HB

115

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 115

Revision Date:
Title: "...settlement and payment of claims for minimum wages and overtime compensation claims..."
Sponsor: House Labor and Commerce Committee
Requester: House Labor and Commerce Committee

Dept. Affected: Department of Law
BRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. 0093

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: $ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends the Alaska Wage and Hour Act to provide in an action to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, that if the employer shows to the satisfaction of the court that the act or omission giving rise to the action was made in good faith and that the employer had reasonable grounds for believing that the act or omission was not in violation of the state's minimum wage and overtime laws, the court may decline to award liquidated damages or may award an amount of liquidated damages less than the amount set out in AS 23.10.110(a).

The bill further provides that an employee is entitled to liquidated damages, unless the employee and the employer enter into a written settlement agreement in which the employee expressly waives the right to receive liquidated damages. The waiver would have to be knowing and voluntary. The agreement would also have to contain advice to the employee to consult with an attorney or with the Department of Labor before entering into the agreement, and it must allow the employee at least seven calendar days to consider

Richard T. Pegues

Prepared by: Richard T. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: 1/27/95

Richard T. Pegues for BMB

Approved by Commissioner: Bruce M. Botelho, Attorney General — Date: 1/27/95
Agency: Department of Law

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ANALYSIS CONTINUATION:

whether to accept the offer of settlement, and it must provide for a period of at least five days after the employee enters into the agreement in which the employee may revoke the agreement. In essense, an employer and an employee would be permitted to compromise a wage claim without supervision of the court or the Department of Labor.

These provisions mark a departure from the way wage claims are handled in Alaska. First, current law provides that an employer who violates the state's minimum wage and overtime laws is liable for the unpaid wages and overtime, and the employer is liable for liquidated damages in an amount equal to the amount of unpaid minimum wages and unpoaid overtime compensation. The hill has the effect of relieving employers who violate minimum wage and overtime laws from liquidated damages liability and, in the alternative, allowing employers and employees to compromise the amounts owed to employees.

Second, employees are allowed to assign unpaid wage claims to the commissioner of labor under existing AS 23.10.110(b), which permits the commissioner of labor to bring the claims on behalf of employees. In practice, however, substantial wage claims are brought by private counsel, and the commissioner of labor's intervention is usually reserved for small individual wage claims and for claims involving precedential value that have broad impact on the state's workforce. Consequently, the provision allowing costs and fees for prevailing parties, where current laws provide costs and fees only for prevailing plaintiffs, and the provision allowing for the compromise of claims, will probably result in far fewer claims being handled by the private bar.

As a consequence, employees would have the option of accepting settlement offers, in addition to attempting to bring a claim in court through private counsel, purusing a claim under federal wage and hour law, or assigning the claim to the commissioner of labor for state action. In this latter event, the Department of Law presents the claim on behalf of the commissioner. Because the majority of substantial wage claims are now handled by the private bar, we cannot determine whether an increase in our caseload might occur if the bill discourages the private bar from handling wage and hour claims, or if the voluntary compromise provisions will negate much of the current use of the private bar.

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ALASKA STATE CHAMBER OF COMMERCE

January 28, 1995

Representative Pete Kott, Chairman
Labor and Commerce Committee
Alaska House of Representatives
Juneau, Alaska

RE: HB 115 Damages and Attorney Fees for Unpaid Wages

Dear Chairman Kott:

The Alaska State Chamber of Commerce is in support of HB 115, as introduced.

As Alaska law now stands, an employer who is in violation of the state's minimum wage and overtime compensation laws is automatically liable for liquidated damages, regardless of the circumstances.

In the federal Fair Labor Standards Act (FLSA), the court may waive liquidated damages in whole or in part if it can be shown that the employer acted reasonably and in good faith. An Alaska Supreme Court interpretation of Alaska's Wage and Hour Act prevents the courts and the Commissioner of the Alaska Department of Labor from applying this standard of fairness.

Under the provisions proposed in HB 115, employees will still be fully protected under the law, but the courts and the Commissioner will be allowed to consider the circumstances of a case in determining the awarding of liquidated damages.

The Alaska State Chamber of Commerce believes that HB 115 will bring fairness to this section of the law, and we urge passage of this legislation.

Sincerely,

Pamela Neal

Pamela Neal
President

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 115

Revision Date:
Title: Damages and attorney fees for unpaid wages
Sponsor: House Labor & Commerce
Requestor: House Labor & Commerce

Department Affected: Labor
BRU: Labor Standards & Safety
Component: Wage & Hour

COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
CHANGE IN REVENUE FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY95) impact: $ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John A. Abshire — Phone: 465-6003
Division: Labor Standards & Safety — Date: 1/26/95

Approved by Commissioner: Tom Cashen, Commissioner
Agency: Department of Labor — Date: 1/26/95

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MEMORANDUM

TO: Alaskan Employers

FROM: Parry Grover

DATE: February 9, 1994

RE: Analysis of Proposed House Bill Relating to Liquidated Damages and Attorney's Fees for Minimum Wage and Overtime Compensation Claims

Several questions have been raised regarding the impact of the proposed House Bill. This Memorandum responds to those questions:

1. If the Bill is Enacted Into Law, Won't That Make It More Difficult For Employees and Former Employees With Small Claims to Recover the Wages Due Them?

No. The majority of small minimum wage and overtime claims are collected by the Alaska Department of Labor, Wage and Hour Administration. Section 3(e) of the Bill simply restores to the Commissioner discretion to settle those claims with or without liquidated damages. The Commissioner had that discretion prior to McKeown vs. Kinney Shoe Corp., 280 P.2d 1068 (Alaska 1991). The Commissioner is under no obligation to waive or reduce liquidated damages when collecting such claims on behalf of present or former employees. The Commissioner may accept assignment of claims up to $5,000. A.S. 23.05.230(c).

2. If Section 3(d) is Enacted Into Law, Won't It Become It Easy For Employers to Avoid Payment of Overtime Compensation and Liquidated Damages?

