

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 2873 Session of  
1996

INTRODUCED BY STISH, SEPTEMBER 23, 1996

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, NOVEMBER 26, 1996

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," further providing for the minimum wage OF CERTAIN <—  
9 EMPLOYEES DEFINITIONS. <—

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

12 ~~Section 1. Section 4 of the act of January 17, 1968 (P.L.11, <—~~  
13 ~~No.5), known as The Minimum Wage Act of 1968, amended December~~  
14 ~~10, 1974 (P.L.916, No.303), July 1, 1978 (P.L.735, No.135),~~  
15 ~~December 15, 1988 (P.L.1232, No.150), and July 9, 1990 (P.L.348,~~  
16 ~~No.79), is amended to read:~~

17 ~~Section 4. Minimum Wages. Except as may otherwise be~~  
18 ~~provided under this act:~~

19 ~~(a) Every employer shall pay to each of his employes wages~~  
20 ~~for all hours worked at a rate of not less than:~~

21 ~~(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.] ending September 30, 1996.~~

~~(6) Four dollars seventy five cents (\$4.75) an hour after September 30, 1996, and before January 1, 1997.~~

~~(7) Five dollars (\$5.00) an hour after December 31, 1996, and before September 1, 1997.~~

~~(8) Five dollars fifty cents (\$5.50) an hour after August 31, 1997, and before September 1, 1998.~~

~~(9) Six dollars (\$6.00) an hour after August 31, 1998, and before September 1, 1999.~~

~~(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] are less than those set forth under the Fair Labor Standards Act.~~

~~(a.2) On September 1, 1999, and every September 1 thereafter, the minimum wage shall be increased to a figure obtained by dividing the Poverty Level for a family of three persons, as set forth by the Department of Health and Human~~

~~Services, by two thousand eighty and rounding the quotient to the next highest cent. By August 31 of each year, the secretary shall transmit a notice of the new rate to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.~~

~~(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) 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~~

1 ~~this act: And provided further, That the secretary shall~~  
2 ~~promulgate regulations with respect to overtime subject to the~~  
3 ~~limitations that no pay for overtime in addition to the regular~~  
4 ~~rate shall be required except for hours in excess of forty hours~~  
5 ~~in a workweek.~~

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

15 ~~Section 2. The addition of section 4(a)(6) of the act shall~~  
16 ~~apply retroactively to October 1, 1996.~~

17 ~~SECTION 1. THE ACT OF JANUARY 17, 1968 (P.L.11, NO.5), KNOWN~~ <—  
18 ~~AS THE MINIMUM WAGE ACT OF 1968, IS AMENDED BY ADDING A SECTION~~  
19 ~~TO READ:~~

20 ~~SECTION 3.1. MINIMUM WAGE OF HOURLY TIPPED EMPLOYES. IN~~  
21 ~~DETERMINING THE HOURLY WAGE AN EMPLOYER IS REQUIRED TO PAY A~~  
22 ~~TIPPED EMPLOYE, THE AMOUNT PAID SUCH EMPLOYE BY THE EMPLOYE'S~~  
23 ~~EMPLOYER SHALL BE IN AN AMOUNT EQUAL TO:~~

24 ~~(1) THE CASH WAGE PAID THE EMPLOYE WHICH FOR THE PURPOSES OF~~  
25 ~~THE DETERMINATION SHALL BE NOT LESS THAN THE CASH WAGE REQUIRED~~  
26 ~~TO BE PAID THE EMPLOYE ON THE EFFECTIVE DATE OF THIS SECTION.~~

27 ~~(2) AN ADDITIONAL AMOUNT ON ACCOUNT OF THE TIPS RECEIVED BY~~  
28 ~~THE EMPLOYE WHICH AMOUNT IS EQUAL TO THE DIFFERENCE BETWEEN THE~~  
29 ~~WAGE SPECIFIED IN PARAGRAPH (1) AND THE WAGE IN EFFECT UNDER~~  
30 ~~SECTION 4 OF THIS ACT.~~

~~THE ADDITIONAL AMOUNT ON ACCOUNT OF TIPS MAY NOT EXCEED THE  
VALUE OF THE TIPS ACTUALLY RECEIVED BY AN EMPLOYEE.~~

SECTION 1. SECTION 3(D) 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), IS AMENDED TO READ:

SECTION 3. DEFINITIONS.--AS USED IN THIS ACT:

\* \* \*

(D) "WAGES" MEAN COMPENSATION DUE TO ANY EMPLOYEE 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 EMPLOYEE INCLUDES THE REASONABLE COST, AS  
DETERMINED BY THE SECRETARY, TO THE EMPLOYER FOR FURNISHING SUCH  
EMPLOYEE WITH BOARD, LODGING, OR OTHER FACILITIES, IF SUCH BOARD,  
LODGING, OR OTHER FACILITIES ARE CUSTOMARILY FURNISHED BY SUCH  
EMPLOYER TO HIS EMPLOYEES: PROVIDED, THAT THE COST OF BOARD,  
LODGING, OR OTHER FACILITIES SHALL NOT BE INCLUDED AS A PART OF  
THE WAGE PAID TO ANY EMPLOYEE TO THE EXTENT IT IS EXCLUDED  
THEREFROM UNDER THE TERMS OF A BONA FIDE COLLECTIVE-BARGAINING  
AGREEMENT APPLICABLE TO THE PARTICULAR EMPLOYEE: PROVIDED,  
FURTHER, THAT THE SECRETARY IS AUTHORIZED TO DETERMINE THE FAIR  
VALUE OF SUCH BOARD, LODGING, OR OTHER FACILITIES FOR DEFINED  
CLASSES OF EMPLOYEES AND IN DEFINED AREAS, BASED ON AVERAGE COST  
TO THE EMPLOYER OR TO GROUPS OF EMPLOYERS SIMILARLY SITUATED, OR  
AVERAGE VALUE TO GROUPS OF EMPLOYEES, 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 EMPLOYEE.

IN DETERMINING THE HOURLY WAGE [OF] AN EMPLOYER IS REQUIRED

1 TO PAY A TIPPED EMPLOYE, THE AMOUNT PAID SUCH EMPLOYE BY HIS  
2 EMPLOYER SHALL BE [DEEMED TO BE INCREASED ON ACCOUNT OF TIPS BY]  
3 AN AMOUNT [DETERMINED BY THE EMPLOYER, BUT NOT BY AN AMOUNT IN  
4 EXCESS OF FORTY-FIVE PERCENT OF THE APPLICABLE MINIMUM WAGE RATE  
5 UPON THE EFFECTIVE DATE OF THIS AMENDMENT: PROVIDED, THAT THE  
6 AMOUNT OF THE INCREASE] EQUAL TO: (I) THE CASH WAGE PAID THE  
7 EMPLOYE WHICH, FOR THE PURPOSES OF THE DETERMINATION, SHALL BE  
8 NOT LESS THAN THE CASH WAGE REQUIRED TO BE PAID THE EMPLOYE ON  
9 THE DATE IMMEDIATELY PRIOR TO THE EFFECTIVE DATE OF THIS  
10 SUBPARAGRAPH; AND (II) AN ADDITIONAL AMOUNT ON ACCOUNT OF THE  
11 TIPS RECEIVED BY THE EMPLOYE, WHICH IS EQUAL TO THE DIFFERENCE  
12 BETWEEN THE WAGE SPECIFIED IN SUBPARAGRAPH (I) AND THE WAGE IN  
13 EFFECT UNDER SECTION 4 OF THIS ACT. THE ADDITIONAL AMOUNT ON  
14 ACCOUNT OF TIPS [DETERMINED BY THE EMPLOYER] MAY NOT EXCEED THE  
15 VALUE OF TIPS ACTUALLY RECEIVED BY THE EMPLOYE. THE PREVIOUS  
16 SENTENCE SHALL NOT APPLY WITH RESPECT TO ANY TIPPED EMPLOYE  
17 UNLESS:

18 (1) SUCH EMPLOYE HAS BEEN INFORMED BY THE EMPLOYER OF THE  
19 PROVISIONS OF THIS SUBSECTION;

20 (2) ALL TIPS RECEIVED BY SUCH EMPLOYE HAVE BEEN RETAINED BY  
21 THE EMPLOYE AND SHALL NOT BE SURRENDERED TO THE EMPLOYER TO BE  
22 USED AS WAGES TO SATISFY THE REQUIREMENT TO PAY THE CURRENT  
23 HOURLY MINIMUM RATE IN EFFECT; WHERE THE GRATUITY IS ADDED TO  
24 THE CHARGE MADE BY THE ESTABLISHMENT, EITHER BY THE MANAGEMENT,  
25 OR BY THE CUSTOMER, THE GRATUITY SHALL BECOME THE PROPERTY OF  
26 THE EMPLOYE; EXCEPT THAT THIS SUBSECTION SHALL NOT BE CONSTRUED  
27 TO PROHIBIT THE POOLING OF TIPS AMONG EMPLOYEES WHO CUSTOMARILY  
28 AND REGULARLY RECEIVE TIPS.

29 \* \* \*

30 Section 3 2. This act shall take effect immediately.

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