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LEGISLATIVE REFERENCE BUREAU

L.R.B. Form No. 4 (Rev. 1/11/17)

No._____

LEGISLATIVE REFERENCE BUREAU

AN ACT

Amending the act of January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968, further providing for definitions and for minimum wages; providing for tipped employees; further providing for minimum wage advisory board and for enforcement and rules and regulations; providing for rules and regulations; further providing for civil actions; and making an editorial change.

INTRODUCED _____ **20**_____

By _____ **District NO.** ____

By _____ **District NO.** ____

By _____ **District NO.** ____

By _____ **District NO.** ____

See next page for additional co-sponsors.

☐ **Prior Session** _____

Referred to Committee on

Date_____**20**___

Reported_____**20**___

As Committed-Amended

Recommendation

_____

By Hon._____

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 definitions and for minimum
9 wages; providing for tipped employees; further providing for
10 minimum wage advisory board and for enforcement and rules and
11 regulations; providing for rules and regulations; further
12 providing for civil actions; and making an editorial change.

13 The General Assembly declares:

14 (1) The Federal minimum wage was set at $7.25 per hour
15 in 2009. The real value of the minimum wage has generally
16 declined since 1968 and with it the buying power of minimum-
17 wage workers.

18 (2) More than 13% of Pennsylvanians, approximately
19 1,700,000 people, lived in poverty during 2015, according to
20 the United States Census Bureau.

21 (3) At a $7.25 rate, a minimum-wage worker, working 40
22 hours a week for 52 weeks a year, earns $15,080 annually

which is below the 2015 Federal Poverty Level of $20,090 for a family of three.

(4) The absence of a fair minimum wage results in the depression of wages by some employers and constitutes a serious form of unfair competition against other employers, reduces the purchasing power of the workers and threatens the stability of the economy.

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

Section 1. Sections 3(d) and (i) and 4(a), (a.1) and (e) of the act of January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968, are amended and the sections are amended by adding subsections to read:

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

* * *

(d) "Wages" mean compensation due to any employe by reason of his or her 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] <u>9.1</u>.

"Wage" paid to any employe includes the reasonable cost, as determined by the secretary, to the employer for furnishing such employe with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his or her employes: Provided, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employe to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employe:

Provided, further, That the secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employes and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employes, 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 employe.

[In determining the hourly wage an employer is required to pay a tipped employe, the amount paid such employe by his or her employer shall be an amount equal to: (i) the cash wage paid the employe which for the purposes of the determination shall be not less than the cash wage required to be paid the employe on the date immediately prior to the effective date of this subparagraph; and (ii) an additional amount on account of the tips received by the employe which is equal to the difference between the wage specified in subparagraph (i) and the wage in effect under section 4 of this act. The additional amount on account of tips may not exceed the value of tips actually received by the employe. The previous sentence shall not apply with respect to any tipped employe unless:

(1) Such employe has been informed by the employer of the provisions of this subsection;

(2) All tips received by such employe have been retained by the employe and shall not be surrendered to the employer to be used as wages to satisfy the requirement to pay the current hourly minimum rate in effect; where the gratuity is added to the charge made by the establishment, either by the management, or by the customer, the gratuity shall become the property of the employe; except that this subsection shall not be construed

1 to prohibit the pooling of tips among employes who customarily
2 and regularly receive tips.]
3 * * *
4 (i) ["Gratuities"] "Gratuity" or "tip" means a voluntary,
5 monetary [contributions] contribution received by an employe
6 from a guest, patron or customer for services rendered.
7 (j) "Tipped employe" means an employe who customarily and
8 regularly receives a gratuity during the course of the employe's
9 employment.
10 Section 4. Minimum Wages.--Except as may otherwise be
11 provided under this act:
12 (a) [Every] An employer with twenty-five or more employes
13 shall pay to each of his or her employes wages for all hours
14 worked at a rate of not less than:
15 (1) Two dollars sixty-five cents ($2.65) an hour upon the
16 effective date of this amendment.
17 (2) Two dollars ninety cents ($2.90) an hour during the year
18 beginning January 1, 1979.
19 (3) Three dollars ten cents ($3.10) an hour during the year
20 beginning January 1, 1980.
21 (4) Three dollars thirty-five cents ($3.35) an hour after
22 December 31, 1980.
23 (5) Three dollars seventy cents ($3.70) an hour beginning
24 February 1, 1989.
25 (6) Five dollars fifteen cents ($5.15) an hour beginning
26 September 1, 1997.
27 (7) Six dollars twenty-five cents ($6.25) an hour beginning
28 January 1, 2007.
29 (8) Seven dollars fifteen cents ($7.15) an hour beginning
30 July 1, 2007.

