

No. 5
AN ACT

HB 534

Establishing a fixed minimum wage and overtime rates for employes, with certain exceptions; providing for minimum rates for learners and apprentices; creating a Minimum Wage Advisory Board and defining its powers and duties; conferring powers and imposing duties upon the Department of Labor and Industry; imposing duties on employers; and providing penalties.

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

Section 1. Declaration of Policy.—Employes are employed in some occupations in the Commonwealth of Pennsylvania for wages unreasonably low and not fairly commensurate with the value of the services rendered. Such a condition is contrary to public interest and public policy commands its regulation. Employes employed in such occupations are not as a class on a level of equality in bargaining with their employers in regard to minimum fair wage standards, and “freedom of contract” as applied to their relations with their employers is illusory. Judged by any reasonable standard, wages in such occupations are often found to bear no relation to the fair value of the services rendered. In the absence of effective minimum fair wage rates for employes, the depression of wages by some employers 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 evils of unreasonable and unfair wages as they affect some employes employed in the Commonwealth of Pennsylvania are such as to render imperative the exercise of the police power of the Commonwealth for the protection of industry and of the employes employed therein and of the public interest of the community at large.

Section 2. This act shall be known and may be cited as “The Minimum Wage Act of ¹1968.”

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

- (a) “Secretary” means the Secretary of Labor and Industry.
- (b) “Department” means the Department of Labor and Industry.
- (c) “Board” means the Minimum Wage Advisory Board created by this act.
- (d) “Wages” ²mean compensation due to any employe by reason of his 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.

¹ “1967” in original.

² “means” in original.

"Wage" paid to any employe includes the reasonable cost, as determined by the secretary, to the employer ¹ 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 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 ² 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 wage of a tipped employe, the amount paid such employe by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of fifty percent of the applicable minimum wage rate, except that in the case of an employe who (either himself or acting through his representative) shows to the satisfaction of the secretary that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid such employe by his employer shall be deemed to have been increased by such lesser amount.

(e) "Occupation" means any industry, trade, business, service, or employment or class or group thereof in which individuals are gainfully employed.

(f) "Employe" includes to suffer or to permit to work.

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

(h) "Employe" includes any individual employed by an employer but shall not include any individual to the extent that he is subject to the Federal Fair Labor Standards Act of June 25, 1938 (52 Stat. 1060), as amended, or subject to any other Federal minimum wage and hour legislation now in effect or to be hereinafter enacted into law: Provided, That this limitation shall not be deemed to exclude any individuals from entitlement to the amount of weekly wages due them (with respect to regular time pay and overtime pay where applicable) under any statute of the Commonwealth of Pennsylvania or under any valid regulation or order issued thereunder in effect on the effective date of this act.

¹ "of" in original.

² "similarly" in original.

(i) "Gratuities" means voluntary, monetary contributions received by an employe from a guest, patron or customer for services rendered.

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

(a) Every employer shall pay to each of his employes wages at a rate of not less than:

(1) One dollar fifteen cents (\$1.15) an hour effective February 1, 1968.

(2) One dollar thirty cents (\$1.30) an hour effective February 1, 1969.

(3) One dollar forty-five cents (\$1.45) an hour effective February 1, 1970.

(4) One dollar sixty cents (\$1.60) an hour effective February 1, 1971.

(b) The secretary, to the extent necessary to prevent curtailment of employment opportunities, shall by regulations provide for the employment of learners, apprentices and students, under special certificates at wages lower than the minimum wage applicable under this section, and subject to such limitations as to number, proportion and length of service as the secretary shall prescribe: Provided, That the minimum wage prescribed under this subsection (b) shall not be less than one dollar (\$1) an hour.

(c) Employes shall be paid for overtime not less than one and one-half times the employe's regular rate as prescribed in regulations promulgated by the secretary: Provided, That students employed in seasonal occupations as defined and delimited by regulations promulgated by the secretary may, by such regulations, be excluded from the overtime provisions of this act: And provided further, That the secretary shall promulgate regulations with respect to overtime subject to the limitations that no pay for overtime in addition to the regular rate shall be required except for hours in excess of forty-two hours in a workweek prior to February 1, 1969, and except for hours in excess of forty hours in a workweek after February 1, 1969.