No. The liquidated damages penalty built into A.S. 23.10.110(a) will remain the law of Alaska. Any employer who fails to pay minimum wages or overtime compensation when due will be required to make those payments and, in most cases, liquidated damages, court costs and attorneys' fees too. Only those employers who prove to the satisfaction of the court that they acted reasonably and in the good faith belief the minimum wage or overtime compensation was not due will be eligible to avoid an assessment of liquidated damages. Even then, the court will have

discretion to award partial or full liquidated damages, as the circumstances warrant.

Section 3(d) of the Bill is limited to private claims filed in court, i.e., not those enforced by the Commissioner. The experience of my office in defending cases of this type is that the typical plaintiff is a salaried, mid-level manager or supervisor. Typical overtime claims run into the tens of thousands of dollars. Minimum wage cases are rare in Alaska.

The decision of the Alaska Supreme Court in Bobich v. Stewart, 843 P.2d 1232 (Alaska 1992), is typical of private overtime pay litigation in Alaska today. In that case, the employees, Mr. and Mrs. Stewart, managed the Dimond Mini-Storage facility in Anchorage. The owners paid them on a salaried basis and treated them as exempt employees. The Stewarts convinced a jury they were not exempt employees and were entitled to overtime compensation. The jury awarded the Stewarts some $45,133 in overtime pay for a two-year period, which the court doubled as mandatory liquidated damages pursuant to A.S. 23.10.110(a). The court awarded another $11,672 in prejudgment interest and almost full attorney's fees totaling $52,068. The Stewarts' total recovery exceeded $154,000, which the Supreme Court affirmed on appeal.

Faced with the potential of such losses, we believe reasonable employers will continue to have very strong incentives to abide by the Alaska Wage and Hour Act and to enter into reasonable settlements, where they are permitted to do so.

3. Why is this a problem now? Isn't It Enough To Give The Commissioner Discretion to Settle Wage Claims?

Section 3(e) of the Bill will restore the Commissioner to the authority he had prior to Kinney Shoe to settle wage claims. Section 3(e) is not sufficient by itself, however, because the Commissioner has jurisdiction only to enforce claims up to $5,000. Many larger claims are litigated by the parties in the courts without the Commissioner's involvement. Section 3(e) of the Bill does not address those claims.

The Bill also is necessary because of the recent upswing in Wage and Hour Act litigation in Alaska. If my firm's experience is typical — and I believe it is -- we presently see more large Wage and Hour Act cases filed each year than we used to see in the entire mid-1980s. These cases have come into vogue with the plaintiff's bar because of potentially large recoveries, mandatory liquidated damages, and the availability of virtually full attorney's fees and court costs. The Kinney Shoe decision exacerbated this situation by declaring private settlements "void."

It seems anomalous for Alaska law to permit employees to enter into private settlements of wrongful discharge and employment discrimination cases, but not Wage and Hour Act cases. The Bill will have the salutary effect of allowing private settlements. And only those employers who can prove to the satisfaction of the court they acted reasonably and in good faith will have any hope of avoiding an assessment of full liquidated damages.

4. How Does Alaska's Liquidated Damages Statute, A.S. 23.10.110(a), Compare With the Laws of Other States?

I have discussed the liquidated damages provision in the Alaska Wage and Hour Act with knowledgeable attorneys and labor relations consultants in several other states. The strong consensus is that Alaska's liquidated damages provision is more stringent than similar statutes in other states.

By way of illustration, each of the other West Coast states has liquidated damages laws more like the Bill than Alaska's present liquidated damages law. Liquidated damages are not mandatory in every case, as they are in Alaska, in these states:

Washington. Washington law allows employees to recover liquidated damages where the employer violates its overtime compensation act "willfully and within intent to deprive the employee of any part of his wages." See RCW 49.52.050(1) & (2). The Supreme Court of Washington has interpreted the willful requirement to mean that nonpayment must be:

> the result of knowing and intentional action and not the result of a bona fide dispute as to the obligation of payment.

Chelan County Deputy Sheriffs' Assn vs. City of Airway Heights, 109 Wn.2d 282, 300, 745 P.2d 1 (1987).

Oregon. In Oregon, an employee may recover liquidated damages for non-payment of overtime compensation as provided under the federal Fair Labor Standards Act (FLSA). A former employee may recover the greater of one month's pay as liquidated damages or the liquidated damages recoverable under the FLSA. ORS 652.150. In either case, the federal good faith and reasonable basis defense is available to the employer as is proposed in section 3(d) of the Bill.

California. California law also permits recovery of liquidated damages in wage and hour act cases. However, Section 1194.2(b) of the California Labor Code is virtually identical to section 3(d) of the Bill. It provides that California courts may

refuse to award liquidated damages or award any amount up to full liquidated damages

> if the employer demonstrates that the act or omission giving rise to the action was in good faith and that the employer had reasonable grounds for believing that the act or omission was not in violation of any provision of the Labor Code.

In short, Alaska presently treats its employers more harshly than its West Coast sister states by making liquidated damages mandatory in every case, regardless of the circumstances. The Bill is a corrective measure which will bring Alaska into the mainstream on the issue of liquidated damages without undermining the strong incentives employers have for compliance with the Alaska Wage and Hour Act.

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Alaska State Legislature

Senator Tim Kelly, Chair
Senator John Torgerson, Vice Chair
Senator Mike Miller
Senator Jim Duncan
Senator Judy Salo

SENATE LABOR AND COMMERCE COMMITTEE

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Sponsor Statement
SB 45:

Damages and Attorney Fees for Minimum Wage and Overtime Compensation Claims

SB 45 is the reintroduction of SB 340 of the Eighteenth Legislature. SB 45 seeks to remedy four main problems with the current system of awarding punitive damages in claims for payment of overtime compensation or statutory minimum wages under the Alaska Wage and Hour Act ("AWHA"). Any employer who violates any provision of the AWHA is liable to an employee affected for the amount of unpaid minimum wages or unpaid overtime compensation, as the case may be, and for an additional equal amount as liquidated damages. (AS 23.10.110(a)).

