

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 1090 Session of  
2006

INTRODUCED BY TARTAGLIONE, HUGHES, COSTA, FERLO, FONTANA, FUMO,  
KASUNIC, KITCHEN, LAVALLE, LOGAN, MELLOW, MUSTO, O'PAKE,  
STACK, STOUT, WASHINGTON, A. WILLIAMS, C. WILLIAMS, WOZNIAK,  
BOSCOLA, BROWNE, CONTI, PILEGGI, RAFFERTY AND TOMLINSON,  
JANUARY 31, 2006

SENATOR SCARNATI, LABOR AND INDUSTRY, AS AMENDED, JUNE 19, 2006

## 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," giving effect to Federal changes in wage rates;  
9 PROVIDING FOR PREEMPTION; and making editorial changes. <—

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

12 Section 1. Section 3 of the act of January 17, 1968 (P.L.11,  
13 No.5), known as The Minimum Wage Act of 1968, amended December  
14 15, 1988 (P.L.1232, No.150), and December 21, 1998 (P.L.1290,  
15 No.168), is amended to read:

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

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

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

19 (c) "Board" means the Minimum Wage Advisory Board created by  
20 this act.

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

7 "Wage" paid to any employe includes the reasonable cost, as  
8 determined by the secretary, to the employer for furnishing such  
9 employe with board, lodging, or other facilities, if such board,  
10 lodging, or other facilities are customarily furnished by such  
11 employer to his or her employes: Provided, That the cost of  
12 board, lodging, or other facilities shall not be included as a  
13 part of the wage paid to any employe to the extent it is  
14 excluded therefrom under the terms of a bona fide collective-  
15 bargaining agreement applicable to the particular employe:  
16 Provided, further, That the secretary is authorized to determine  
17 the fair value of such board, lodging, or other facilities for  
18 defined classes of employes and in defined areas, based on  
19 average cost to the employer or to groups of employers similarly  
20 situated, or average value to groups of employes, or other  
21 appropriate measures of fair value. Such evaluations, where  
22 applicable and pertinent, shall be used in lieu of actual  
23 measure of cost in determining the wage paid to any employe.

24 In determining the hourly wage an employer is required to pay  
25 a tipped employe, the amount paid such employe by his or her  
26 employer shall be an amount equal to: (i) the cash wage paid the  
27 employe which for the purposes of the determination shall be not  
28 less than the cash wage required to be paid the employe on the  
29 date immediately prior to the effective date of this  
30 subparagraph; and (ii) an additional amount on account of the

1 tips received by the employee which is equal to the difference  
2 between the wage specified in subparagraph (i) and the wage in  
3 effect under section 4 of this act. The additional amount on  
4 account of tips may not exceed the value of tips actually  
5 received by the employee. The previous sentence shall not apply  
6 with respect to any tipped employee unless:

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

9 (2) All tips received by such employee have been retained by  
10 the employee and shall not be surrendered to the employer to be  
11 used as wages to satisfy the requirement to pay the current  
12 hourly minimum rate in effect; where the gratuity is added to  
13 the charge made by the establishment, either by the management,  
14 or by the customer, the gratuity shall become the property of  
15 the employee; except that this subsection shall not be construed  
16 to prohibit the pooling of tips among employees who customarily  
17 and regularly receive tips.

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

21 (f) "Employee" includes to suffer or to permit to work.

22 (g) "Employer" includes any individual, partnership,  
23 association, corporation, business trust, or any person or group  
24 of persons acting, directly or indirectly, in the interest of an  
25 employer in relation to any employee.

26 (h) "Employee" includes any individual employed by an  
27 employer.

