

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 195 Session of 2015

INTRODUCED BY TARTAGLIONE, FONTANA, HAYWOOD, TEPLITZ, BREWSTER, HUGHES, COSTA, SCHWANK, LEACH AND YUDICHAK, JANUARY 28, 2015

REFERRED TO LABOR AND INDUSTRY, JANUARY 28, 2015

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 rate of minimum wages, for
 9 Minimum Wage Advisory Board, for investigations, for duty of
 10 employers, for penalties and for civil actions; establishing
 11 the Wage Enforcement Fund; and further providing for
 12 preemption.

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

15 Section 1. Section 3 of the act of January 17, 1968 (P.L.11,
 16 No.5), known as The Minimum Wage Act of 1968, is amended by
 17 adding a subsection to read:

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

19 * * *

20 (j) "High violation industry" means an industry that incurs
 21 at least 25 violations over a two-year period.

22 Section 2. Section 4(a) of the act, amended July 5, 2012
 23 (P.L.987, No.109), is amended to read:

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

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

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

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

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

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

13 (5) Three dollars seventy cents (\$3.70) an hour beginning
14 February 1, 1989.

15 (6) Five dollars fifteen cents (\$5.15) an hour beginning
16 September 1, 1997.

17 (7) Six dollars twenty-five cents (\$6.25) an hour beginning
18 January 1, 2007.

19 (8) Seven dollars fifteen cents (\$7.15) an hour beginning
20 July 1, 2007.

21 (9) Eight dollars sixty-seven cents (\$8.67) an hour
22 beginning July 1, 2015.

23 (10) Ten dollars ten cents (\$10.10) an hour beginning
24 January 1, 2016.

25 (11) Beginning January 1, 2017, and each succeeding January
26 1 thereafter, the minimum wage shall be increased by an annual
27 cost-of-living adjustment calculated by applying the percentage
28 change in the Consumer Price Index for All Urban Consumers (CPI-
29 U) for the Pennsylvania, New Jersey, Delaware and Maryland area,
30 for the most recent twelve-month period for which figures have

1 been officially reported by the United States Department of
2 Labor, Bureau of Labor Statistics sixty days prior to the date
3 the adjustment is due to take effect, to the then current salary
4 amounts. The percentage increase and the minimum wage amounts
5 shall be determined by the secretary as prescribed in this
6 section and public notice given in the Pennsylvania Bulletin
7 within ten days of the date such determination is made.

8 * * *

9 Section 3. Sections 6(e)(4) and (5) and 7, 8 and 12 of the
10 act, amended July 9, 2006 (P.L.1077, No.112), are amended to
11 read:

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

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

14 * * *

15 (4) submit an annual report to the General Assembly by
16 [March] April 1 of each year detailing, to the maximum extent
17 possible, data on the previous calendar year's demographics of
18 those workers who are paid the minimum wage or below. The board
19 may include any other relevant facts that it believes necessary
20 into the content of such report; and

21 (5) make recommendations to the General Assembly by
22 September 1[, 2007,] of each year as to changes that it
23 recommends be made to this act.

24 Section 7. Investigations.--(a) The secretary or his or her
25 representative shall have authority to investigate and ascertain
26 the wages of persons employed in any occupation in the
27 Commonwealth; enter and inspect the place of business or
28 employment of any employer of employes in any occupation in the
29 Commonwealth at any reasonable time, for the purpose of
30 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 employes; copy any or all of such records
3 as the secretary or an authorized representative may deem
4 necessary or appropriate; require from such employer full and
5 accurate statements in writing, at such times as the secretary
6 may deem necessary, of the wages paid to all employes in his or
7 her employment; and interrogate such persons for the purpose of
8 ascertaining whether the provisions of this act and the
9 regulations issued thereunder have been and are being complied
10 with.

11 (b) The department shall collect on a quarterly basis the
12 following data categorized by industry: the number of
13 violations; amount of fines collected; nature of violations;
14 number of individual complaints filed; number of complaints
15 resolved; amount of unpaid wages owed; amount of unpaid wages
16 recovered; number of pending individual complaints; number of
17 workplaces investigated from complaints and number of workplaces
18 investigated proactively; number of workplaces reinvestigated
19 following violations; number of subsequent violations. On a
20 semi-annual basis, the department shall prepare and submit a
21 report of this data to the chairperson of the Labor and Industry
22 Committee of the Senate and the chairperson of the Labor and
23 Industry Committee of the House of Representatives and post the
24 report on the department's publicly accessible Internet website.

