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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 345 Session of 2021

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INTRODUCED BY KIM AND KINSEY, APRIL 8, 2021

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 8, 2021

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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. Sections 3(d) and 4(a) of the act of January 17,  
16 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968, are  
17 amended to read:

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

19 \* \* \*

20 (d) "Wages" mean compensation due to any employe by reason  
21 of his or her employment, payable in legal tender of the United  
22 States or checks on banks convertible into cash on demand at  
23 full face value, subject to such deductions, charges or

1 allowances as may be permitted by regulations of the secretary  
2 under section 9.

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

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

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

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

5 (2) All tips received by such employe have been retained by  
6 the employe 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 employe; except that this subsection shall not be construed  
12 to prohibit the pooling of tips among employes who customarily  
13 and regularly receive tips.]

14 \* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 \* \* \*

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

3 Section 5.2. Gratuities.--(a) A gratuity shall be the sole  
4 property of the employe to whom the gratuity was paid, given or  
5 left. An employer may not take a gratuity or a part of a  
6 gratuity that was paid, given to or left for an employe by a  
7 guest, customer or patron or require an employe to credit the  
8 gratuity against the wages due to the employe from the employer.

9 (b) An employer that permits a guest, customer or patron to  
10 pay a gratuity by credit card shall pay the employe the full  
11 amount of the gratuity that the guest, customer or patron  
12 indicated on the credit card slip without a deduction for any  
13 credit card processing fees or costs that may be charged to the  
14 employer by the credit card company. The payment of a gratuity  
15 made by a guest, customer or patron using a credit card shall be  
16 made to the employe not later than the next regular payday after  
17 the date the guest, customer or patron authorized the credit  
18 card payment.

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

21 Section 9. Enforcement; Rules and Regulations.--[The  
22 secretary shall enforce this act.] (a) The secretary shall make  
23 and, from time to time, revise regulations, with the assistance  
24 of the board, when requested by the secretary, which shall be  
25 deemed appropriate to carry out the purposes of this act and to  
26 safeguard the minimum wage rates thereby established. Such  
27 regulations may include, but are not limited to, regulations  
28 defining and governing bona fide executive, administrative, or  
29 professional employes and outside salespersons, learners and  
30 apprentices, their number, proportion, length of learning

1 period, and other working conditions; [handicapped] workers with  
2 disabilities; part-time pay; overtime standards; bonuses;  
3 allowances for board, lodging, apparel, or other facilities or  
4 services customarily furnished by employers to employes;  
5 [allowances for gratuities;] or allowances for such other  
6 special conditions or circumstances which may be incidental to a  
7 particular employer-employee relationship.

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

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

25 (b) Any employer or the officer or agent of any corporation  
26 who pays or agrees to pay any employe less than the rates  
27 applicable to such employe under this act shall, upon conviction  
28 thereof in a summary proceeding, be sentenced to pay a fine of  
29 not less than [seventy-five dollars (\$75)] two hundred twenty-  
30 five dollars (\$225) nor more than [three hundred dollars (\$300)]

1 nine hundred dollars (\$900) or to undergo imprisonment of not  
2 less than ten nor more than sixty days, or both. Each week in  
3 which such employe is paid less than the rate applicable to him  
4 or her under this act and for each employe who is paid less than  
5 the prescribed rate, a separate offense shall be deemed to  
6 occur. Any agreement between the employer and the employe to  
7 work for less than the applicable wage rate shall be no defense  
8 to action by the Commonwealth under this section.

9 (c) Any employer or the officer or agent of any corporation  
10 who violates any other provision of this act or of any  
11 regulation issued thereunder shall, upon conviction thereof in a  
12 summary proceeding, be sentenced to pay a fine of not less than  
13 [one hundred dollars (\$100)] three hundred dollars (\$300) nor  
14 more than [five hundred dollars (\$500)] one thousand five  
15 hundred dollars (\$1,500), and each day of such failure to comply  
16 with this act or regulation, shall constitute a separate  
17 offense.

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

1 necessary to collect such claim,]

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

8 (c) In an action under this section, the secretary may  
9 recover liquidated damages in an amount equal to the wages owed  
10 to the employe unless the employer shows that the act or  
11 omission resulting in the nonpayment of wages was in good faith  
12 and the employer had reasonable grounds for believing that the  
13 act or omission was not in violation of this act.

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

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

18 (b) This section does not prohibit local regulation pursuant  
19 to an ordinance which was adopted by a municipality prior to  
20 January 1, 2006, and which remained in effect on January 1,  
21 2006.]

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

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

29 (1) publish the amount of savings, along with the  
30 appropriation in which an amount is to be saved, on the



1 Department of Human Services' publicly accessible Internet  
2 website; and

3 (2) forward a notice of the information under paragraph (1)  
4 to the Legislative Reference Bureau for publication in the  
5 Pennsylvania Bulletin.

6 (b) Savings under subsection (a) shall be used to provide  
7 increases to childcare providers, direct-care workers and for  
8 home-based and community-based services. The Secretary of Human  
9 Services shall distribute the savings under subsection (a) in  
10 the same manner that the providers are paid. The programs that  
11 will receive the savings and the amounts being augmented to each  
12 appropriation shall be forwarded to the Legislative Reference  
13 Bureau for publication in the Pennsylvania Bulletin.

14 Section 6. This act shall take effect immediately.