Under current law, the following four problems exist: (1) The Alaska Supreme Court in *McKeown v. Kinney Shoe Corporation*, 820 P.2d 1068, (Alaska 1991), ruled that liquidated damages are mandatory, (2) In the same decision, the court ruled that private settlements which do not include liquidated damages are invalid, (3) Only the plaintiff is allowed to recover attorney fees and costs in an AWHA lawsuit, and (4) The Commissioner of Labor does not have the authority to settle wage or overtime compensation claims.

Firstly, current Alaska law makes an employer automatically liable for liquidated damages if a violation of AWHA can be proven. Though this is intended to deter employers from violating the law, it creates an imbalance in certain situations. Presently, an employer who makes an honest mistake is punished as severely as an employer who willingly and knowingly violates the law.

SB 45 seeks to remedy this flaw in the AWHA. SB 45, if passed, would allow for a complete or partial waiver of the liquidated damages requirement if it can be shown by the employer that action was taken in "good faith and on reasonable grounds." This language is almost identical to that found in the Federal Labor Standards Act, upon which the AWHA is based. Further, SB 45 would allow the Court to award liquidated damages in an amount less than required should fairness so require. This waiver would not apply to an action brought by the Commissioner of Labor.

Secondly, current law does not allow for private settlements which do not include a liquidated damages award. SB 45 encourages private, out-of-court

settlements of AWHA claims. Under SB 45, an employee would be permitted to waive his right to liquidated damages in a written settlement agreement with the employer. However, a written settlement agreement which waives liquidated damages must meet certain criteria which helps to ensure the protection of the employee. A written waiver must include the following: a knowing and voluntary waiver embodied in a written document, it must advise the employee to consult with an attorney or the Department of Labor before entering the agreement, it must allow the employee seven days to consider acceptance of the settlement, and it must allow a five day grace period in which the employee can revoke the agreement.

Thirdly, present law allows only the plaintiff to recover attorney fees and costs in an AWHA lawsuit. This rule is one-sided; the employer always pays. SB 45

Thirdly, present law allows only the plaintiff to recover attorney fees and costs in an AWHA lawsuit. This rule is one-sided. The employer always pays. SB 45 would tackle the attorney fees problem by awarding attorney fees to the prevailing party. The awarding of attorney fees and costs to the prevailing party would help deter frivolous and meritless lawsuits--a desperately needed change in the status of current law.

Lastly, as it now stands, the Commissioner of Labor does not have the authority to settle wage or overtime compensation claims. The *Kinney Shoe* decision declared such private settlements void. SB 45 reverses current law and provides for the Commissioner of Labor to supervise the payment of unpaid minimum wage or overtime compensation claims including the settlement of such claims. This provision of SB 45 would help to encourage the settlement of these disputes outside the traditional litigation process. Further, allowing the Commissioner of Labor to oversee the settlement agreements will level the playing field for negotiations between employee and employer.

In conclusion, SB 45, if passed, will remedy the four major flaws inherent in the AWHA. Further, passage of SB 45 would change state law regarding liquidated damage awards in a way which would closely parallel existing federal law. All parties involved benefit from passage of SB 45. Employees remain protected from potential abuses by employers. Employers are afforded more flexibility if a mistake has been made, and the court system will become less congested by cases which are meritless or could have been settled privately.

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Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM February 7, 1995

SUBJECT: Sectional Summary of SB 45 (State minimum wage and overtime compensation claims)

TO: Senator Tim Kelly, Chair
Senate Labor and Commerce Committee

FROM: Teresa B Cramer TBC
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 applies the exceptions enacted in section 3 of the bill to the general rule established in the statute that employers who violate the overtime wage or minimum wage requirements are liable for liquidated damages in the amount of the unpaid minimum wage or overtime compensation.

Sec. 2 permits the court to award attorney fees to the prevailing party, as determined by court rule, rather than only providing for attorney fees for a prevailing plaintiff.

Sec. 3 adds new provisions to permit the court to decline to award liquidated damages or to award an amount less than the amount required under AS 23.10.110(a), which is amended by sec. 1 of this bill. The court may do so if the employer shows to the satisfaction of the court that the employer acted in good faith and had reasonable grounds for believing that it was not violating the minimum wage or overtime requirements. This waiver does not apply to an action brought by the Commissioner of Labor.

Under subsection (e), the commissioner is permitted to supervise the payment of unpaid minimum wage or overtime claims including settlements. Under bill sec. 4(a), subsection (e) applies to agreements entered into on or after the effective date of the Act.

Subsection (f) permits an employee to waive the right to liquidated damages in a written settlement agreement with the employer. The settlement must meet standards listed in the subsection. Under bill sec. 4(b), subsection (f) applies to written agreements entered into on or after the effective date of the Act.

Sec. 4 addresses how to apply the provisions of the Act. As noted in the discussion above, sec. 4(a) and (b) apply the settlement provisions to agreements entered into on or after the date the Act takes effect. Under sec. 4(c), to the extent constitutionally permitted, the rest of the Act applies to actions begun on or after the date the Act takes effect.

TC:lmb
95-114.lmb

CARR GOTTSTEIN FOODS CO.

John J. Cairns, Chairman

6411 A Street, Anchorage, Alaska 99518
Ph: (907) 564-2265 FAX: (907) 564-2580

February 9, 1995

Senator Tim Kelly
State Capitol
Room 101
Juneau, Alaska 99801-1182

VIA FAX 465-3756

Re: Support of SB 45

Dear Senator Kelly:

I wanted to let you know that we at Carrs wholeheartedly support the passage of SB 45. As you know, this legislation brings much needed reform to Alaska's wage and hour statutes by returning to the Department of Labor the ability to supervise mutually agreeable settlements in wage disputes and by replacing mandatory punitive damages with a flexible approach that can be used by the courts to achieve fairness.