25 (c) The secretary shall investigate high-violation
26 industries no less than quarterly; train investigators to
27 recognize basic labor, health and safety violations; and engage
28 in cross-agency referrals to protect workers' rights.

29 Section 8. Duty of Employer.--(a) Every employer of
30 employes shall keep a true and accurate record of the hours

1 worked by each employe, the hourly rate, piece rate or weekly
2 rate of pay for each employe and the wages paid to each, and
3 shall furnish to the secretary or his or her duly authorized
4 representative, upon demand, a sworn statement of the same.

5 (b) Failure of an employer to comply with the recordkeeping
6 requirements of this section shall raise a rebuttable
7 presumption that the employer failed to pay the required minimum
8 wage rate.

9 (c) Such records shall be open to inspection by any duly
10 authorized representative of the secretary at any reasonable
11 time and shall be preserved for a period of three years.

12 (d) Every employer subject to this act shall keep a summary
13 of this act and any regulations issued thereunder applicable to
14 him or her, posted in a conspicuous place where employes
15 normally pass and can read it. Employers shall, upon request, be
16 furnished copies of such summaries without charge.

17 (e) [Employers] Every employer shall permit any duly
18 authorized representative of the secretary to interrogate any
19 employe in the place of employment and during work hours with
20 respect to the wages paid to and the hours worked by such
21 employe or other employes.

22 (f) Every employer shall, upon hiring an employe, provide
23 its name, address, telephone number and other contact
24 information and the pay rate and expected weekly hours to the
25 employe and provide a timely update of this information when
26 appropriate to the employe.

27 Section 12. Penalties.--(a) Any employer and his or her
28 agent, or the officer or agent of any corporation, who
29 discharges or in any other manner discriminates against any
30 employe [because such employe has] who has filed or submitted a

1 complaint under this act, cooperated with the secretary or the
2 secretary's representative, submitted evidence, testified or is
3 about to testify before the secretary or [his or her] the
4 secretary's representative in any investigation or proceeding
5 under or related to this act, or because such employer believes
6 that said employe may [so testify] take these actions, or has
7 exercised any right under this act or any regulation
8 implementing its provisions, or because such employe provides
9 assistance or information to another employe about this act
10 shall, upon conviction thereof [in a summary proceeding], be
11 sentenced to pay a fine of not less than five hundred dollars
12 (\$500) nor more than one thousand dollars (\$1,000), and in
13 default of the payment of such fine and costs, shall be
14 sentenced to imprisonment for not less than ten days nor more
15 than ninety days. A first offense under this subsection shall be
16 graded as a summary offense. A second or subsequent offense
17 under this subsection, committed within a five-year period of
18 the prior offense, shall be graded as a misdemeanor of the third
19 degree and shall be punishable by a fine of not less than one
20 thousand dollars (\$1,000) nor more than three thousand dollars
21 (\$3,000) or to imprisonment of not less than ten nor more than
22 100 days. Each day of such failure to comply with this
23 subsection or its regulations and each employe who is
24 discharged or in any other manner discriminated against shall
25 constitute a separate offense subject to a separate penalty. Any
26 employer and his or her agent, or the officer or agent of any
27 corporation, can also be required to pay the employe an amount
28 set by the court sufficient to compensate the employe and deter
29 future violations.