1 (9) Twelve dollars ($12.00) an hour beginning July 1, 2017.
2 (10) Twelve dollars fifty cents ($12.50) an hour beginning
3 July 1, 2018.
4 (11) Thirteen dollars ($13.00) an hour beginning July 1,
5 2019.
6 (12) Thirteen dollars fifty cents ($13.50) an hour beginning
7 July 1, 2020.
8 (13) Fourteen dollars ($14.00) an hour beginning July 1,
9 2021.
10 (14) Fourteen dollars fifty cents ($14.50) an hour beginning
11 July 1, 2022.
12 (15) Fifteen dollars ($15.00) an hour beginning July 1,
13 2023.
14 (16) Beginning July 1, 2024, and for each succeeding July 1
15 thereafter, the minimum wage shall be increased by an annual
16 cost-of-living adjustment calculated by the secretary using the
17 percentage change in the Consumer Price Index for All Urban
18 Consumers (CPI-U) for the Pennsylvania, New Jersey, Delaware and
19 Maryland area. In calculating the adjustment, the secretary
20 shall use the most recent twelve-month period for which figures
21 have been officially reported by the United States Department of
22 Labor, Bureau of Labor Statistics. At least sixty days prior to
23 the date the adjustment is due to take effect, the percentage
24 increase and the minimum wage amount, rounded to the nearest
25 multiple of five cents (5¢), shall be determined by the
26 secretary. The secretary shall, within ten days following the
27 determination, forward a notice of the determination to the
28 Legislative Reference Bureau for publication in the next
29 Pennsylvania Bulletin.
30 (a.1) An employer with less than twenty-five employes shall

pay to each of his or her employes wages for all hours worked at a rate of not less than:

(1) Seven dollars fifteen cents ($7.15) an hour upon the effective date of this section.

(2) Nine dollars ($9.00) an hour beginning July 1, 2017.

(3) Nine dollars fifty cents ($9.50) an hour beginning July 1, 2018.

(4) Ten dollars ($10.00) an hour beginning July 1, 2019.

(5) Ten dollars fifty cents ($10.50) an hour beginning July 1, 2020.

(6) Eleven dollars ($11.00) an hour beginning July 1, 2021.

(7) Eleven dollars fifty cents ($11.50) an hour beginning July 1, 2022.

(8) Twelve dollars ($12.00) an hour beginning July 1, 2023.

(9) Beginning July 1, 2024, and for each succeeding July 1 thereafter, the minimum wage shall be increased by an annual cost-of-living adjustment calculated by the secretary using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the Pennsylvania, New Jersey, Delaware and Maryland area. In calculating the adjustment, the secretary shall use the most recent twelve-month period for which figures have been officially reported by the United States Department of Labor, Bureau of Labor Statistics. At least sixty days prior to the date the adjustment is due to take effect, the percentage increase and the minimum wage amount, rounded to the nearest multiple of five cents (5¢), shall be determined by the secretary. The secretary shall, within ten days following the determination, forward a notice of the determination to the Legislative Reference Bureau for publication in the next Pennsylvania Bulletin.

1 [(a.1)] (a.2) If the minimum wage set forth in the Fair
2 Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 201 et
3 seq.) is increased above the minimum wage required under this
4 section, the minimum wage required under this section shall be
5 increased by the same amounts and effective the same date as the
6 increases under the Fair Labor Standards Act, and the provisions
7 of subsection (a) are suspended to the extent they differ from
8 those set forth under the Fair Labor Standards Act.
9 * * *
10 (e) In lieu of the minimum wage prescribed in subsection (a)
11 or (a.1) and section 5(c) and notwithstanding subsections (b)
12 and (d), an employer may, during the first sixty calendar days
13 when an employe under the age of twenty years is initially
14 employed, pay the employe training wages at a rate of not less
15 than the minimum wage set forth in section 6(a) of the Fair
16 Labor Standards Act (29 U.S.C. § 206(a)). A person employed at
17 the training wage under this subsection shall be informed of the
18 amount of the training wage and the right to receive the full
19 minimum wage, or a higher wage, upon completion of the training
20 period. No employer may take any action to displace existing
21 employes, including partial displacements such as reduction in
22 the hours, wages or employment benefits of existing employes,
23 for purposes of hiring individuals at the training wage
24 authorized by this subsection.
25 Section 2. The act is amended by adding a section to read:
26 Section 4.1. Tipped Employes.--(a) An employer shall pay a
27 tipped employe wages for all hours worked at a rate of not less
28 than:
29 (1) Nine dollars ($9.00) an hour upon the effective date of
30 this section.

(2) Nine dollars thirty-eight cents ($9.38) an hour beginning July 1, 2018.

(3) Nine dollars seventy-five cents ($9.75) an hour beginning July 1, 2019.

(4) Ten dollars thirteen cents ($10.13) an hour beginning July 1, 2020.

(5) Ten dollars fifty cents ($10.50) an hour beginning July 1, 2021.

(6) Ten dollars eighty-eight cents ($10.88) an hour beginning July 1, 2022.

(7) Twelve dollars ($12.00) an hour beginning July 1, 2023.

