

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 250 Session of 2015

INTRODUCED BY KIM, DERMODY, HANNA, FRANKEL, YOUNGBLOOD, GOODMAN, STURLA, M. DALEY, BOYLE, THOMAS, HARKINS, DONATUCCI, GAINNEY, SAMUELSON, GERGELY, SCHLOSSBERG, SCHWEYER, O'BRIEN, FREEMAN, DeLUCA, BISHOP, C. PARKER, DEAN, DEASY, P. DALEY, PASHINSKI, D. COSTA, KINSEY, CARROLL, SCHREIBER, SIMS, GIBBONS, W. KELLER, BROWNLEE, V. BROWN, McCARTER, MARKOSEK, DAVIS, SNYDER, COHEN, BIZZARRO, FARINA, KIRKLAND, DAVIDSON, CRUZ, McNEILL, BRIGGS, P. COSTA, J. HARRIS, CALTAGIRONE, SABATINA, READSHAW, SANTARSIERO, ROEBUCK, GALLOWAY, FABRIZIO, WATERS, MAHONEY, BRADFORD, D. MILLER, DeLISSIO, FLYNN, WHEATLEY, EVANS, ACOSTA, RAVENSTAHL AND KORTZ, FEBRUARY 12, 2015

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, FEBRUARY 12, 2015

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 the definitions of "wages"  
 9 and "gratuities" and providing for the definition of "tipped  
 10 employe"; further providing for minimum wage rates; providing  
 11 for tipped employees; and further providing for minimum wage  
 12 advisory board, for enforcement and rules and regulations,  
 13 for penalties, for civil actions and for preemption; and  
 14 making an editorial change.

15 The General Assembly declares:

16 (1) The Federal minimum wage was set at \$7.25 per hour  
 17 in 2009. The real value of the minimum wage has generally  
 18 declined since 1968 and with it the buying power of minimum-  
 19 wage workers.

1 (2) Nearly 14% of Pennsylvanians, approximately  
2 1,800,000 people, lived in poverty during 2012, according to  
3 the United States Census Bureau.

4 (3) At a \$7.25 rate, a minimum-wage worker, working 40  
5 hours a week for 52 weeks a year, earns \$15,080 annually  
6 which is below the 2013 Federal Poverty Level of \$19,530 for  
7 a family of three.

8 (4) The absence of a fair minimum wage results in the  
9 depression of wages by some employers and constitutes a  
10 serious form of unfair competition against other employers,  
11 reduces the purchasing power of the workers and threatens the  
12 stability of the economy.

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

15 Section 1. Section 3(d) and (i) of the act of January 17,  
16 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968,  
17 amended July 9, 2006 (P.L.1077, No.112), are amended and the  
18 section is amended by adding a definition to 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  
24 full face value, subject to such deductions, charges or  
25 allowances as may be permitted by regulations of the secretary  
26 under section [9] 9.1.

27 "Wage" paid to any employe includes the reasonable cost, as  
28 determined by the secretary, to the employer for furnishing such  
29 employe with board, lodging, or other facilities, if such board,  
30 lodging, or other facilities are customarily furnished by such

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

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

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

29 (2) All tips received by such employe have been retained by  
30 the employe and shall not be surrendered to the employer to be

1 used as wages to satisfy the requirement to pay the current  
2 hourly minimum rate in effect; where the gratuity is added to  
3 the charge made by the establishment, either by the management,  
4 or by the customer, the gratuity shall become the property of  
5 the employe; except that this subsection shall not be construed  
6 to prohibit the pooling of tips among employes who customarily  
7 and regularly receive tips.]

8 \* \* \*

9 (i) ["Gratuities"] "Gratuity" or "tip" means a voluntary,  
10 monetary [contributions] contribution received by an employe  
11 from a guest, patron or customer for services rendered.

12 (j) "Tipped employe" means an employe who customarily and  
13 regularly receives a gratuity during the course of the employe's  
14 employment.

15 Section 2. Section 4(a) of the act is amended by adding  
16 paragraphs to read:

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

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

21 \* \* \*

22 (9) Nine dollars (\$9.00) an hour beginning six months  
23 following the effective date of this paragraph.

24 (10) Ten dollars ten cents (\$10.10) an hour beginning twelve  
25 months after the effective date of this paragraph.

26 (11) Beginning after December 31, 2016, and for each  
27 succeeding January 1 thereafter, the minimum wage shall be  
28 increased by an annual cost-of-living adjustment calculated by  
29 the secretary using the percentage change in the Consumer Price  
30 Index for All Urban Consumers (CPI-U) for the Pennsylvania, New

1 Jersey, Delaware and Maryland area. In calculating the  
2 adjustment, the secretary shall use the most recent twelve-month  
3 period for which figures have been officially reported by the  
4 United States Department of Labor, Bureau of Labor Statistics.  
5 At least sixty days prior to the date the adjustment is due to  
6 take effect, the percentage increase and the minimum wage  
7 amount, rounded to the nearest multiple of five cents (5¢),  
8 shall be determined by the secretary. The secretary shall,  
9 within ten days following the determination, forward a notice of  
10 the determination to the Legislative Reference Bureau for  
11 publication in the next Pennsylvania Bulletin.