30 (b) Any employer or the officer or agent of any corporation

1 who pays or agrees to pay any employe less than the rates
2 applicable to such employe under this act shall, upon conviction
3 thereof [in a summary proceeding], be sentenced to pay to such
4 employe an amount equal to the balance of wages owed and twice
5 the amount of such underpaid wages and to pay a fine of not less
6 than [seventy-five dollars (\$75)] two hundred dollars (\$200) nor
7 more than [three hundred dollars (\$300)] one thousand dollars
8 (\$1,000) or to undergo imprisonment of not less than ten nor
9 more than sixty days, or both. Each week in which such employe
10 is paid less than the rate applicable to him or her under this
11 act and for each employe who is paid less than the prescribed
12 rate, a separate offense shall be deemed to occur[.] which shall
13 be subject to a separate penalty. A first offense under this
14 subsection shall be graded as a summary offense. A second or
15 subsequent offense under this subsection, committed within a
16 five-year period of the prior offense, shall be graded as a
17 misdemeanor of the third degree and shall be punishable by a
18 fine of not less than five hundred dollars (\$500) nor more than
19 one thousand dollars (\$1,000) or to imprisonment of not less
20 than ten nor more than seventy days, or both. Any agreement
21 between the employer and the employe to work for less than the
22 applicable wage rate shall be no defense to action by the
23 Commonwealth under this section.

24 (b.1) Any employer who fails to provide updated information
25 to an employe as required by section 8(f) shall, upon conviction
26 thereof, be sentenced to pay a fine of not less than one hundred
27 fifty dollars (\$150) nor more than three hundred fifty dollars
28 (\$350). Each day in which an employe is not provided with this
29 information, and each employe to whom this information is not
30 provided, shall constitute a separate offense which shall be

1 subject to a separate penalty. A first offense under this
2 subsection shall be graded as a summary offense. A second or
3 subsequent offense under this subsection, committed within a
4 five-year period of the prior offense, shall be graded as a
5 misdemeanor of the third degree and shall be punishable by a
6 fine of not less than five hundred dollars (\$500) nor more than
7 one thousand dollars (\$1,000).

8 (c) Any employer or the officer or agent of any corporation
9 who violates any other provision of this act or of any
10 regulation issued thereunder shall, upon conviction thereof [in
11 a summary proceeding], be sentenced to pay a fine of not less
12 than [one hundred dollars (\$100)] two hundred dollars (\$200) nor
13 more than [five hundred dollars (\$500), and each] one thousand
14 dollars (\$1,000). Each day of such failure to comply with this
15 act or regulation, and each employe against whom the employer or
16 officer or agent of any corporation violated any other provision
17 of this act or regulation, shall constitute a separate
18 offense[.] which shall be subject to a separate penalty. A first
19 offense under this subsection shall be graded as a summary
20 offense. A second or subsequent offense under this subsection,
21 committed within a five-year period of the prior offense, shall
22 be graded as a misdemeanor of the third degree and shall be
23 punishable by a fine of not less than five hundred dollars
24 (\$500) nor more than one thousand dollars (\$1,000).

25 (d) In addition to any other civil remedy or criminal
26 penalty provided for in this act, the secretary may order an
27 employer to pay wages owed to an employe under this act and
28 impose a civil penalty of up to one thousand dollars (\$1,000)
29 per violation of this act or the regulations, or twice the
30 underpaid wages in damages to the employe, whichever is greater.

1 The secretary may issue orders and levy the civil penalty only
2 after affording the accused party the opportunity for a hearing
3 as provided in 2 Pa.C.S. (relating to administrative law and
4 procedure). Each week in which an employe is paid less than the
5 rate applicable to the employe under this act and for each
6 employe who is paid less than the prescribed rate shall
7 constitute a separate violation which shall be subject to a
8 separate penalty. For other violations of this act or the
9 regulations, each day of such failure to comply with this act or
10 regulation shall constitute a separate violation. The secretary
11 may seek enforcement of the payment of civil penalties and
12 orders in Commonwealth Court. At the request of an employe, the
13 department shall assign that portion of the money due that
14 constitutes wages, wage supplements, interest on wages or wage
15 supplements or liquidated damages due that employe, to that
16 employe and file an order in that amount in the name of that
17 employe with the county clerk of the county where the employer
18 resides or has a place of business. The filing of such order
19 shall be the full force and effect of a judgment duly docketed
20 in the office of such clerk.

