

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 12 Session of 2021

INTRODUCED BY TARTAGLIONE, FONTANA, KEARNEY, HAYWOOD, BLAKE, COLLETT, STREET, SANTARSIERO, BREWSTER, COSTA, SCHWANK, KANE, HUGHES, CAPPELLETTI, SAVAL, COMITTA, L. WILLIAMS, MUTH, SABATINA AND A. WILLIAMS, FEBRUARY 22, 2021

REFERRED TO LABOR AND INDUSTRY, FEBRUARY 22, 2021

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

1 full face value, subject to such deductions, charges or  
2 allowances as may be permitted by regulations of the secretary  
3 under section 9.

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

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

1 account of tips may not exceed the value of tips actually  
2 received by the employe. The previous sentence shall not apply  
3 with respect to any tipped employe unless:

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

6 (2) All tips received by such employe have been retained by  
7 the employe and shall not be surrendered to the employer to be  
8 used as wages to satisfy the requirement to pay the current  
9 hourly minimum rate in effect; where the gratuity is added to  
10 the charge made by the establishment, either by the management,  
11 or by the customer, the gratuity shall become the property of  
12 the employe; except that this subsection shall not be construed  
13 to prohibit the pooling of tips among employes who customarily  
14 and regularly receive tips.]

15 \* \* \*

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

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

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

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

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

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

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

30 (6) Five dollars fifteen cents (\$5.15) an hour beginning

1 September 1, 1997.

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

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

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

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

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

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

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

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

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

16 (16) Beginning July 1, 2028, and for each succeeding July 1

17 thereafter, the minimum wage shall be increased by an annual

18 cost-of-living adjustment calculated by the secretary using the

19 percentage change in the Consumer Price Index for All Urban

20 Consumers (CPI-U) for the Pennsylvania, New Jersey, Delaware and

21 Maryland area. In calculating the adjustment, the secretary

22 shall use the most recent twelve-month period for which figures

23 have been officially reported by the United States Department of

24 Labor, Bureau of Labor Statistics. At least sixty days prior to

25 the date the adjustment is due to take effect, the percentage

26 increase and the minimum wage amount, rounded to the nearest

27 multiple of five cents (5¢), shall be determined by the

28 secretary. The secretary shall, within ten days following the

29 determination, forward a notice of the determination to the

30 Legislative Reference Bureau for publication in the next

1 Pennsylvania Bulletin.

2 \* \* \*

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

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

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

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

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

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

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

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

26 (b) Any employer or the officer or agent of any corporation  
27 who pays or agrees to pay any employe less than the rates  
28 applicable to such employe under this act shall, upon conviction  
29 thereof in a summary proceeding, be sentenced to pay a fine of  
30 not less than [seventy-five dollars (\$75)] two hundred twenty-

1 five dollars (\$225) nor more than [three hundred dollars (\$300)]  
2 nine hundred dollars (\$900) or to undergo imprisonment of not  
3 less than ten nor more than sixty days, or both. Each week in  
4 which such employe is paid less than the rate applicable to him  
5 or her under this act and for each employe who is paid less than  
6 the prescribed rate, a separate offense shall be deemed to  
7 occur. Any agreement between the employer and the employe to  
8 work for less than the applicable wage rate shall be no defense  
9 to action by the Commonwealth under this section.

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

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

1 trust for the assigning worker and may bring any legal action  
2 necessary to collect such claim,]

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

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

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

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

19 (b) This section does not prohibit local regulation pursuant  
20 to an ordinance which was adopted by a municipality prior to  
21 January 1, 2006, and which remained in effect on January 1,  
22 2006.]

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

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

30 (1) publish the amount of savings, along with the



1 appropriation in which an amount is to be saved, on the  
2 Department of Human Services' publicly accessible Internet  
3 website; and

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

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

15 Section 6. This act shall take effect immediately.