(8) Beginning July 1, 2024, and for each succeeding July 1 thereafter, the minimum wage shall be increased by an annual cost-of-living adjustment calculated by the secretary using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the Pennsylvania, New Jersey, Delaware and Maryland area. In calculating the adjustment, the secretary shall use the most recent twelve-month period for which figures have been officially reported by the United States Department of Labor, Bureau of Labor Statistics. At least sixty days prior to the date the adjustment is due to take effect, the percentage increase and the minimum wage amount, rounded to the nearest multiple of five cents (5¢), shall be determined by the secretary. The secretary shall, within ten days following the determination, forward a notice of the determination to the Legislative Reference Bureau for publication in the next Pennsylvania Bulletin.

(b) The following shall apply:

(1) Each tipped employe shall be informed in writing by the employer, no later than twenty days after the effective date of

this section, that the tipped employe will be paid not less than the appropriate minimum wage under subsection (a).

(2) Each gratuity received by the employe shall be retained by the employe and shall not be surrendered or paid to the employer. This paragraph shall not be deemed to prohibit the pooling of gratuities among tipped employes.

(3) If a gratuity is added, either by the employer or manager of the establishment or by the guest, patron or customer, to the charge to the guest, patron or customer, the gratuity shall become the property of the tipped employe and shall not be used by the employer to satisfy the requirement to pay the wage then in effect.

Section 3. Sections 6(e)(2) and 9 of the act are amended to read:

Section 6. Minimum Wage Advisory Board.--* * *

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

* * *

(2) conduct public hearings at the request of the secretary in order to develop rules and regulations in accordance with section [9] 9.1 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;

* * *

Section 9. [Enforcement; Rules and Regulations.--The secretary shall enforce this act. The secretary shall make and, from time to time, revise regulations, with the assistance of the board, when requested by the secretary, which shall be deemed appropriate to carry out the purposes of this act and to safeguard the minimum wage rates thereby established. Such regulations may include, but are not limited to, regulations

1 defining and governing bona fide executive, administrative, or
2 professional employes and outside salespersons, learners and
3 apprentices, their number, proportion, length of learning
4 period, and other working conditions; handicapped workers; part-
5 time pay; overtime standards; bonuses; allowances for board,
6 lodging, apparel, or other facilities or services customarily
7 furnished by employers to employes; allowances for gratuities;
8 or allowances for such other special conditions or circumstances
9 which may be incidental to a particular employer-employe
10 relationship.] Enforcement.--(a) The secretary shall have the
11 authority to investigate claims of violations of this act and to
12 assess administrative penalties under section 12 of this act.
13 (b) The Attorney General and the district attorneys of the
14 several counties shall have concurrent jurisdiction to bring an
15 action for criminal violations of this act under section 12 of
16 this act. A person charged by the Attorney General does not have
17 standing to challenge the authority of the Attorney General to
18 prosecute the action. If a challenge is made, the challenge
19 shall be dismissed and no relief may be available in the courts
20 of this Commonwealth to the person making the challenge.
21 Section 4. The act is amended by adding a section to read:
22 Section 9.1. Rules and Regulations.--(1) The secretary
23 shall make and revise regulations, with the assistance of the
24 board, to carry out the purposes of this act and to safeguard
25 the payment of the wage rates established under this act.
26 (2) The regulations may include regulations defining and
27 governing any of the following:
28 (i) Bona fide executive, administrative or professional
29 employes and outside salespersons.
30 (ii) Learners and apprentices and the number, proportion,

1 length of learning period and other working conditions of
2 learners and apprentices.
3 (iii) Handicapped workers.
4 (iv) Part-time pay.
5 (v) Overtime standards.
6 (vi) Bonuses.
7 (vii) Allowances for apparel, board, lodging or other
8 facilities or services customarily furnished by employers to
9 employes.
10 (viii) Allowances for gratuities.
11 (ix) Allowances for other special conditions or
12 circumstances that may be incidental to a particular employer-
13 employe relationship.
14 Section 5. Section 13 of the act is amended to read:
15 Section 13. Civil Actions.--(a) If any employe is paid by
16 his or her employer less than the minimum wages provided by
17 section 4 of this act or by any regulation issued thereunder,
18 such [worker] employe may recover in a civil action the full
19 amount of such minimum wage less any amount actually paid to the
20 [worker] employe by the employer, together with costs and such
21 reasonable attorney's fees as may be allowed by the court, and
22 any agreement between the employer and the [worker] employe to
23 work for less than such minimum wage shall be no defense to such
24 action.
25 (b) At the request of any employe paid less than the minimum
26 wage to which such employe was entitled under this act and
27 regulations issued [thereunder] under this act, the secretary
28 may take an assignment of such wage claim, in trust for the
29 assigning [worker] employe and may bring any legal action
30 necessary to collect such claim, and the employer shall be

1 required to pay the cost and such reasonable attorney's fees as
2 may be allowed by the court.
3 Section 6. This act shall take effect as follows:
4 (1) The amendment of the definition of "wage" under
5 section 3(d) of the act and the addition of section 4.1 of
6 the act shall take effect in six months.
7 (2) The remainder of this act shall take effect
8 immediately.