As you know, wage and hour disputes are unique in the legal world in that the parties to the dispute are prohibited from settling their differences short of final litigation. This results in "all or nothing" litigation when reasoned discussion and settlement is called for. SB 45 would allow the Department of Labor or courts to supervise settlements of the parties. Where the employee's interests are protected by the Department, the court and/or a private attorney, there is no reason to bar the parties from reaching a private agreement. Under the current system, the employer has absolutely no reason not to litigate every case to the bitter end, which is surely not a situation that promotes the welfare of employees.

The current law requires any back wage award be doubled. We have had situations where a good, reliable full time employee asks a supervisor in an entirely different division for temporary extra work. Although we need the help, we have to refuse them, due to the overtime exposure. For example, our security department hired a woman from our headquarters accounting staff to work phones in the evening. The woman was from an immigrant family, and she wanted the extra money to help a younger brother go to college. The security supervisor assumed that being a different division with different facilities, supervision, duties and hours, no overtime was payable. He was wrong. When the temporary phone work was over, the employee filed an overtime claim and received double her overtime wages. Our well-meaning security supervisor intended to do the employee a favor and wound up costing our company several thousand dollars in mandatory penalties. Results like this are silly. The courts should have the flexibility to waive penalties when the employer acts in good faith.

Finally, SB 45 would apply to wage and hour disputes the general rule of allowing a court to award attorneys' fees to the prevailing party. The only argument I have heard against

this is that potential claimants would be scared off by the exposure. In the first place, it is unclear to me why a claimant who has been found by a court to have brought an unfounded claim should face any less risk than a defendant who must pay to defend. More importantly, I have been litigating cases for over 10 years in Alaska, and I have never had a potential claimant even imply that Rule 82 exposure deterred them from bringing a claim. Rule 82 does not scare anyone, including vexatious plaintiffs.

I urge you to support SB 45 and to move it out of committee as soon as possible.

Very truly yours,

John J. Cairns
Chairman of the Board

JJC/mjc

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Mail Stop 3101

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Juneau, Alaska 99801-2105

MEMORANDUM February 14, 1995

SUBJECT: Sectional Summary of HB 115 (State minimum wage and overtime compensation claims)

TO: Representative Pete Kott
Attention: George Dozier

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 applies the exceptions enacted in section 3 of the bill to the general rule established in the statute that employers who violate the overtime wage or minimum wage requirements are liable for liquidated damages in the amount of the unpaid minimum wage or overtime compensation.

Sec. 2 permits the court to award attorney fees to the prevailing party, as determined by court rule, rather than only providing for attorney fees for a prevailing plaintiff.

Sec. 3 adds new provisions to permit the court to decline to award liquidated damages or to award an amount less than the amount required under AS 23.10.110(a), which is amended by sec. 1 of this bill. The court may do so if the employer shows to the satisfaction of the court that the employer acted in good faith and had reasonable grounds for believing that it was not violating the minimum wage or overtime requirements. This waiver does not apply to an action brought by the Commissioner of Labor.

Under subsection (e), the commissioner is permitted to supervise the payment of unpaid minimum wage or overtime claims including settlements. Under bill sec. 4(a), subsection (e) applies to agreements entered into on or after the effective date of the Act.

Subsection (f) permits an employee to waive the right to liquidated damages in a written settlement agreement with the employer. The settlement must meet standards listed in the subsection. Under bill sec. 4(b), subsection (f) applies to written agreements entered into on or after the effective date of the Act.

Sec. 4 addresses how to apply the provisions of the Act. As noted in the discussion above, sec. 4(a) and (b) apply the settlement provisions to agreements entered into on or after the date the Act takes effect. Under sec. 4(c), to the extent constitutionally permitted, the rest of the Act applies to actions begun on or after the date the Act takes effect.

TC:glc
95-141.glc

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ALL OTHERS ADMITTED IN ALASKA

MEMORANDUM

To: Senator Tim Kelly

From: Robert P. Blasco
Robertson, Monagle & Eastaugh
586-3340

Date: February 8, 1995

Re: SB 45

****

On January 30, 1995, the House Labor and Commerce Committee heard testimony on companion Bill HB 115. In opposition to the proposed amendments in SB 45 and HB 115, Mr. Ken Legacki offered certain legal opinions. The following responses to those comments are presented here for your consideration. Mr. Legacki's comments are numbered with the response immediately following. I welcome any questions and will be available to assist with providing any additional information.

1. HB 45 does not address Webster v. Bechtel, 621 P.2d 890 (Alaska 1980).

RESPONSE: The Alaska Supreme Court in Webster v. Bechtel held that the FLSA did not "preempt" the Alaska Wage and Hour Act. Therefore, SB 45 is in accordance with the Webster decision -- the legislature may both adopt a Wage and Hour law and amend that law from time to time.

2. Attorneys fees to employers are specifically prohibited by the FLSA.

RESPONSE: This is incorrect. The FLSA mandates an award of attorneys fees to plaintiff/employees "in addition to any judgment awarded to the plaintiff or plaintiffs." The FLSA is silent as to attorneys fees when no judgment is awarded to the plaintiffs. Whether silence in the federal law precludes attorneys fees to employers is a matter of interpretation -- it is not an express prohibition in the statute. At least one court has upheld an award of attorneys fees to the employer where the employee and employer stipulated prior to trial that the losing party would pay the fees. Goodman v. Aero Enterprises, 469 S.2d 835 (Fla. App. 1985) Therefore, SB 45 does not conflict with any express prohibition in the FLSA.

3. Private Settlements are "specifically" prohibited by the FLSA.

RESPONSE: The FLSA "authorizes" the Department of Labor to "supervise" full payment of unpaid wages and overtime. Courts have interpreted that to mean that absent Department approval or court approval, an employer may not enter a settlement with an employee. The reason for this interpretation is generally stated to protect employees from overreaching employers. SB 45 incorporates extensive provisions which eliminate any potential for overreaching. Therefore, it seems the Alaska Supreme Court, upon review of the amendments in SB 45, would look to the policy against overreaching and if SB 45 provides that protection, the amendments should be proper.