21 (e) An employer similar in operation and ownership to
22 another employer found in violation of subsection (a), (b),
23 (b.1), (c) or (d) shall be deemed the same employer for the
24 purposes of this section if the employes of the similar employer
25 are engaged in substantially the same work in substantially the
26 same working conditions under substantially the same supervisors
27 or if the similar employer has substantially the same production
28 process, produces substantially the same products and has the
29 same body of customers as the other employer found in violation
30 of subsection (a), (b), (b.1), (c) or (d). Such similar employer

1 shall continue to be subject to this section and shall be liable
2 for the acts of such other employer under this section, as
3 applicable.

4 (f) All fines and penalties collected under this section and
5 sections 9.1 and 11.1 of the act of July 14, 1961 (P.L.637,
6 No.329), known as the "Wage Payment and Collection Law," shall
7 be deposited into the Wage Enforcement Fund established under
8 section 13.1 of this act. This subsection does not apply to
9 penalties and wages paid to employes for violations of this act
10 or the Wage Payment and Collection Law.

11 Section 4. Section 13 of the act is amended to read:

12 Section 13. Civil Actions.--If any employe is paid by his or
13 her employer less than the minimum wages provided by section 4
14 of this act or by any regulation issued thereunder, such worker
15 may recover in a civil action the full amount of such minimum
16 wage less any amount actually paid to the worker by the
17 employer, together with liquidated damages equal to twice the
18 amount of underpaid wages, costs and such reasonable attorney's
19 fees as may be allowed by the court, and any agreement between
20 the employer and the worker to work for less than such minimum
21 wage shall be no defense to such action. At the request of any
22 employe paid less than the minimum wage to which such employe
23 was entitled under this act and regulations issued thereunder,
24 the secretary may take an assignment of such wage claim, in
25 trust for the assigning worker and may bring any legal action
26 necessary to collect such claim, and the employer shall be
27 required to pay [the cost] liquidated damages equal to twice the
28 amount of underpaid wages, the costs and such reasonable
29 attorney's fees as may be allowed by the court.

30 Section 5. The act is amended by adding a section to read:

1 Section 13.1. Wage Enforcement Fund.--(a) The Wage
2 Enforcement Fund is established in the State Treasury. The
3 moneys in the Wage Enforcement Fund shall consist of the fines
4 and penalties collected under section 12 of this act and
5 sections 9.1 and 11.1 of the act of July 14, 1961 (P.L.637,
6 No.329), known as the "Wage Payment and Collection Law," and
7 deposited into the fund pursuant to section 12(e) of this act.

8 (b) Moneys in the Wage Enforcement Fund are hereby
9 appropriated on a continuing basis, upon approval of the
10 Governor, to the department for periodic inspections, for
11 investigations of violations and for the enforcement of this act
12 and the "Wage Payment and Collection Law," including, but not
13 limited to, staffing for inspection, investigation and
14 enforcement under this act and the "Wage Payment and Collection
15 Law."

16 (c) No moneys may be expended or obligated from the Wage
17 Enforcement Fund to any third party for any other purpose than
18 investigation, training investigators and enforcement under this
19 act and the "Wage Payment and Collection Law."

20 (d) Moneys in the Wage Enforcement Fund shall not lapse at
21 any time or be transferred to any other fund, except as provided
22 in section 12(e) of this act.

23 (e) No later than June 30 of each calendar year the
24 department shall provide a report to the Governor and the
25 General Assembly, through the Secretary-Parliamentarian of the
26 Senate and the Chief Clerk of the House of Representatives,
27 regarding the Wage Enforcement Fund. The report shall include an
28 accounting for the fines collected and deposited into the fund,
29 the expenditures and transfers from the fund during the prior
30 year, a description of the purposes for which expenditures from

1 the fund were made in the prior year and a full account of the
2 data collections required of the department under section 7 of
3 this act. This report shall be posted on the department's
4 publicly accessible Internet website no later than July 1 of
5 each calendar year.

6 Section 6. Section 14.1 of the act, added July 9, 2006
7 (P.L.1077, No.112), is repealed:

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

11 (b) This section does not prohibit local regulation pursuant
12 to an ordinance which was adopted by a municipality prior to
13 January 1, 2006, and which remained in effect on January 1,
14 2006.]

15 Section 7. Any and all regulations are hereby abrogated to
16 the extent that they are inconsistent with this act.

17 Section 8. This act shall take effect immediately.