

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

AS AMENDED ON THIRD CONSIDERATION, JUNE 22, 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.

21 ~~(7) Six dollars thirty cents (\$6.30) an hour beginning~~ <—
22 ~~January 1, 2007.~~

23 ~~(8) Six dollars sixty five cents (\$6.65) an hour beginning~~
24 ~~January 1, 2008, and thereafter.~~

25 (7) SIX DOLLARS TWENTY-FIVE CENTS (\$6.25) AN HOUR BEGINNING <—
26 JANUARY 1, 2007.

27 (8) SEVEN DOLLARS FIFTEEN CENTS (\$7.15) AN HOUR BEGINNING
28 JULY 1, 2007.

29 (a.1) If the minimum wage set forth in the Fair Labor
30 Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 201 et seq.)

1 is increased above [three dollars thirty-five cents (\$3.35) an
2 hour] the minimum wage required under this section, the minimum
3 wage required under this section shall be increased by the same
4 amounts and effective the same date as the increases under the
5 Fair Labor Standards Act, and the provisions of subsection (a)
6 are suspended to the extent they differ from those set forth
7 under the Fair Labor Standards Act.

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

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

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

1 students employed in seasonal occupations as defined and
2 delimited by regulations promulgated by the secretary may, by
3 such regulations, be excluded from the overtime provisions of
4 this act: And provided further, That the secretary shall
5 promulgate regulations with respect to overtime subject to the
6 limitations that no pay for overtime in addition to the regular
7 rate shall be required except for hours in excess of forty hours
8 in a workweek.

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

18 ~~(c) Notwithstanding the provisions of subsection (a)(7) and~~ <—
19 ~~(8), the minimum wage set forth in subsection (a)(6) shall apply~~
20 ~~to minors subject to the act of May 13, 1915 (P.L.286, No.177),~~
21 ~~known as the "Child Labor Law," except those minors described in~~
22 ~~section 7.2 of the "Child Labor Law," who shall receive 85% of~~
23 ~~the minimum wage under subsection (a)(7) and (8).~~

24 (E) IN LIEU OF THE MINIMUM WAGE PRESCRIBED IN SUBSECTION (A) <—
25 AND NOTWITHSTANDING SUBSECTIONS (B) AND (D), AN EMPLOYER MAY,
26 DURING THE FIRST SIXTY CALENDAR DAYS WHEN AN EMPLOYE UNDER THE
27 AGE OF TWENTY YEARS IS INITIALLY EMPLOYED, PAY THE EMPLOYE
28 TRAINING WAGES AT A RATE OF NOT LESS THAN THE MINIMUM WAGE SET
29 FORTH IN SECTION 6(A) OF THE FAIR LABOR STANDARDS ACT (29 U.S.C.
30 § 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 EMPLOYEES, INCLUDING PARTIAL
DISPLACEMENTS SUCH AS REDUCTION IN THE HOURS, WAGES OR
EMPLOYMENT BENEFITS OF EXISTING EMPLOYEES, FOR PURPOSES OF HIRING
INDIVIDUALS AT THE TRAINING WAGE AUTHORIZED BY THIS SUBSECTION.

Section 3. Section 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), is
amended to read:

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 employee 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 employee of
a retail or service establishment shall not be excluded from the
definition of employee employed in a bona fide executive or

1 administrative capacity because of the number of hours in his or
2 her workweek which he or she devotes to activities not directly
3 or closely related to the performance of executive
4 administrative activities, if less than forty percent of his or
5 her hours worked in the workweek are devoted to such
6 activities);

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

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

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

26 (10) Golf caddy;

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

30 (12) Employees not subject to civil service laws who hold

1 elective office or are on the personal staff of such an
2 officeholder, are immediate advisers to him or her, or are
3 appointed by him or her to serve on a policy-making level.

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

6 (1) Seaman;

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

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

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

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

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

30 (7) Any employe of a motor carrier with respect to whom the

1 Federal Secretary of Transportation has power to establish
2 qualifications and maximum hours of service under 49 U.S.C. §
3 3102(b)(1) and (2) (relating to requirements for qualifications,
4 hours of service, safety and equipment standards).

5 ~~(c) An employer whose annual gross payroll is less than five~~ <—
6 ~~hundred thousand dollars (\$500,000) shall pay 85% of the minimum~~
7 ~~wage under section 4(a)(7) and (8), unless otherwise exempt from~~
8 ~~the minimum wage provisions of section 4(a)(6), such employer~~
9 ~~shall pay the minimum wage set forth under section 4(a)(6).~~

10 (C) (1) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (A)(7) <—
11 AND (8), AN EMPLOYER UNLESS OTHERWISE EXEMPT FROM THE MINIMUM
12 WAGE PROVISIONS OF SECTION 4(A)(6) WHOSE EMPLOYE COMPLEMENT IS
13 COMPOSED OF THE EQUIVALENT OF TEN FULL-TIME EMPLOYES TO BE
14 CALCULATED ON A FORTY-HOUR WORKWEEK SHALL PAY:

15 (I) FIVE DOLLARS SIXTY-FIVE CENTS (\$5.65) AN HOUR BEGINNING
16 JANUARY 1, 2007.