In summary, the amendments should be viewed as providing a fairness and balance not presently existing in the Alaska Wage and Hour law. So long as the general purposes behind the FLSA are not contravened, the legislature is not prohibited from modifying the Alaska Wage and Hour Act.

This sounds like lawyer jabberish to avoid unwanted the federal law

the

January 30, 1995

Representative Pete Kott, Chairman
House Labor and Commerce Committee
Capitol Building
Juneau, Alaska

Subject: Statement of Support for House Bill 115

Dear Chairman Kott:

Tesoro Alaska Petroleum Company supports passage of HB 115. This bill will rectify an anomaly that currently exists between state law and the Fair Labor Standards Act. Current Alaska Wage and Hour law provides for mandatory liquidated damages when employers are found to have erred under state law, irrespective of the circumstances.

The proposed bill will not eliminate liquidated damages from future awards made under state Wage and Hour law. If passed, the new law would restore flexibility for the trier of facts when an employer has proven that its error was made in "good faith." A similar approach is used in the Federal Wage and Hour laws, as well as the comparable laws of California, Oregon, and Washington.

If you have any questions or, if we can be of assistance, please contact me. We hope HB 115 will be moved out of Committee soon and believe it's final passage will benefit the State.

Thank you,

Bernie Smith/drp

Bernie Smith
Manager, Alaska Government Affairs

cc: Representative Norm Rokeberg
Representative Jerry Sanders
Representative Beverly Masek
Representative Kim Elton
Representative Gene Kubina

DAVIS WRIGHT TREMAINE
LAW OFFICES
SUITE 1450 · 550 WEST 7TH AVENUE · ANCHORAGE, ALASKA 99501
(907) 257-5300

MEMORANDUM

TO: Alaskan Employers

FROM: Parry Grover

DATE: May 9, 1994

RE: CSHB 459

An assertion has been made that Section 3(f) of CSHB 459 will be held invalid because it allows private settlements without court or agency supervision. It is argued Section 3(f) conflicts with the federal Fair Labor Standards Act.

This argument is incorrect. CSHB 459 is limited to claims brought under the Alaska Wage & Hour Act. It has no effect on claims brought under the federal act. Federal law does not prohibit the states from adopting their own wage and hour laws, as Alaska has done. Federal law does not even require that states adopt the same exemptions or legal standards. The states -- Alaska included -- are free to specify when and how claims brought under their wage and hour laws may be settled.

Section 3(f) of CSHB 459 allows for private settlements of Alaska wage and hour act claims. It has no bearing whatsoever on claims brought under the federal act. It merely restores the practice of private settlements which were common prior to the Alaska Supreme Court's Kinney Shoe decision in 1991, albeit with new, stringent safeguards to insure the employee understands what he or she is settling. It is the companion to Section 3(e) which restores to the Commissioner of Labor the same settlement authority.

9-LS0503\A.1
Cramer
2/14/95

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE FINKELSTEIN

TO: HB 115

Page 1, line 2:

Delete "**and attorney fees**"

Page 1, line 10, through page 2, line 6:

Delete all material.

Renumber the following bill sections accordingly.

Page 3, line 10:

Delete "sec. 3"

Insert "sec. 2"

Page 3, line 12:

Delete "sec. 3"

Insert "sec. 2"

AMENDMENT

OFFERED IN HOUSE JUDICIARY BY REP. FINKELSTEIN
TO: HB 115

Page 2, line 9, after "shows":
Insert", by clear and convincing evidence,"

AMENDMENT

OFFERED IN HOUSE JUDICIARY BY REP. FINKELSTEIN
TO: HB 115

Page 2, line 29
Delete "A waiver may not be considered to be"
Insert "Whether a waiver is knowing and voluntary depends on all of the circumstances. However, a waiver is not"

AMENDMENT

OFFERED IN HOUSE JUDICIARY BY REP. FINKELSTEIN
TO: HB 115

Page 2, line 15, after ".":
Insert "Ignorance of the law does not constitute good faith under this section."

9-LS0503\G
Cramer
3/15/95

CS FOR HOUSE BILL NO. 115(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to settlement and payment of claims for overtime compensation claims and to liquidated damages and attorney fees for overtime compensation claims."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 23.10.110(a) is amended to read:

(a) An employer who violates a provision of AS 23.10.060 or 23.10.065 is liable to an employee affected in the amount of unpaid minimum wages, or unpaid overtime compensation, as the case may be, and**, except as provided in (d) of this section,** in an additional equal amount as liquidated damages.

*** Sec. 2.** AS 23.10.110(c) is amended to read:

(c) The court in an action brought under this section shall, in addition to a judgment awarded to the plaintiff, allow costs of the action and**, except as provided in (e) - (h) of this section,** reasonable attorney fees to be paid by the defendant. The attorney fees in the case of actions brought under this section by the commissioner

shall be remitted by the commissioner to the Department of Revenue. The commissioner may not be required to pay the filing fee or other costs. The commissioner in case of suit has power to join various claimants against the same employer in one cause of action.

*** Sec. 3.** AS 23.10.110 is amended by adding new subsections to read:

(d) In an action under (a) of this section to recover unpaid overtime compensation or liquidated damages for unpaid overtime, if the defendant shows by clear and convincing evidence that the act or omission giving rise to the action was made in good faith and that the employer had reasonable grounds for believing that the act or omission was not in violation of AS 23.10.060, the court may decline to award liquidated damages or may award an amount of liquidated damages less than the amount set out in (a) of this section.