(d) An employe whose earning capacity is impaired by physical or mental deficiency or injury may be paid less than the applicable minimum wage if a license specifying a wage rate commensurate with the employe's productive capacity has been obtained by the employer from the secretary. Such license shall be granted only upon joint application of employer and employe.

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

(1) Labor on a farm;

(2) Domestic services in or about the private home of the employer;

(3) Delivery of newspapers to the consumer;

(4) In connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand, the

major part of which circulation is within the county where published or counties contiguous thereto;

(5) In a bona fide executive, administrative, or professional capacity (including any employe employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools) or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the secretary, except that an employe of a retail or service establishment shall not be excluded from the definition of employe employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive administrative activities, if less than forty percent of his hours worked in the workweek are devoted to such activities);

(6) In the activities of an educational, charitable, religious or nonprofit organization where the employer-employe relationship does not in fact exist or where the services are rendered to such organization gratuitously;

(7) In the employ of the United States or the Commonwealth of Pennsylvania or any political subdivision or instrumentality of the Commonwealth of Pennsylvania;

(8) In seasonal employment, if the employe is under eighteen years of age, or if a student under twenty-four years of age, by a nonprofit health or welfare agency engaged in activities dealing with handicapped or exceptional children or by a nonprofit day or resident seasonal recreational camp for campers under the age of eighteen years, which operates for a period of less than three months in any one year;

(9) In a nonprofit educational institution in which the employe is enrolled as a student, or by a related nonprofit facility, such as a fraternity, when the placement, wages and working conditions of such students are controlled by the institution, or by such related nonprofit facility: Provided, That when such student is engaged in activity which is not part of a school function or which is open to the public or a substantial portion thereof apart from the school community, this exemption shall not apply;

(10) In employment by an establishment which is an amusement or recreational establishment, if (i) it does not operate for more than seven months in any calendar year, or (ii) during the preceding calendar year, its average receipts for any six months of such year were not more than thirty-three and one-third percent of its average receipts for the other six months of such year;

(11) Golf caddy;

(12) Employment in an establishment which is a motion picture theatre;

(13) In the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shell fish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first

processing, canning or packing such marine products at sea, as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employe;

(14) In employment as a switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations;

(15) As a seaman on a vessel other than an American vessel;

(16) In planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employes employed by his employer in such forestry or lumbering operations does not exceed eight;

(17) As an agricultural employe employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco.

(b) Employment in the following classifications shall be exempt from the overtime provisions of this act:

(1) By an establishment which is a hotel (including a resort hotel) or a motel;

(2) By an establishment which is a restaurant;

(3) Primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb service, to the public, to employes, or to members or guests of members of clubs;

(4) Seaman;

(5) Any person who is employed by any employer engaged in the business of operating an intercity, local, suburban or interurban bus carrier, street, suburban or interurban electric railway, or local trolley or subway carrier subject to the jurisdiction of the Pennsylvania Public Utility Commission or the Interstate Commerce Commission, or by a municipal transportation authority;

(6) Any salesman, partsman, or mechanic primarily engaged in selling and servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers;

(7) Any person who (i) is employed by an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective, who reside on the premises and (ii) ¹ receive compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed;

¹ "receives" in original.

(8) Any driver employed by an employer engaged in the business of operating taxicabs;

(9) Any employe of a bowling establishment if such employe receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed;

(10) Any employe with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935.