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

1 Section 2. Section 4 of the act, amended December 10, 1974  
2 (P.L.916, No.303), July 1, 1978 (P.L.735, No.135), December 15,  
3 1988 (P.L.1232, No.150), and July 9, 1990 (P.L.348, No.79), is  
4 amended to read:

5 Section 4. Minimum Wages.--Except as may otherwise be  
6 provided under this act:

7 (a) Every employer shall pay to each of his or her employes  
8 wages for all hours worked at a rate of not less than:

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

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

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

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

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

19 ~~(6) Five dollars fifteen cents (\$5.15) an hour beginning~~ <—  
20 ~~September 1, 1997, and thereafter.~~

21 (6) SIX DOLLARS TWENTY-FIVE CENTS (\$6.25) AN HOUR BEGINNING <—  
22 JULY 1, 2006.

23 (7) SIX DOLLARS THIRTY CENTS (\$6.30) AN HOUR BEGINNING  
24 JANUARY 1, 2007.

25 (8) SIX DOLLARS SIXTY-FIVE CENTS (\$6.65) AN HOUR BEGINNING  
26 JANUARY 1, 2008, AND THEREAFTER.

27 (a.1) If the minimum wage set forth in the Fair Labor  
28 Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 201 et seq.)  
29 is increased above [three dollars thirty-five cents (\$3.35) an  
30 hour] the minimum wage required under this section, the minimum

1 wage required under this section shall be increased by the same  
2 amounts and effective the same date as the increases under the  
3 Fair Labor Standards Act, and the provisions of subsection (a)  
4 are suspended to the extent they differ from those set forth  
5 under the Fair Labor Standards Act.

6 (b) The secretary, to the extent necessary to prevent  
7 curtailment of employment opportunities, shall by regulations  
8 provide for the employment of learners and students, under  
9 special certificates at wages lower than the minimum wage  
10 applicable under this section, and subject to such limitations  
11 as to number, proportion and length of service as the secretary  
12 shall prescribe: Provided, That the minimum wage prescribed  
13 under this subsection (b) shall not be less than eighty-five  
14 percent of the otherwise applicable wage rate in effect under  
15 section 4. A special certificate issued under this subsection  
16 shall provide that for six or less students for whom it is  
17 issued shall, except during vacation periods, be employed on a  
18 part-time basis and not in excess of twenty hours in any  
19 workweek at a sub-minimum rate.

20 In the case of an employer who intends to employ seven or  
21 more students, at a sub-minimum rate, the secretary may issue a  
22 special certificate only if the employer certifies to the  
23 secretary that employment of such students will not create a  
24 substantial probability of reducing the full-time employment  
25 opportunities for other workers.

26 (c) Employes shall be paid for overtime not less than one  
27 and one-half times the employe's regular rate as prescribed in  
28 regulations promulgated by the secretary: Provided, That  
29 students employed in seasonal occupations as defined and  
30 delimited by regulations promulgated by the secretary may, by

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

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

16 (E) IN LIEU OF THE MINIMUM WAGE PRESCRIBED IN SUBSECTION (A) <—  
17 AND NOTWITHSTANDING SUBSECTIONS (B) AND (D), AN EMPLOYER MAY,  
18 DURING THE FIRST SIXTY CALENDAR DAYS WHEN AN EMPLOYE UNDER THE  
19 AGE OF TWENTY YEARS IS INITIALLY EMPLOYED, PAY THE EMPLOYE  
20 TRAINING WAGES AT A RATE OF NOT LESS THAN THE MINIMUM WAGE SET  
21 FORTH IN SECTION 6(A) OF THE FAIR LABOR STANDARDS ACT (29 U.S.C.  
22 § 206(A)). A PERSON EMPLOYED AT THE TRAINING WAGE UNDER THIS  
23 SUBSECTION SHALL BE INFORMED OF THE AMOUNT OF THE TRAINING WAGE  
24 AND THE RIGHT TO RECEIVE THE FULL MINIMUM WAGE, OR A HIGHER  
25 WAGE, UPON COMPLETION OF THE TRAINING PERIOD. NO EMPLOYER MAY  
26 TAKE ANY ACTION TO DISPLACE EXISTING EMPLOYES, INCLUDING PARTIAL  
27 DISPLACEMENTS SUCH AS REDUCTION IN THE HOURS, WAGES OR  
28 EMPLOYMENT BENEFITS OF EXISTING EMPLOYES, FOR PURPOSES OF HIRING  
29 INDIVIDUALS AT THE TRAINING WAGE AUTHORIZED BY THIS SUBSECTION.