12 \* \* \*

13 Section 3. The act is amended by adding a section to read:

14 Section 4.1. Tipped Employes.--(a) An employer shall pay a  
15 tipped employe as follows:

16 (1) Fifty percent of the wage in effect under section 4(a)  
17 (9), as the wage may be increased under section 4(a)(11).

18 (2) Seventy-five percent of the wage in effect under section  
19 4(a)(10), as the wage may be increased under section 4(a)(11).

20 (b) The following shall apply:

21 (1) Each tipped employe shall be informed in writing by the  
22 employer, no later than twenty days after the effective date of  
23 this section, that the tipped employe will be paid not less than  
24 the appropriate minimum wage under subsection (a) beginning six  
25 months after the effective date of this section.

26 (2) Each gratuity received by the employe shall be retained  
27 by the employe and shall not be surrendered or paid to the  
28 employer. This paragraph shall not be deemed to prohibit the  
29 pooling of gratuities among tipped employes.

30 (3) If a gratuity is added, either by the employer or

1 manager of the establishment or by the guest, patron or  
2 customer, to the charge to the guest, patron or customer, the  
3 gratuity shall become the property of the tipped employe and  
4 shall not be used by the employer to satisfy the requirement to  
5 pay the wage then in effect.

6 Section 4. Sections 6(e)(2) and 9 of the act, amended July  
7 9, 2006 (P.L.1077, No.112), are amended to read:

8 Section 6. Minimum Wage Advisory Board.--\* \* \*

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

10 \* \* \*

11 (2) conduct public hearings at the request of the secretary  
12 in order to develop rules and regulations in accordance with  
13 section [9] 9.1 of this act, in which hearings due process of  
14 law shall be observed and any person may appear and be heard or  
15 file statements in support of his or her position;

16 \* \* \*

17 Section 9. [Enforcement; Rules and Regulations.--The  
18 secretary shall enforce this act. The secretary shall make and,  
19 from time to time, revise regulations, with the assistance of  
20 the board, when requested by the secretary, which shall be  
21 deemed appropriate to carry out the purposes of this act and to  
22 safeguard the minimum wage rates thereby established. Such  
23 regulations may include, but are not limited to, regulations  
24 defining and governing bona fide executive, administrative, or  
25 professional employes and outside salespersons, learners and  
26 apprentices, their number, proportion, length of learning  
27 period, and other working conditions; handicapped workers; part-  
28 time pay; overtime standards; bonuses; allowances for board,  
29 lodging, apparel, or other facilities or services customarily  
30 furnished by employers to employes; allowances for gratuities;

1 or allowances for such other special conditions or circumstances  
2 which may be incidental to a particular employer-employee  
3 relationship.] Enforcement.--(a) The secretary shall have the  
4 authority to investigate claims of violations of this act and to  
5 assess administrative penalties under section 12 of this act.

6 (b) The Attorney General and the district attorneys of the  
7 several counties shall have concurrent jurisdiction to bring an  
8 action for criminal violations of this act under section 12 of  
9 this act. A person charged by the Attorney General shall not  
10 have standing to challenge the authority of the Attorney General  
11 to prosecute the action. If a challenge is made, the challenge  
12 shall be dismissed and no relief shall be available in the  
13 courts of this Commonwealth to the person making the challenge.

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

15 Section 9.1. Rules and Regulations.--(1) The secretary  
16 shall make and revise regulations, with the assistance of the  
17 board, to carry out the purposes of this act and to safeguard  
18 the payment of the wage rates established under this act.

19 (2) The regulations may include regulations defining and  
20 governing any of the following:

21 (i) Bona fide executive, administrative or professional  
22 employees and outside salespersons.

23 (ii) Learners and apprentices and the number, proportion,  
24 length of learning period and other working conditions of  
25 learners and apprentices.

26 (iii) Handicapped workers.

27 (iv) Part-time pay.

28 (v) Overtime standards.

29 (vi) Bonuses.

30 (vii) Allowances for apparel, board, lodging or other

1 facilities or services customarily furnished by employers to  
2 employes.

3 (viii) Allowances for gratuities.

4 (ix) Allowances for other special conditions or  
5 circumstances which may be incidental to a particular employer-  
6 employe relationship.

