

No. 2012-109

AN ACT

HB 1820

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," further providing for minimum wages and for exemptions.

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

Section 1. Section 4 of the act of January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968, amended July 9, 2006 (P.L.1077, No.112), is amended to read:

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

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

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

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

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

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

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

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

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

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

(a.1) If the minimum wage set forth in the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 201 et seq.) is increased above the minimum wage required under this section, the minimum wage required under this section shall be increased by the same amounts and effective the same date as the increases under the Fair Labor Standards Act, and the provisions of subsection (a) are suspended to the extent they differ from those set forth under the Fair Labor Standards Act.

(b) The secretary, to the extent necessary to prevent curtailment of employment opportunities, shall by regulations provide for the employment of learners 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 eighty-five percent of the otherwise applicable wage rate in effect under section 4. A special certificate issued under this subsection shall provide that for six or less students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek at a sub-minimum rate.

In the case of an employer who intends to employ seven or more students, at a sub-minimum rate, the secretary may issue a special certificate only if the employer certifies to the secretary that employment of such students will not create a substantial probability of reducing the full-time employment opportunities for other workers.

(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 hours in a workweek. ***An employer shall not be in violation of this subsection if the employer is entitled to utilize, and acts consistently with, section 7(j) of the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 207(j)) and regulations promulgated under that provision.***

(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.). A license obtained from the secretary shall be granted only upon joint application of employer and employe.

(e) In lieu of the minimum wage prescribed in subsection (a) and section 5(c) and notwithstanding subsections (b) and (d), an employer may, during the first sixty calendar days when an employe under the age of twenty years is initially employed, pay the employe training wages at a rate of not less than the minimum wage set forth in section 6(a) of the Fair Labor Standards Act (29 U.S.C. § 206(a)). A person employed at the training wage under this subsection shall be informed of the amount of the training wage and the right to receive the full minimum wage, or a higher wage, upon completion of the training period. No employer may take any action to displace existing employes, including partial displacements such as reduction in the hours, wages or employment benefits of existing employes, for purposes of hiring individuals at the training wage authorized by this subsection.

Section 2. Section 5(b) of the act is amended by adding a paragraph to read:

Section 5. Exemptions.—* * *

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

* * *

(8) The hours of an employe of an air carrier subject to the provisions of Title II of the Railway Labor Act (Public Law 69-257, 44 Stat. 577, 45 U.S.C. § 181 et seq.) when:

(i) the hours are voluntarily worked by the employe pursuant to a shift-trading practice under which the employe has the opportunity to reduce hours worked in any workweek by voluntarily offering a shift for trade or reassignment; or

(ii) the required hours of work, wages and overtime compensation have been agreed to either in a collective bargaining agreement between the employer and labor organization representing employes for purposes of collective bargaining or pursuant to a voluntary agreement or understanding arrived at between the employer and employe.

* * *

Section 3. This act shall take effect as follows:

(1) The addition of section 5(b)(8) of the act shall take effect in 90 days.

(2) The remainder of this act shall take effect immediately.

APPROVED—The 5th day of July, A.D. 2012

TOM CORBETT