

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2302

Session of
1978

INTRODUCED BY MESSRS. VALICENTI, NOVAK, GIAMMARCO, JOHNSON,
FLAHERTY, TRELLO, MISCEVICH, STEWART, GRAY, JONES, MUSTO AND
MRKONIC, APRIL 5, 1978

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 6, 1978

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 amending the minimum wages and exceptions
9 and exclusions from the minimum wage and overtime provisions
10 of the act; providing for minimum rates for students; and
11 amending overtime provisions for certain employes of hotels,
12 motels and restaurants.

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

15 Section 1. ~~Subsections (d) and (h)~~ SUBSECTION (D) of section <—
16 3, act of January 17, 1968 (P.L.11, No.5), known as "The Minimum
17 Wage Act of 1968," ~~subsection (d)~~ amended December 10, 1974 <—
18 (P.L.916, No.303), ~~are~~ IS amended to read: <—

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

20 * * *

21 (d) "Wages" mean compensation due to any employe by reason
22 of his employment, payable in legal tender of the United States

1 or checks on banks convertible into cash on demand at full face
2 value, subject to such deductions, charges or allowances as may
3 be permitted by regulations of the secretary under section 9.

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

21 In determining the hourly wage of a tipped employe, the
22 amount paid such employe by his employer shall be deemed to be
23 increased on account of tips by an amount determined by the
24 employer, but not by an amount in excess of [fifty percent of
25 the applicable minimum wage rate] forty-five percent of the
26 applicable minimum wage rate upon the effective date of this
27 amendment, until January 1, 1980 and thereafter forty percent of
28 the applicable minimum wage rate, [except] Provided, that the
29 amount of the increase on account of tips determined by the
30 employer may not exceed the value of tips actually received by

1 the employee. The previous sentence shall not apply with respect
2 to any tipped employee unless:

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

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

14 * * *

15 ~~(h) "Employee" includes any individual employed by an~~ <—
16 ~~employer but shall not include any individual to the extent that~~
17 ~~he is subject to the Federal Fair Labor Standards Act of June~~
18 ~~25, 1938 (52 Stat. 1060), as amended, or subject to any other~~
19 ~~Federal minimum wage and hour legislation now in effect or to be~~
20 ~~hereinafter enacted into law: Provided, That this limitation~~
21 ~~shall not be deemed to exclude any individuals from entitlement~~
22 ~~to the amount of weekly wages due them (with respect to regular~~
23 ~~time pay and overtime pay where applicable) under any statute of~~
24 ~~the Commonwealth of Pennsylvania or under any valid regulation~~
25 ~~or order issued thereunder in effect on the effective date of~~
26 ~~this act: Further provided, That this limitation shall not be~~
27 ~~deemed to exclude any individuals from entitlement to meal~~
28 ~~periods, rest periods, and resting facilities as provided in~~
29 ~~section 8.~~

30 * * *

1 Section 2. Subsections (a) and (b) of section 4 of the act,
2 amended December 10, 1974 (P.L.916, No.303), are amended to
3 read:

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

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

8 (1) [One dollar ninety cents (\$1.90)] Two dollars sixty-five
9 cents (\$2.65) an hour upon the effective date of this amendment.

10 (2) [Two dollars (\$2.00)] Two dollars ninety cents (\$2.90)
11 an hour [effective] during the year beginning January 1, [1975]
12 1979.

13 (3) [Two dollars twenty cents (\$2.20)] Three dollars ten
14 cents (\$3.10) an hour [effective January 1, 1976] during the
15 year beginning January 1, 1980.

16 (4) [Two dollars thirty cents (\$2.30)] Three dollars thirty-
17 five cents (\$3.35) an hour [effective January 1, 1977] after
18 December 31, 1980.

19 (b) The secretary, to the extent necessary to prevent
20 curtailment of employment opportunities, shall by regulations
21 provide for the employment of learners and students, under
22 special certificates at wages lower than the minimum wage
23 applicable under this section, and subject to such limitations
24 as to number, proportion and length of service as the secretary
25 shall prescribe: Provided, That the minimum wage prescribed
26 under this subsection (b) shall not be less than eighty-five
27 percent of the otherwise applicable wage rate in effect under
28 section 4. A special certificate issued under this subsection
29 shall provide that for [four] six or less students for whom it
30 is issued shall, except during vacation periods, be employed on

1 a part-time basis and not in excess of twenty hours in any
2 workweek at a sub-minimum rate.

3 In the case of an employer who intends to employ [five] seven
4 or more students, at a sub-minimum rate, the secretary may issue
5 a special certificate only if the employer certifies to the
6 secretary that employment of such students will not create a
7 substantial probability of reducing the full-time employment
8 opportunities for other workers.

9 * * *

10 Section 3. Paragraph (9) of subsection (a) and subsection
11 (c) of Section 5 of the act, amended or added December 10, 1974
12 (P.L.916, No.303), are amended to read:

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

16 * * *

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

25 * * *

26 (c) Employment in the following classifications shall be
27 compensated for overtime in the manner hereinafter set out:

28 (1) Employees of hotels, motels and restaurants (other than
29 maids and custodial workers in hotels and motels);

30 Upon effective date of amendment.....overtime after [48] 44

1 hours
2 [May 1, 1975.....overtime after 46 hours,
3 and thereafter.
4 (2) Maids and custodial workers in motels and hotels;
5 Upon effective date of amendment.....overtime after 48 hours
6 May 1, 1975.....overtime after 46 hours
7 May 1, 1976.....overtime after 44 hours
8 May 1, 1977.....overtime after 40 hours
9 (3) Primarily in connection with the preparation or offering
10 of food or beverages for human consumption, either on the
11 premises, or by such services as catering, banquet, box lunch,
12 or curb service, to the public, to employees, or to members or
13 guests of members of clubs (other than hotels, motels and
14 restaurants);
15 Upon effective date of amendment.....overtime after 48 hours
16 May 1, 1975.....overtime after 44 hours
17 May 1, 1976.....overtime after 40 hours
18 (4) Any employee of a bowling establishment;
19 Upon effective date of amendment.....overtime after 48 hours
20 May 1, 1975.....overtime after 44 hours
21 May 1, 1976.....overtime after 40 hours]
22 Section 4. Section 15 of the act is amended to read:
23 Section 15. Effective Date.--This act shall take effect
24 immediately except [that the minimum wage rates for employees
25 under section 4 of this act shall take effect on the dates] as
26 provided [therein] in sections 3 and 4 of the act.
27 Section 5. Subsection (c) of section 5 shall be repealed
28 effective January 1, 1979.