7 Section 6. Section 12 of the act, amended July 9, 2006  
8 (P.L.1077, No.112), is amended to read:

9 Section 12. Penalties.--(a) [Any employer and his or her  
10 agent, or the officer or agent of any corporation,] A person who  
11 discharges or in any other manner discriminates against any  
12 employe [because such employe has] who has filed or submitted a  
13 complaint under this act, cooperated with the Attorney General,  
14 a district attorney, the secretary or the secretary's  
15 representative, submitted evidence, testified or is about to  
16 testify [before the secretary or his or her representative] in  
17 any investigation or proceeding under or related to this act, or  
18 because such [employer] person believes that said employe may  
19 [so testify shall, upon conviction thereof in a summary  
20 proceeding,] take these actions, or has exercised any right  
21 under this act or any regulation implementing its provisions, or  
22 because such employe provided assistance or information to  
23 another employe about this act commits a summary offense and,  
24 upon conviction thereof, shall be sentenced to pay a fine of not  
25 less than [five hundred dollars (\$500)] two thousand dollars  
26 (\$2,000) nor more than [one thousand dollars (\$1,000)] five  
27 thousand dollars (\$5,000), and in default of the payment of such  
28 fine [and costs], shall be sentenced to imprisonment for not  
29 less than ten days nor more than ninety days. If the secretary  
30 determines that a violation of this subsection has occurred, the



1 secretary shall assess a penalty against the person of not less  
2 than two thousand dollars (\$2,000) nor more than five thousand  
3 dollars (\$5,000).

4 (b) [Any employer or the officer or agent of any  
5 corporation] A person who pays or agrees to pay any employe less  
6 than the rates applicable to such employe under this act [shall,  
7 upon conviction thereof in a summary proceeding,] commits a  
8 summary offense and, upon conviction thereof, shall be sentenced  
9 to pay a fine of not less than [seventy-five dollars (\$75)] one  
10 thousand five hundred dollars (\$1,500) nor more than [three  
11 hundred dollars (\$300)] three thousand dollars (\$3,000) or to  
12 undergo imprisonment of not less than ten nor more than sixty  
13 days, or both. Each week in which such employe is paid less than  
14 the rate applicable to him or her under this act and for each  
15 employe who is paid less than the prescribed rate, a separate  
16 offense shall be deemed to occur. Any agreement between the  
17 employer and the employe to work for less than the applicable  
18 wage rate shall be no defense to an action [by the Commonwealth]  
19 under this section. If the secretary determines that a violation  
20 of this subsection has occurred, the secretary shall assess a  
21 penalty against the person of not less than one thousand five  
22 hundred dollars (\$1,500) nor more than three thousand dollars  
23 (\$3,000) for each week that the violation occurred and for each  
24 employe that is the subject of the violation.

25 (c) [Any employer or the officer or agent of any  
26 corporation] A person who violates any other provision of this  
27 act or of any regulation [issued thereunder shall, upon  
28 conviction thereof in a summary proceeding,] implementing its  
29 provisions commits a summary offense and, upon conviction  
30 thereof, shall be sentenced to pay a fine of not less than [one

1 hundred dollars (\$100)] one thousand five hundred dollars  
2 (\$1,500) nor more than [five hundred dollars (\$500)] five  
3 thousand dollars (\$5,000), and each day [of such failure to  
4 comply with this act or regulation,] that such violation occurs  
5 shall constitute a separate offense. If the secretary determines  
6 that a violation of any other provision of this act or a  
7 regulation implementing its provisions has occurred, the  
8 secretary shall assess a penalty against the person of not less  
9 than one thousand five hundred dollars (\$1,500) nor more than  
10 five thousand dollars (\$5,000) for each day such violation  
11 occurs.

12 Section 7. Section 13 of the act is amended to read:

13 Section 13. Civil Actions.--(a) If any employe is paid by  
14 his or her employer less than the minimum wages provided by  
15 section 4 of this act or by any regulation issued thereunder,  
16 such [worker] employe may recover in a civil action the full  
17 amount of such minimum wage less any amount actually paid to the  
18 [worker] employe by the employer, together with costs and such  
19 reasonable attorney's fees as may be allowed by the court, and  
20 any agreement between the employer and the [worker] employe to  
21 work for less than such minimum wage shall be no defense to such  
22 action.

23 (b) At the request of any employe paid less than the minimum  
24 wage to which such employe was entitled under this act and  
25 regulations issued [thereunder] under this act, the secretary  
26 may take an assignment of such wage claim, in trust for the  
27 assigning [worker] employe and may bring any legal action  
28 necessary to collect such claim, and the employer shall be  
29 required to pay the cost and such reasonable attorney's fees as  
30 may be allowed by the court.

1 Section 8. Section 14.1 of the act, added July 9, 2006  
2 (P.L.1077, No.112), is repealed:

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

6 (b) This section does not prohibit local regulation pursuant  
7 to an ordinance which was adopted by a municipality prior to  
8 January 1, 2006, and which remained in effect on January 1,  
9 2006.]

10 Section 9. This act shall take effect as follows:

11 (1) The repeal under section 3(d) of the act and the  
12 addition of section 4.1 of the act shall take effect in six  
13 months.

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