17 (II) SIX DOLLARS SIXTY-FIVE CENTS (\$6.65) AN HOUR BEGINNING
18 JULY 1, 2007.

19 (2) SUCH EMPLOYER SHALL PAY THE FULL AMOUNT OF THE MINIMUM
20 WAGE UNDER SECTION 4(A)(8) BEGINNING JULY 1, 2008.

21 Section 4. Sections 6, 7, 8 and 9 of the act are amended to
22 read:

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

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

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

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

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

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

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

26 (3) the board shall submit its report including
27 recommendations for the promulgation of rules and regulations to
28 the secretary, who shall within thirty days thereafter accept
29 such report or refer it to the board for further consideration
30 and consultation. If the report is referred to the board for

1 further consideration, the secretary shall, in consultation with
2 the board, modify, amend, or otherwise act upon such report
3 within sixty days thereafter. Rules and regulations developed
4 and promulgated hereunder shall be published and any person
5 aggrieved thereby, shall have a right of review as set forth in
6 section 10 of this act.

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

24 Section 8. Duty of Employer.--Every employer of employees
25 shall keep a true and accurate record of the hours worked by
26 each employee and the wages paid to each, and shall furnish to
27 the secretary or his or her duly authorized representative, upon
28 demand, a sworn statement of the same. Such records shall be
29 open to inspection by any duly authorized representative of the
30 secretary at any reasonable time and shall be preserved for a

1 period of three years. Every employer subject to this act shall
2 keep a summary of this act and any regulations issued thereunder
3 applicable to him or her, posted in a conspicuous place where
4 employes normally pass and can read it. Employers shall, upon
5 request, be furnished copies of such summaries without charge.
6 Employers shall permit any duly authorized representative of the
7 secretary to interrogate any employe in the place of employment
8 and during work hours with respect to the wages paid to and the
9 hours worked by such employe or other employes.

10 Section 9. Enforcement; Rules and Regulations.--The
11 secretary shall enforce this act. [He] The secretary shall make
12 and, from time to time, revise regulations, with the assistance
13 of the board, when requested by [him] the secretary, which shall
14 be deemed appropriate to carry out the purposes of this act and
15 to safeguard the minimum wage rates thereby established. Such
16 regulations may include, but are not limited to, regulations
17 defining and governing bona fide executive, administrative, or
18 professional employes and outside [salesmen] sales persons,
19 learners and apprentices, their number, proportion, length of
20 learning period, and other working conditions; handicapped
21 workers; part-time pay; overtime standards; bonuses; allowances
22 for board, lodging, apparel, or other facilities or services
23 customarily furnished by employers to employes; allowances for
24 gratuities; or allowances for such other special conditions or
25 circumstances which may be incidental to a particular employer-
26 employe relationship.

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

29 Section 12. Penalties.--(a) Any employer and his or her
30 agent, or the officer or agent of any corporation, who

1 discharges or in any other manner discriminates against any
2 employe because such employe has testified or is about to
3 testify before the secretary or his or her representative in any
4 investigation or proceeding under or related to this act, or
5 because such employer believes that said employe may so testify
6 shall, upon conviction thereof in a summary proceeding, be
7 sentenced to pay a fine of not less than five hundred dollars
8 (\$500) nor more than one thousand dollars (\$1,000), and in
9 default of the payment of such fine and costs, shall be
10 sentenced to imprisonment for not less than ten days nor more
11 than ninety days.

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

25 (c) Any employer or the officer or agent of any corporation
26 who violates any other provision of this act or of any
27 regulation issued thereunder shall, upon conviction thereof in a
28 summary proceeding, be sentenced to pay a fine of not less than
29 one hundred dollars (\$100) nor more than five hundred dollars
30 (\$500), and each day of such failure to comply with this act or

1 regulation, shall constitute a separate offense.

2 Section 6. The act is amended by adding a section to read:

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

6 (b) This section does not prohibit local regulation pursuant
7 to an ordinance which was adopted by a municipality prior to
8 January 1, 2006, and which remained in effect on January 1,
9 2006.

10 ~~Section 7. This act shall take effect in 60 days.~~ <—

11 SECTION 7. ALL ACTS AND PARTS OF ACTS ARE REPEALED INSOFAR <—
12 AS THEY ARE INCONSISTENT WITH THE ADDITION OF SECTION 14.1 OF
13 THE ACT.

14 SECTION 8. THIS ACT SHALL APPLY AS FOLLOWS:

15 (1) THE ADDITION OF SECTION 14.1 OF THE ACT SHALL NOT
16 INVALIDATE ANY ORDINANCE, CHARTER PROVISION, RESOLUTION, RULE
17 OR REGULATION IN EFFECT ON THE EFFECTIVE DATE OF THIS
18 SECTION.

19 (2) THE FOLLOWING PROVISIONS SHALL APPLY TO CONTRACTS
20 ENTERED INTO OR RENEWED ON OR AFTER THE EFFECTIVE DATE OF
21 THIS SECTION:

22 (I) THE ADDITION OF SECTION 14.1 OF THE ACT.

23 (II) SECTION 7 OF THIS ACT.

24 SECTION 9. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.