(e) If the plaintiff prevails in an action for unpaid overtime compensation under (a) of this section, the court shall award reasonable attorney fees to the plaintiff unless the defendant shows by clear and convincing evidence that the act or omission giving rise to the action was made in good faith and that the defendant had reasonable grounds for believing that the act or omission was not in violation of AS 23.10.060, in which case

(1) the court may award attorney fees to the plaintiff in accordance with court rules; or

(2) if the defendant would be entitled to attorney fees if the action were subject to the standards under court rule offers of judgment, the court may not award attorney fees to either the plaintiff or the defendant.

(f) If the defendant prevails in an action for unpaid overtime compensation under (a) of this section and had previously made an offer of judgment to the plaintiff, the court shall award attorney fees to the defendant unless the plaintiff proves to the satisfaction of the court that the action was both brought and prosecuted in good faith and that the plaintiff had reasonable grounds for believing that the act or omission was in violation of AS 23.10.060. If the court awards attorney fees to the defendant, the award shall be made in accordance with court rule.

(g) Failure to inquire into Alaska law is not consistent with a claim of good

faith under this subsection.

(h) Subsections (d) - (g) of this section do not apply to an action brought under this section by the commissioner.

(i) The commissioner may supervise the payment of the unpaid overtime compensation owing to an employee under AS 23.10.060. Payment in full in accordance with an agreement by an employee to settle a claim for unpaid overtime compensation or liquidated damages for unpaid overtime compensation constitutes a waiver of any right the employee may have under (a) of this section to unpaid overtime compensation or liquidated damages for unpaid overtime compensation.

(j) In a settlement for unpaid overtime compensation that is not supervised by the department or the court, an employee is entitled to liquidated damages under (a) of this section unless the employee and the employer enter into a written settlement agreement in which the employee expressly waives the right to receive liquidated damages. A private written settlement agreement under this subsection is not valid unless submitted to the department for review. The department shall review the agreement and approve it if it is fair to the parties. The department shall approve or deny an agreement within 30 days of receipt.

*** Sec. 4.** APPLICATION OF ACT. (a) AS 23.10.110(i), added by sec. 3 of this Act, applies to agreements entered into on or after the effective date of this Act.

(b) AS 23.10.110(j), added by sec. 3 of this Act, applies to written agreements entered into on or after the effective date of this Act.

(c) Except as provided in (a) and (b) of this section, this Act applies to wages earned for hours worked on or after the effective date of this Act.

9-LS0503\F
Cramer
3/15/95

CS FOR HOUSE BILL NO. 115(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to settlement and payment of claims for overtime compensation claims and to liquidated damages and attorney fees for overtime compensation claims."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.10.110(a) is amended to read:

(a) An employer who violates a provision of AS 23.10.060 or 23.10.065 is liable to an employee affected in the amount of unpaid minimum wages, or unpaid overtime compensation, as the case may be, and, except as provided in (d) of this section, in an additional equal amount as liquidated damages.

* Sec. 2. AS 23.10.110(c) is amended to read:

(c) The court in an action brought under this section shall, in addition to a judgment awarded to the plaintiff, allow costs of the action and, except as provided in (e) - (h) of this section, reasonable attorney fees to be paid by the defendant. The attorney fees in the case of actions brought under this section by the commissioner

shall be remitted by the commissioner to the Department of Revenue. The commissioner may not be required to pay the filing fee or other costs. The commissioner in case of suit has power to join various claimants against the same employer in one cause of action.

* Sec. 3. AS 23.10.110 is amended by adding new subsections to read:

(d) In an action under (a) of this section to recover unpaid overtime compensation or liquidated damages for unpaid overtime, if the defendant shows by clear and convincing evidence that the act or omission giving rise to the action was made in good faith and that the employer had reasonable grounds for believing that the act or omission was not in violation of AS 23.10.060, the court may decline to award liquidated damages or may award an amount of liquidated damages less than the amount set out in (a) of this section.

(e) If the plaintiff prevails in an action for unpaid overtime compensation under (a) of this section, the court shall award reasonable attorney fees to the plaintiff unless the defendant

(1) shows by clear and convincing evidence that the act or omission giving rise to the action was made in good faith and that the defendant had reasonable grounds for believing that the act or omission was not in violation of AS 23.10.060, in which case the court may award attorney fees to the plaintiff in accordance with court rules; or

(2) would be entitled to attorney fees if the action were subject to the standards under court rule offers of judgment, in which case neither the plaintiff nor the defendant is entitled to attorney fees.

(f) If the defendant prevails in an action for unpaid overtime compensation under (a) of this section and had previously made an offer of judgment to the plaintiff, the court shall award attorney fees to the defendant unless the plaintiff proves to the satisfaction of the court that the action was both brought and prosecuted in good faith and that the plaintiff had reasonable grounds for believing that the act or omission was in violation of AS 23.10.060. If the court awards attorney fees to the defendant, the award shall be made in accordance with court rule.

(g) A person may not claim that the person acted in good faith under (d) - (f)

of this section unless the person demonstrates having made a reasonable effort to determine the applicable law of this state.

(h) Subsections (d) - (g) of this section do not apply to an action brought under this section by the commissioner.

(i) The commissioner may supervise the payment of the unpaid overtime compensation owing to an employee under AS 23.10.060. Payment in full in accordance with an agreement by an employee to settle a claim for unpaid overtime compensation or liquidated damages for unpaid overtime compensation constitutes a waiver of any right the employee may have under (a) of this section to unpaid overtime compensation or liquidated damages for unpaid overtime compensation.

(j) In a settlement for unpaid overtime compensation that is not supervised by the department or the court, an employee is entitled to liquidated damages under (a) of this section unless the employee and the employer enter into a written settlement agreement in which the employee expressly waives the right to receive liquidated damages. A private written settlement agreement under this subsection is not valid unless submitted to the department for review. The department shall review the agreement and approve it if it is fair to the parties. If the department does not act within 30 days after receiving the agreement, the agreement is considered approved.

*** Sec. 4.** APPLICATION OF ACT. (a) AS 23.10.110(i), added by sec. 3 of this Act, applies to agreements entered into on or after the effective date of this Act.

