

No. 1990-79

## AN ACT

SB 1458

Amending the act of January 17, 1968 (P.L.11, No.5), entitled "An act 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," providing for certain exceptions from the minimum wage provisions.

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

Section 1. Section 4(d) of the act of January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968, is amended to read:

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

\* \* \*

(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 *either* a license specifying a wage rate commensurate with the employe's productive capacity has been obtained by the employer from the secretary *or a Federal certificate is obtained under section 14(c) of the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 201 et seq.)*. [Such license] *A license obtained from the secretary* shall be granted only upon joint application of employer and employe.

Section 2. Section 5(b) of the act, amended December 10, 1974 (P.L.916, No.303), is amended to read:

Section 5. Exemptions.—\* \* \*

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

(1) Seaman;

(2) 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;

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

(4) 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;

(5) Any employe engaged in the processing of maple sap into sugar (other than refined sugar) or syrup;

(6) Employment by an establishment which is a motion picture theatre[.];

*(7) Any employe of a motor carrier with respect to whom the Federal Secretary of Transportation has power to establish qualifications and maximum hours of service under 49 U.S.C. § 3102(b)(1) and (2) (relating to requirements for qualifications, hours of service, safety and equipment standards).*

Section 3. No claim shall be made for overtime wages pursuant to the act to which this is an amendment by an employe of a motor carrier with respect to whom the Federal Secretary of Transportation has power to establish qualifications and maximum hours of service under 49 U.S.C. § 3102(b)(1) and (2) (relating to requirements for qualifications, hours of service, safety and equipment standards) after the effective date of this act.

Section 4. This act shall be retroactive to February 1, 1989.

Section 5. This act shall take effect immediately.

APPROVED—The 9th day of July, A. D. 1990.

ROBERT P. CASEY