30 (F) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (A)(7) AND

1 (8), THE MINIMUM WAGE SET FORTH IN SUBSECTION (A)(6) SHALL APPLY  
2 TO MINORS SUBJECT TO THE ACT OF MAY 13, 1915 (P.L.286, NO.177),  
3 KNOWN AS THE "CHILD LABOR LAW," EXCEPT THOSE MINORS DESCRIBED IN  
4 SECTION 7.2 OF THE "CHILD LABOR LAW," WHO SHALL RECEIVE 85% OF  
5 THE MINIMUM WAGE UNDER SUBSECTION (A)(7) AND (8).

6 Section 3. Section 5 of the act, amended December 10, 1974  
7 (P.L.916, No.303), July 1, 1978 (P.L.735, No.135), December 15,  
8 1988 (P.L.1232, No.150), and July 9, 1990 (P.L.348, No.79), is  
9 amended to read:

10 Section 5. Exemptions.--(a) Employment in the following  
11 classifications shall be exempt from both the minimum wage and  
12 overtime provisions of this act:

13 (1) Labor on a farm;

14 (2) Domestic services in or about the private home of the  
15 employer;

16 (3) Delivery of newspapers to the consumer;

17 (4) In connection with the publication of any weekly,  
18 semiweekly, or daily newspaper with a circulation of less than  
19 four thousand, the major part of which circulation is within the  
20 county where published or counties contiguous thereto;

21 (5) In a bona fide executive, administrative, or  
22 professional capacity (including any employee employed in the  
23 capacity of academic administrative personnel or teacher in  
24 elementary or secondary schools) or in the capacity of outside  
25 salesman (as such terms are defined and delimited from time to  
26 time by regulations of the secretary, except that an employee of  
27 a retail or service establishment shall not be excluded from the  
28 definition of employee employed in a bona fide executive or  
29 administrative capacity because of the number of hours in his or  
30 her workweek which he or she devotes to activities not directly

1 or closely related to the performance of executive  
2 administrative activities, if less than forty percent of his or  
3 her hours worked in the workweek are devoted to such  
4 activities);

5 (6) In the activities of an educational, charitable,  
6 religious or nonprofit organization where the employer-employee  
7 relationship does not in fact exist or where the services are  
8 rendered to such organization gratuitously;

9 (7) In seasonal employment, if the employee is under eighteen  
10 years of age, or if a student under twenty-four years of age, by  
11 a nonprofit health or welfare agency engaged in activities  
12 dealing with handicapped or exceptional children or by a  
13 nonprofit day or resident seasonal recreational camp for campers  
14 under the age of eighteen years, which operates for a period of  
15 less than three months in any one year;

16 (9) In employment by an establishment which is a public  
17 amusement or recreational establishment, organized camp, or  
18 religious or nonprofit educational conference center, if (i) it  
19 does not operate for more than seven months in any calendar  
20 year, or (ii) during the preceding calendar year, its average  
21 receipts for any six months of such year were not more than  
22 thirty-three and one-third percent of its average receipts for  
23 the other six months of such year;

24 (10) Golf caddy;

25 (11) In employment as a switchboard operator employed by an  
26 independently owned public telephone company which has not more  
27 than seven hundred and fifty stations;

28 (12) Employees not subject to civil service laws who hold  
29 elective office or are on the personal staff of such an  
30 officeholder, are immediate advisers to him or her, or are



1 appointed by him or her to serve on a policy-making level.

