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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2902 Session of  
2020

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INTRODUCED BY RABB, GALLOWAY, HILL-EVANS, LEE AND WEBSTER,  
NOVEMBER 30, 2020

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, NOVEMBER 30, 2020

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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 gratuities; further providing for  
10 enforcement and rules and regulations, for penalties and for  
11 civil actions; repealing provisions relating to preemption;  
12 and providing for taxpayer savings and reinvestment.

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

15 Section 1. Section 3(d), (g) and (h) of the act of January  
16 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968,  
17 are amended and the section is amended by adding a subsection to  
18 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 or her employment, payable in legal tender of the United  
23 States or checks on banks convertible into cash on demand at

1 full face value, subject to such deductions, charges or  
2 allowances as may be permitted by regulations of the secretary  
3 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 or her employes: Provided, That the cost of  
9 board, lodging, or other facilities shall not be included as a  
10 part of the wage paid to any employe to the extent it is  
11 excluded therefrom under the terms of a bona fide collective-  
12 bargaining agreement applicable to the particular employe:  
13 Provided, further, That the secretary is authorized to determine  
14 the fair value of such board, lodging, or other facilities for  
15 defined classes of employes and in defined areas, based on  
16 average cost to the employer or to groups of employers similarly  
17 situated, or average value to groups of employes, or other  
18 appropriate measures of fair value. Such evaluations, where  
19 applicable and pertinent, shall be used in lieu of actual  
20 measure of cost in determining the wage paid to any employe.

21 [In determining the hourly wage an employer is required to  
22 pay a tipped employe, the amount paid such employe by his or her  
23 employer shall be an amount equal to: (i) the cash wage paid the  
24 employe which for the purposes of the determination shall be not  
25 less than the cash wage required to be paid the employe on the  
26 date immediately prior to the effective date of this  
27 subparagraph; and (ii) an additional amount on account of the  
28 tips received by the employe which is equal to the difference  
29 between the wage specified in subparagraph (i) and the wage in  
30 effect under section 4 of this act. The additional amount on

1 account of tips may not exceed the value of tips actually  
2 received by the employe. The previous sentence shall not apply  
3 with respect to any tipped employe unless:

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

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

15 \* \* \*

16 (g) "Employer" includes any individual, partnership,  
17 association, corporation, business trust, covered business  
18 entity or any person or group of persons acting, directly or  
19 indirectly, in the interest of an employer in relation to any  
20 employe.

21 (g.1) "Covered business entity" means a business or trade  
22 that contracts with one or more self-employed individuals for  
23 services and is required to report the payment of services to  
24 such individuals on IRS Form 1099-MISC or IRS Form 1099-K for  
25 more than twenty-five percent of the business's or trade's  
26 Pennsylvania workforce. Self-employed individuals under this  
27 subsection shall be included in the covered business entity's  
28 workforce if the contracts for services include, but are not  
29 limited to, oral or written contracts and if services are  
30 arranged through application software designed to run on smart

1 phones and other mobile devices and software designed to run  
2 inside a web browser. Covered business entities and self-  
3 employed individuals who contract for services with covered  
4 business entities are considered employers or employes where the  
5 context so dictates.

6 (h) "Employee" includes any individual employed by an  
7 employer, any employed individual incarcerated in a State or  
8 local jail or prison and any individual who contracts for  
9 services with a covered business entity.

10 \* \* \*

11 Section 1.1. Section 4(a) and (d) of the act are amended to  
12 read:

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

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

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

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

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

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

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

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

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

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

3 (9) Twelve dollars (\$12) an hour beginning July 1, 2021.

4 (10) Twelve dollars fifty cents (\$12.50) an hour beginning  
5 July 1, 2022.

6 (11) Thirteen dollars (\$13) an hour beginning July 1, 2023.

7 (12) Thirteen dollars fifty cents (\$13.50) an hour beginning  
8 July 1, 2024.

9 (13) Fourteen dollars (\$14) an hour beginning July 1, 2025.

10 (14) Fourteen dollars fifty cents (\$14.50) an hour beginning  
11 July 1, 2026.

12 (15) Fifteen dollars (\$15) an hour beginning July 1, 2027.

13 (16) Beginning July 1, 2028, and for each succeeding July 1  
14 thereafter, the minimum wage shall be increased by an annual  
15 cost-of-living adjustment calculated by the secretary using the  
16 percentage change in the Consumer Price Index for All Urban  
17 Consumers (CPI-U) for the Pennsylvania, New Jersey, Delaware and  
18 Maryland area. In calculating the adjustment, the secretary  
19 shall use the most recent twelve-month period for which figures  
20 have been officially reported by the United States Department of  
21 Labor, Bureau of Labor Statistics. At least sixty days prior to  
22 the date the adjustment is due to take effect, the percentage  
23 increase and the minimum wage amount, rounded to the nearest  
24 multiple of five cents (5¢), shall be determined by the  
25 secretary. The secretary shall, within ten days following the  
26 determination, forward a notice of the determination to the  
27 Legislative Reference Bureau for publication in the next  
28 Pennsylvania Bulletin.

29 \* \* \*

30 [(d) An employe whose earning capacity is impaired by

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

9 \* \* \*

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

11 Section 5.2. Gratuities.--(a) A gratuity shall be the sole  
12 property of the employe to whom the gratuity was paid, given or  
13 left. An employer may not take a gratuity or a part of a  
14 gratuity that was paid, given to or left for an employe by a  
15 guest, customer or patron or require an employe to credit the  
16 gratuity against the wages due to the employe from the employer.