(11) Any employe of an employer subject to the provisions of Part I of the Interstate Commerce Act;

(12) Any employe of a carrier by air subject to the provisions of Title II of the Railway Labor Act;

(13) Any employe employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any by-product thereof;

(14) Any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(15) Any employe employed as an announcer, news editor, or chief engineer by a radio or television station, the major studio of which is located (i) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (ii) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least forty airline miles from the principal city in such area;

(16) Any employe employed within the area of production by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employes are employed in the establishment in such operations;

(17) Any employe engaged in ginning of cotton for market, in any place of employment located in a county where cotton is grown in commercial quantities or in the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap, into sugar (other than refined sugar) or syrup;

(18) Any employe engaged (i) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the State, or (ii) in transportation, whether or not performed by the farmer, between the farm and any point within the state of persons employed or to be employed in the harvesting of fruits or vegetables.

Section 6. Minimum Wage Advisory Board.—(a) There is hereby created in the Department of Labor and Industry a Minimum Wage Advisory Board consisting of nine members to be appointed by the secretary to assist him in carrying out his duties under this act, and for the purpose of conducting public hearings at the request of the secretary in order to recommend rules and regulations for the occupations covered within this act.

(b) Of the nine members, three shall be representatives of an established recognized association of labor organizations, three shall be representatives of an established recognized association of employers and three shall be members from the general public. The Secretary of Labor and Industry or his designated representative shall be chairman of the board.

(c) Each member of the board shall receive compensation of thirty dollars (\$30) per day plus necessary expenses, for each day actually spent in the performance of his duties. No employe of the Commonwealth shall receive any additional compensation or expenses on account of his services under this act.

(d) At least ten days' public notice shall be given in the manner prescribed by the board prior to any public hearing of the board. Five members of the board shall constitute a quorum.

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

(1) consult with the secretary concerning any matter arising under the administration of this act and advise and assist him in carrying out the duties prescribed for him by section 8 of this act;

(2) conduct public hearings at the request of the secretary in order to develop rules and regulations in accordance with section¹ 9 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 position;

(3) the board shall submit its report including recommendations for the promulgation of rules and regulations to the secretary, who shall within thirty days thereafter accept such report or refer it to the board for further consideration and consultation. If the report is referred to the board for further consideration, the secretary shall, in consultation with the board, modify, amend, or otherwise act upon such report within sixty days thereafter. Rules and regulations developed and promulgated hereunder shall be published and any person aggrieved thereby, shall have a right of review as set forth in section² 10 of this act.

Section 7. Investigations.—(a) The secretary or his representative shall have authority to investigate and ascertain the wages of persons employed in any occupation in the Commonwealth; enter and inspect the place of business or employment of any employer of employes in any occupation in the Commonwealth at any reasonable time, for the

¹ "8" in original.

² "9" in original.

purpose of examining and inspecting any records of any such employer that in any way relate to wages, hours, or other conditions of employment of any such employes; copy any or all of such records as he or his authorized representative may deem necessary or appropriate; require from such employer full and accurate statements in writing, at such times as the secretary may deem necessary, of the wages paid to all employes in his employment; and interrogate such persons for the purpose of ascertaining whether the provisions of this act and the regulations issued thereunder have been and are being complied with.

Section 8. Duty of Employer.—Every employer of employes shall keep a true and accurate record of the hours worked by each employe and the wages paid to each, and shall furnish to the secretary or his duly authorized representative, upon demand, a sworn statement of the same. Such records shall be open to inspection by any duly authorized representative of the secretary at any reasonable time and shall be preserved for a period of three years. Every employer subject to this act shall keep a summary of this act and any regulations issued thereunder applicable to him, posted in a conspicuous place where employes normally pass and can read it. Employers shall, upon request, be furnished copies of such summaries without charge. Employers shall permit any duly authorized representative of the secretary to interrogate any employe in the place of employment and during work hours with respect to the wages paid to and the hours worked by such employe or other employes.

Section 9. Enforcement; Rules and Regulations.—The secretary shall enforce this act. He shall make and, from time to time, revise regulations, with the assistance of the board, when requested by him, 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 defining and governing bona fide executive, administrative, or professional employes and outside salesmen, learners and apprentices, their number, proportion, length of learning period, and other working conditions; handicapped workers; part-time pay; overtime standards; bonuses; allowances for board, lodging, apparel, or other facilities or services customarily furnished by employers to employes; allowances for gratuities; or allowances for such other special conditions or circumstances which may be incidental to a particular employer-employe relationship.

