14 this act [shall be guilty of a summary offense and, upon  
15 conviction thereof,] shall be punished by a fine of not [more]  
16 less than three hundred dollars (\$300) nor more than one  
17 thousand dollars (\$1,000), or by imprisonment up to 90 days, or  
18 by both[, for each offense]. Each day of such failure to comply  
19 with this act, and each employee against whom the employer or  
20 officer or agent of any corporation violated any other provision  
21 of this act, shall constitute a separate offense which shall be  
22 subject to a separate penalty. A first offense under this  
23 subsection shall be graded as a summary offense. A second or  
24 subsequent offense under this subsection, committed within a  
25 five-year period of the prior offense, shall be graded as a  
26 misdemeanor of the third degree and shall be punishable by a  
27 fine of not less than five hundred dollars (\$500) nor more than  
28 one thousand dollars (\$1,000). The good faith contest or dispute  
29 by any employer of any wage claim or the good faith assertion of  
30 a right of set-off or counter-claim shall not be considered a

1 violation of this act: Provided, That the employer has paid all  
2 wages due in excess of the amount in dispute or asserted to be  
3 subject to a right of set-off or counter-claim. [Nonpayment of  
4 wages to, on account of, or for the benefit of each individual  
5 employe shall constitute a separate offense.]

6 (c) Where such employer is a corporation, the president,  
7 secretary, treasurer or officers exercising corresponding  
8 functions shall each be guilty of such summary offense.

9 (d) [All fines or penalties collected under this act shall  
10 be paid into the State Treasury through the Department of  
11 Revenue to the credit of the General Fund.] All fines and  
12 penalties collected under section 9.1 and this section, as well  
13 as section 12 of the act of January 17, 1968 (P.L.11, No.5),  
14 known as The Minimum Wage Act of 1968, shall be deposited into  
15 the Wage Enforcement Fund established under section 11.2. This  
16 subsection does not apply to penalties and wages paid to  
17 employees for violations of this act or The Minimum Wage Act of  
18 1968.

19 Section 5. The act is amended by adding sections to read:

20 Section 11.2. Employer Liability.--An employer similar in  
21 operation and ownership to another employer found in violation  
22 of section 9.1(c) or (h) or 11.1(b) shall be deemed the same  
23 employer for the purposes of this section if the employees of the  
24 similar employer are engaged in substantially the same work in  
25 substantially the same working conditions under substantially  
26 the same supervisors, or if the similar employer has  
27 substantially the same production process, produces  
28 substantially the same products and has the same body of  
29 customers as the other employer found in violation of section  
30 9.1(c) or (h) or 11.1(b). Such similar employer shall continue

1 to be subject to section 9.1(c) or (h) or 11.1(b) and shall be  
2 liable for the acts of such other employer under section 9.1(c)  
3 or (h) or 11.1(b), as applicable.

4 Section 11.3. Wage Enforcement Fund.--(a) The Wage  
5 Enforcement Fund is established in the State Treasury. The  
6 moneys in the Wage Enforcement Fund shall consist of the fines  
7 and penalties collected under sections 9.1 and 11.1 and section  
8 12 of the act of January 17, 1968 (P.L.11, No.5), known as The  
9 Minimum Wage Act of 1968, and deposited into the fund pursuant  
10 to section 12 of The Minimum Wage Act of 1968.

11 (b) Moneys in the Wage Enforcement Fund are hereby  
12 appropriated on a continuing basis, upon approval of the  
13 Governor, to the department for periodic inspections, for  
14 investigations of violations and for the enforcement of this act  
15 and The Minimum Wage Act of 1968, including, but not limited to,  
16 staffing for inspection, investigation and enforcement under  
17 this act and The Minimum Wage Act of 1968.

18 (c) No moneys may be expended or obligated from the Wage  
19 Enforcement Fund to any third party for any other purpose than  
20 investigation, training investigators and enforcement under this  
21 act and The Minimum Wage Act of 1968.

22 (d) Moneys in the Wage Enforcement Fund shall not lapse at  
23 any time or be transferred to any other fund, except as provided  
24 in section 12 of The Minimum Wage Act of 1968.

25 (e) No later than June 30 of each calendar year the  
26 department shall provide a report to the Governor and the  
27 General Assembly, through the Secretary-Parliamentarian of the  
28 Senate and the Chief Clerk of the House of Representatives,  
29 regarding the Wage Enforcement Fund. The report shall include an  
30 accounting for the fines collected and deposited into the fund,



1 the expenditures and transfers from the fund during the prior  
2 year, a description of the purposes for which expenditures from  
3 the fund were made in the prior year and a full account of the  
4 data collections required of the department under section 7 of  
5 The Minimum Wage Act of 1968. This report shall be posted on the  
6 department's publicly accessible Internet website no later than  
7 July 1 of each calendar year.

8       Section 6. This act shall take effect in 60 days.