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

4 (1) Seaman;

5 (2) Any salesman, partsman, or mechanic primarily engaged in  
6 selling and servicing automobiles, trailers, trucks, farm  
7 implements, or aircraft if employed by a nonmanufacturing  
8 establishment primarily engaged in the business of selling such  
9 vehicles to ultimate purchasers;

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

12 (4) Any employe employed as an announcer, news editor, or  
13 chief engineer by a radio or television station, the major  
14 studio of which is located (i) in a city or town of one hundred  
15 thousand population or less, according to the latest available  
16 decennial census figures as compiled by the Bureau of the  
17 Census, except where such city or town is part of a standard  
18 metropolitan statistical area, as defined and designated by the  
19 Bureau of the Budget, which has a total population in excess of  
20 one hundred thousand, or (ii) in a city or town of twenty-five  
21 thousand population or less, which is part of such an area but  
22 is at least forty airline miles from the principal city in such  
23 area;

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

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

28 (7) Any employe of a motor carrier with respect to whom the  
29 Federal Secretary of Transportation has power to establish  
30 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) AN EMPLOYER WHOSE ANNUAL GROSS PAYROLL IS LESS THAN FIVE  
HUNDRED THOUSAND DOLLARS (\$500,000) SHALL PAY 85% OF THE MINIMUM  
WAGE UNDER SECTION 4(A)(7) AND (8), UNLESS OTHERWISE EXEMPT FROM  
THE MINIMUM WAGE PROVISIONS OF SECTION 4(A)(6), SUCH EMPLOYER  
SHALL PAY THE MINIMUM WAGE SET FORTH UNDER SECTION 4(A)(6).

Section 4. 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  
employee 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.

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 employees in any occupation in the Commonwealth at any reasonable time, for the purpose of examining and inspecting any records of any such employer that

1 in any way relate to wages, hours, or other conditions of  
2 employment of any such employees; copy any or all of such records  
3 as [he] the secretary or [his] an authorized representative may  
4 deem necessary or appropriate; require from such employer full  
5 and accurate statements in writing, at such times as the  
6 secretary may deem necessary, of the wages paid to all employees  
7 in his or her employment; and interrogate such persons for the  
8 purpose of ascertaining whether the provisions of this act and  
9 the regulations issued thereunder have been and are being  
10 complied with.

11 Section 8. Duty of Employer.--Every employer of employees  
12 shall keep a true and accurate record of the hours worked by  
13 each employee and the wages paid to each, and shall furnish to  
14 the secretary or his or her duly authorized representative, upon  
15 demand, a sworn statement of the same. Such records shall be  
16 open to inspection by any duly authorized representative of the  
17 secretary at any reasonable time and shall be preserved for a  
18 period of three years. Every employer subject to this act shall  
19 keep a summary of this act and any regulations issued thereunder  
20 applicable to him or her, posted in a conspicuous place where  
21 employees normally pass and can read it. Employers shall, upon  
22 request, be furnished copies of such summaries without charge.  
23 Employers shall permit any duly authorized representative of the  
24 secretary to interrogate any employee in the place of employment  
25 and during work hours with respect to the wages paid to and the  
26 hours worked by such employee or other employees.

27 Section 9. Enforcement; Rules and Regulations.--The  
28 secretary shall enforce this act. [He] The secretary shall make  
29 and, from time to time, revise regulations, with the assistance  
30 of the board, when requested by [him] the secretary, which shall

1 be deemed appropriate to carry out the purposes of this act and  
2 to safeguard the minimum wage rates thereby established. Such  
3 regulations may include, but are not limited to, regulations  
4 defining and governing bona fide executive, administrative, or  
5 professional employees and outside [salesmen] sales persons,  
6 learners and apprentices, their number, proportion, length of  
7 learning period, and other working conditions; handicapped  
8 workers; part-time pay; overtime standards; bonuses; allowances  
9 for board, lodging, apparel, or other facilities or services  
10 customarily furnished by employers to employees; allowances for  
11 gratuities; or allowances for such other special conditions or  
12 circumstances which may be incidental to a particular employer-  
13 employee relationship.