(b) AS 23.10.110(j), added by sec. 3 of this Act, applies to written agreements entered into on or after the effective date of this Act.

(c) Except as provided in (a) and (b) of this section, this Act applies to wages earned for hours worked on or after the effective date of this Act.

CHANGES TO HB 115 and SB 45

CHANGE TITLE TO READ:

"An Act Relating to Settlement and Payment of Claims for Overtime Compensation and to Liquidated Damages and Attorneys Fees for Overtime Compensation Claims."

* Sec. 2. AS 23.10.110(c) is amended to read:

(c) The court in an action brought under this section shall, in addition to a judgment awarded to the plaintiff, allow costs of the action and, except as provided in (d) of this section, reasonable attorney fees to be paid by the defendant. The attorney fees in the case of actions brought under this section by the commissioner shall be remitted by the commissioner to the Department of Revenue. The commissioner may not be required to pay the filing fee or other costs. The commissioner in case of suit has power to join various claimants against the same employer in one cause of action.

* Sec. 3. AS 23.10.110 is amended by adding new subsections to read:

(d) In an action under (a) of this section to recover unpaid overtime compensation, or liquidated damages for unpaid overtime compensation:

(1) if the defendant shows by clear and convincing evidence that the act or omission giving rise to the action was made in good faith and that the defendant had reasonable grounds for believing that the act or omission was not in violation of AS 23.10.060, the court may decline to award liquidated damages, or may award an amount of liquidated damages less than the amount set

out in (a) of this section;

(2) except as provided in (3) below, if the plaintiff prevails in an action under (a) of this section, the court may award attorneys fees to the plaintiff according to court rules if the defendant shows by clear and convincing evidence that the act or omission giving rise to the action was made in good faith and that the defendant had reasonable grounds for believing that the act or omission was not in violation of AS 23.10.060;

(3) if the plaintiff prevails in an action under (a) of this section but the defendant in accordance with court rules pertaining to offers of judgment would be entitled to attorneys fees, neither the plaintiff nor the defendant shall be entitled to attorneys fees if the defendant shows by clear and convincing evidence that the act or omission giving rise to the action was made in good faith and that the defendant had reasonable grounds for believing that the act or omission was not in violation of AS 23.10.060; and

(4) if the defendant prevails in an action under (a) of this section and previously made an offer of judgment in accordance with court rules, the court shall award attorneys fees to the defendant in accordance with court rules unless the plaintiff proves to the satisfaction of the court that the action was both brought and prosecuted in good faith and that the plaintiff had reasonable grounds for believing that the act or omission was in violation of AS 23.10.060.

(5) Failure to inquire into Alaska law is not consistent with a claim of good faith under this subsection.

(6) This subsection does not apply to an action brought under this section by the commissioner.

(e) [Unchanged from present form of bill]

(f) In a settlement that is not supervised by the department or court, an employee is entitled to liquidated damages under (a) of this section unless the employer and employee enter into a written settlement agreement in which the employee expressly waives the right to receive liquidated damages. Private settlement agreements under this section are valid only if submitted to the Department of Labor for approval. The department will approve or deny an agreement within 30 days of receipt.

* Sec. 4. APPLICATION OF ACT. (a) AS 23.10.110(e), added by sec. 3 of this Act, applies to agreements entered into on or after the effective date of this Act.

(b) AS 23.10.110(f), added by sec. 3 of this Act, applies to written agreements entered into on or after the effective date of this Act.

(c) Except as provided in (a) and (b) of this section, this Act applies to wages earned for hours worked on or after the effective date of this Section.

9-LS0503\C.1
Cramer
3/15/95

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE FINKELSTEIN

TO: CSHB 115(JUD) "C" version dated 3/14/95

Page 1, line 2:

Delete "**and attorney fees**"

Page 1, line 3:

Delete "**; and amending Alaska Rules of Civil Procedure 68 and 82**"

Page 1, line 10, through page 2, line 4:

Delete all material.

Renumber the following bill sections accordingly.

Page 2, lines 13 - 30:

Delete all material.

Reletter the following subsections accordingly.

Page 2, line 31:

Delete "(d) - (f)"

Insert "(d)"

Page 3, line 3:

Delete "(d) - (g)"

Insert "(d) and (e)"

Page 3, line 19:

Delete "AS 23.10.110(i), added by sec. 3"

Insert "AS 23.10.110(g), added by sec. 2"

Page 3, line 21:

Delete "AS 23.10.110(j), added by sec. 3"

Insert "AS 23.10.110(h), added by sec. 2"

Page 3, lines 25 - 31:

Delete all material.

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ALASKA
★STATE★
CHAMBER
OF COMMERCE

TESTIMONY ON HB 115

Damages and Attorney Fees for Unpaid Wages

Thank you for the opportunity to provide testimony on HB 115, regarding Damages and Attorney Fees for Unpaid Wages. The Alaska State Chamber of Commerce is in support of HB 115, as introduced.

My name is Pamela Neal, President of the Alaska State Chamber of Commerce. The State Chamber serves nearly seven hundred member businesses statewide who provide jobs to over 80,000 employees. In addition, we represent the interests of the local Chambers of Commerce throughout Alaska on business and economic issues coming before the State Legislature.

As Alaska law now stands, an employer who is in violation of the state's minimum wage and overtime compensation laws is automatically liable for liquidated damages, regardless of the circumstances.

In the federal Fair Labor Standards Act (FLSA), the court may waive liquidated damages in whole or in part if it can be shown that the employer acted reasonably and in good faith. An Alaska Supreme Court interpretation of Alaska's Wage and Hour Act prevents the courts and the Commissioner of the Alaska Department of Labor from applying this standard of fairness.

Under the provisions proposed in HB 115, employees will still be fully protected under the law, but the courts and the Commissioner will be allowed to consider the circumstances of a case in determining the awarding of liquidated damages.