Section 10. Court Review.—(a) All questions of fact arising under this act, except as otherwise herein provided, shall be decided by the secretary and there shall be no appeal from the decision on any such question of fact. There shall be a right of review by the Court of Common Pleas of Dauphin County from any regulation or holding on any question of law included or embodied in any such regulation or decision of the secretary or his representative.

(b) Any person aggrieved by a regulation or decision of the secre-

tary may petition said court for such a review within thirty days after the effective date of such regulation or decision. A copy of such petition shall be filed with the secretary, which filing shall constitute service. Within thirty days after service of the petition, the secretary shall file with the prothonotary of said court a transcript of the record of the proceedings duly certified over the seal of the department, which record shall include all papers on file and all evidence taken, including notes of testimony. The cost of said transcript at sixty cents (60¢) per page and one dollar (\$1) for certification shall be entered as part of the record costs to be paid as the court may direct.

(c) The court, upon application of either party, shall fix a time and place for argument. After argument and review of the record and testimony, the court may sustain, modify or reverse the regulation or decision of the secretary or his representative as in its judgment the law may warrant.

Section 11. Unconstitutionality.—If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provisions to other persons or circumstances shall not be affected thereby.

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

(b) Any employer or the officer or agent of any corporation who pays or agrees to pay any employe less than the rates applicable to such employe under this act shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than seventy-five dollars (\$75) nor more than three hundred dollars (\$300) or to undergo imprisonment of not less than ten nor more than sixty days, or both. Each week in which such employe is paid less than the rate applicable to him under this act and for each employe who is paid less than the prescribed rate, a separate offense shall be deemed to occur. Any agreement between the employer and the employe to work for less than the applicable wage rate shall be no defense to action by the Commonwealth under this section.

(c) Any employer or the officer or agent of any corporation who violates any other provision of this act or of any regulation issued thereunder shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100), and each day of such

failure to comply with this act or regulation, shall constitute a separate offense.

Section 13. Civil Actions.—If any employe is paid by his or her employer less than the minimum wages provided by section 4 of this act or by any regulation issued thereunder, such worker may recover in a civil action the full amount of such minimum wage less any amount actually paid to the worker by the employer, together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between the employer and the worker to work for less than such minimum wage shall be no defense to such action. At the request of any employe paid less than the minimum wage to which such employe was entitled under this act and regulations issued thereunder, the secretary may take an assignment of such wage claim, in trust for the assigning worker and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the cost and such reasonable attorney's fees as may be allowed by the court.

Section 14. Repealer.—Any acts or parts of acts inconsistent with this act are repealed: Provided, however, That in the case of any person in a job classification in which wages are regulated by the act of May 27, 1937 (P. L. 917), as supplemented by the act of September 15, 1961 (P. L. 1313) or by any regulation or wage order thereunder in effect on the effective date of this act, all of the provisions of such laws, regulations and wage orders (including those relating to deductions for tips, board and lodging), shall continue to be followed in computing the total weekly pay due (regular time pay plus overtime pay where applicable) to such persons until such time as their total weekly pay under this act at the rates established herein or hereunder (and applying the deductions for tips, board and lodging as established by or under this act) shall be equal to or greater than the total weekly pay that would otherwise be due when computed as aforesaid. At such time as the total weekly amount of pay due under the standards set forth in this act equals or exceeds an employe's earnings under an existing minimum wage order determined as aforesaid, further pay for such employe shall be determined only under the provisions of this act.

Section 15. Effective Date.—This act shall take effect immediately except as follows:

(a) The minimum wage rates for employes under section 4 of this act shall take effect on the dates provided therein.

(b) The overtime provisions of section 4 of this act shall take effect on February 1, 1968.

APPROVED—The 17th day of January, A. D. 1968.

RAYMOND P. SHAFER