14 Section 5. Section 12 of the act, amended December 10, 1974  
15 (P.L.916, No.303), is amended to read:

16 Section 12. Penalties.--(a) Any employer and his or her  
17 agent, or the officer or agent of any corporation, who  
18 discharges or in any other manner discriminates against any  
19 employee because such employee has testified or is about to  
20 testify before the secretary or his or her representative in any  
21 investigation or proceeding under or related to this act, or  
22 because such employer believes that said employee may so testify  
23 shall, upon conviction thereof in a summary proceeding, be  
24 sentenced to pay a fine of not less than five hundred dollars  
25 (\$500) nor more than one thousand dollars (\$1,000), and in  
26 default of the payment of such fine and costs, shall be  
27 sentenced to imprisonment for not less than ten days nor more  
28 than ninety days.

29 (b) Any employer or the officer or agent of any corporation  
30 who pays or agrees to pay any employee less than the rates

1 applicable to such employee under this act shall, upon conviction  
2 thereof in a summary proceeding, be sentenced to pay a fine of  
3 not less than seventy-five dollars (\$75) nor more than three  
4 hundred dollars (\$300) or to undergo imprisonment of not less  
5 than ten nor more than sixty days, or both. Each week in which  
6 such employee is paid less than the rate applicable to him or her  
7 under this act and for each employee who is paid less than the  
8 prescribed rate, a separate offense shall be deemed to occur.  
9 Any agreement between the employer and the employee to work for  
10 less than the applicable wage rate shall be no defense to action  
11 by the Commonwealth under this section.

12 (c) Any employer or the officer or agent of any corporation  
13 who violates any other provision of this act or of any  
14 regulation issued thereunder shall, upon conviction thereof in a  
15 summary proceeding, be sentenced to pay a fine of not less than  
16 one hundred dollars (\$100) nor more than five hundred dollars  
17 (\$500), and each day of such failure to comply with this act or  
18 regulation, shall constitute a separate offense.

19 ~~Section 6. This act shall take effect in 60 days.~~ <—

20 SECTION 6. THE ACT IS AMENDED BY ADDING A SECTION TO READ: <—

21 SECTION 13.1. PREEMPTION.--(A) THE REGULATION OF MINIMUM  
22 WAGES UNDER THIS ACT IS A MATTER OF EXCLUSIVE STATE CONTROL.  
23 EXCEPT AS SET FORTH IN SUBSECTION (B), MINIMUM WAGES MAY NOT BE  
24 REGULATED BY ANY ORDINANCE, HOME RULE CHARTER PROVISION,  
25 RESOLUTION, CONTRACT, RULE OR REGULATION OF A POLITICAL  
26 SUBDIVISION.

27 (B) THIS SECTION DOES NOT PROHIBIT LOCAL REGULATION PURSUANT  
28 TO AN ORDINANCE WHICH WAS ADOPTED BY A MUNICIPALITY PRIOR TO  
29 JANUARY 1, 2006, AND WHICH REMAINED IN EFFECT ON JANUARY 1,  
30 2006.

1       SECTION 7.   ALL ACTS AND PARTS OF ACTS ARE REPEALED INsofar  
2 AS THEY ARE INCONSISTENT WITH THE ADDITION OF SECTION 13.1 OF  
3 THE ACT.

4       SECTION 8.   THIS ACT SHALL APPLY AS FOLLOWS:

5           (1)   THE ADDITION OF SECTION 13.1 OF THE ACT SHALL NOT  
6 INVALIDATE ANY ORDINANCE, CHARTER PROVISION, RESOLUTION, RULE  
7 OR REGULATION IN EFFECT ON THE EFFECTIVE DATE OF THIS  
8 SECTION.

9           (2)   THE FOLLOWING PROVISIONS SHALL APPLY TO CONTRACTS  
10 ENTERED INTO OR RENEWED ON OR AFTER THE EFFECTIVE DATE OF  
11 THIS SECTION:

12                   (I)   THE ADDITION OF SECTION 13.1 OF THE ACT.

13                   (II)   SECTION 7 OF THIS ACT.

14       SECTION 9.   THIS ACT SHALL TAKE EFFECT IMMEDIATELY.