17 (b) An employer that permits a guest, customer or patron to  
18 pay a gratuity by credit card shall pay the employe the full  
19 amount of the gratuity that the guest, customer or patron  
20 indicated on the credit card slip without a deduction for any  
21 credit card processing fees or costs that may be charged to the  
22 employer by the credit card company. The payment of a gratuity  
23 made by a guest, customer or patron using a credit card shall be  
24 made to the employe not later than the next regular payday after  
25 the date the guest, customer or patron authorized the credit  
26 card payment.

27 Section 3. Sections 9, 12 and 13 of the act are amended to  
28 read:

29 Section 9. Enforcement; Rules and Regulations.--[The  
30 secretary shall enforce this act.] (a) The secretary shall make

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

16 (b) The secretary shall have the authority to investigate  
17 possible violations of this act and to assess administrative  
18 penalties under section 12 of this act.

19 Section 12. Penalties.--(a) Any employer and his or her  
20 agent, or the officer or agent of any corporation, who  
21 discharges or in any other manner discriminates against any  
22 employe because such employe has testified or is about to  
23 testify before the secretary or his or her representative in any  
24 investigation or proceeding under or related to this act, or  
25 because such employer believes that said employe may so testify  
26 shall, upon conviction thereof in a summary proceeding, be  
27 sentenced to pay a fine of not less than [five hundred dollars  
28 (\$500)] one thousand five hundred dollars (\$1,500) nor more than  
29 [one thousand dollars (\$1,000)] three thousand dollars (\$3,000),  
30 and in default of the payment of such fine and costs, shall be

1 sentenced to imprisonment for not less than ten days nor more  
2 than ninety days.

3 (b) Any employer or the officer or agent of any corporation  
4 who pays or agrees to pay any employe less than the rates  
5 applicable to such employe under this act shall, upon conviction  
6 thereof in a summary proceeding, be sentenced to pay a fine of  
7 not less than [~~seventy-five dollars (\$75)~~] two hundred twenty-  
8 five dollars (\$225) nor more than [~~three hundred dollars (\$300)~~]  
9 nine hundred dollars (\$900) or to undergo imprisonment of not  
10 less than ten nor more than sixty days, or both. Each week in  
11 which such employe is paid less than the rate applicable to him  
12 or her under this act and for each employe who is paid less than  
13 the prescribed rate, a separate offense shall be deemed to  
14 occur. Any agreement between the employer and the employe to  
15 work for less than the applicable wage rate shall be no defense  
16 to action by the Commonwealth under this section.

17 (c) Any employer or the officer or agent of any corporation  
18 who violates any other provision of this act or of any  
19 regulation issued thereunder shall, upon conviction thereof in a  
20 summary proceeding, be sentenced to pay a fine of not less than  
21 [~~one hundred dollars (\$100)~~] three hundred dollars (\$300) nor  
22 more than [~~five hundred dollars (\$500)~~] one thousand five  
23 hundred dollars (\$1,500), and each day of such failure to comply  
24 with this act or regulation, shall constitute a separate  
25 offense.

26 Section 13. Civil Actions.--(a) If any employe is paid by  
27 his or her employer less than the minimum wages provided by  
28 section 4 of this act or by any regulation issued thereunder,  
29 such worker may recover in a civil action the full amount of  
30 such minimum wage less any amount actually paid to the worker by

1 the employer, together with costs and such reasonable attorney's  
2 fees as may be allowed by the court, and any agreement between  
3 the employer and the worker to work for less than such minimum  
4 wage shall be no defense to such action. [At the request of any  
5 employe paid less than the minimum wage to which such employe  
6 was entitled under this act and regulations issued thereunder,  
7 the secretary may take an assignment of such wage claim, in  
8 trust for the assigning worker and may bring any legal action  
9 necessary to collect such claim,]

10 (b) The secretary may bring any legal action necessary to  
11 collect the wages of any employe who is paid by his or her  
12 employer less than the minimum wages provided by section 4 of  
13 this act or by any regulation issued thereunder and the employer  
14 shall be required to pay the cost and such reasonable attorney's  
15 fees as may be allowed by the court.

16 (c) In an action under this section, the secretary may  
17 recover liquidated damages in an amount equal to the wages owed  
18 to the employe unless the employer shows that the act or  
19 omission resulting in the nonpayment of wages was in good faith  
20 and the employer had reasonable grounds for believing that the  
21 act or omission was not in violation of this act.

22 Section 4. Section 14.1 of the act is repealed:

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

26 (b) This section does not prohibit local regulation pursuant  
27 to an ordinance which was adopted by a municipality prior to  
28 January 1, 2006, and which remained in effect on January 1,  
29 2006.]

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

1 Section 14.2. Taxpayer Savings and Reinvestment.--(a) When  
2 section 4(a)(9), (10), (11), (12), (13), (14) and (15) of this  
3 act each take effect, the Secretary of Human Services shall  
4 determine the amount that will be saved by raising the wage of  
5 individuals that makes the individuals no longer eligible for  
6 programs. The Secretary of Human Services shall:

7 (1) publish the amount of savings, along with the  
8 appropriation in which an amount is to be saved, on the  
9 Department of Human Services' publicly accessible Internet  
10 website; and

11 (2) forward a notice of the information under paragraph (1)  
12 to the Legislative Reference Bureau for publication in the  
13 Pennsylvania Bulletin.

14 (b) Savings under subsection (a) shall be used to provide  
15 increases to childcare providers, direct-care workers and for  
16 home and community-based services. The Secretary of Human  
17 Services shall distribute the savings under subsection (a) in  
18 the same manner that the providers are paid. The programs that  
19 will receive the savings and the amounts being augmented to each  
20 appropriation shall be forwarded to the Legislative Reference  
21 Bureau for publication in the Pennsylvania Bulletin.

22 Section 6. This act shall take effect immediately.