The Alaska State Chamber of Commerce believes that HB 115 will bring fairness to this section of the law, and we urge passage of this legislation.

Kenneth W. Legacki
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Anchorage, Alaska 99501
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TESTIMONY OF KENNETH W. LEGACKI
IN OPPOSITION TO HOUSE BILL 115 AND SENATE BILL 45

I. SUMMARY

House Bill 115 and Senate Bill 45 are void as a matter of law and will not pass judicial scrutiny when challenged. The problem with these bills is that they conflict with the federal Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq. Courts across the nation have held that states are free to make their wage and hour laws more favorable to the employee than the FLSA. However, state laws which are less favorable to the employee than the FLSA are unenforceable. House Bill 115 and Senate Bill 45 are deficient in these respects: 1) they allow attorney fees to prevailing employers and limit the amount of attorney fees that can be awarded to prevailing employees, and 2) they provide for private settlements. These deficiencies are void under the FLSA.

II. BACKGROUND

A. The FLSA is a Protective Statute

The Fair Labor Standards Act has several purposes: (1) to protect the health and well-being of the employees so they are not abused in the workplace, (2) to create employment by making employers pay a premium for requiring workers to work more than

eight hours in a day, 40 hours in a workweek, and (3) to ensure fair and free competition in the marketplace by making sure that the playing field is level for all employers and that they all obey the law.

The nationwide enforcement of the FLSA is imperative. Otherwise, employers who are permitted to violate the FLSA standards will have an unfair competitive advantage over employers who comply. In Hodgson v. Wheaton Glass Co., 446 F.2d 527 (3rd Cir. 1971), the court held: "One purpose of the Fair Labor Standards Act is the protection of competing enterprises from the unfair competition which would result from an employer using as working capital employee compensation unlawfully withheld." Id. at 535.

The FLSA is a "floor" statute. It sets nationwide minimum standards for wage and hour laws. The Ninth Circuit in Pacific Merchant Shipping Ass'n v. Aubry, 918 F.2d 1409 (9th Cir. 1990), held:

> Further, the purpose behind the FLSA is to establish a national floor under which wage protections cannot drop, not to establish absolute uniformity in minimum wage and overtime standards nationwide at levels established in the FLSA.

Id. at 1425. Thus, states are free to make their wage and hour statutes more favorable to the employees than the FLSA, but not less favorable. To the extent that the proponents of these bills seek to effect less restrictive wage and hour laws in Alaska than the standards set by the FLSA, they are asking this Legislature to violate United States congressional mandates.

B. Under Alaska Law, the AWHA Must Not Conflict with the FLSA

The Alaska Supreme Court addressed the relationship between the Alaska Wage and Hour Act and the FLSA in Webster v. Bechtel, Inc., 621 P.2d 890 (Alaska 1980). The court held that provisions within the Alaska Wage and Hour Act in conflict with the mandates of the Fair Labor Standards Act are void as a matter of law. The Webster court held:

> [A] state statute is void to the extent that it actually conflicts with the valid federal statute. A conflict will be found . . . where the state "law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

Id. at 897. The court concluded: "The Federal Fair Labor Standards Act provides a minimum base and that states can give greater benefits to the workers of their state." Id. at 899 (emphasis added).[1]

III. THE PROVISION IN HB 115 AND SB 45 FOR ATTORNEY FEES TO PREVAILING EMPLOYERS AND PROHIBITING AN AWARD OF REASONABLE ATTORNEY FEES TO EMPLOYEES CONFLICTS WITH THE FLSA AND IS VOID

Under the FLSA, an award of attorney fees to a prevailing employee is mandatory and there is no corresponding provision for an award to prevailing employers. 29 U.S.C. § 216(b). In Fegley v. Higgins, 19 F.3d 1126 (6th Cir. 1994), the court held that the

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[1] The court reviewed two other state cases in reaching this holding: Glick v. State, 162 Mont. 82, 509 P.2d 1 (Mont. 1973), cert. denied, 414 U.S. 856, 94 S. Ct. 158 (1973), appeal after remand, 165 Mont. 307, 528 P.2d 686 (1974); and State v. Comfort Cab, Inc., 118 N.J. Super. 162, 286 A.2d 742 (1972).

purpose of awarding attorney fees to prevailing employees is "to insure effective access to the judicial process . . . ." Id. at 1134. An "award of attorney fees here 'encourage[s] the vindication of congressionally identified policies and rights.'" Id. at 1135 (citing United Slate, Tile & Composition Roofers, Damp & Waterproof Workers Ass'n, Local 307 v. G & M Roofing & Sheet Metal Co., 732 F.2d 495, 501 (6th Cir. 1984)). The possibility of having to pay attorney fees furthers the objectives of the FLSA because it "encourages employer adherence to the mandates of the FLSA in the future." Id.[2]

Providing that employers could be awarded attorney fees would not further the purpose of the FLSA. Indeed, it would conflict with the FLSA, because it would "chill" an employee's desire to vindicate his or her statutory rights. Thus, valid suits against transgressing employers would not be pursued because of the fear of potential liability for attorney fees.

IV. PRIVATE SETTLEMENT AGREEMENTS ARE PROHIBITED BY THE FLSA

The United States Supreme Court in 1945 ruled that private settlements are unlawful under the FLSA. In Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, 65 S. Ct. 895 (1945), the Court voided a private employer/employee settlement in which liquidated damages had been waived. Id. at 714. Allowing such

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[2] Mandatory attorney fees to ensure access to the judicial process and vindication of congressionally identified policy and rights was recently reaffirmed on January 23, 1995, in McKennon v. Nashville Banner Publishing Co., 1995 WL 20463 (U.S. Tenn.).

private agreements would conflict with the protective purposes of the FLSA:

> To permit an employer to secure a release from the worker who needs his wages promptly will tend to nullify the deterrent effect which Congress plainly intended that [29 U.S.C. § 216(b)] should have.

Id. at 709-710.

This issue was more recently revisited in Lynn's Food Stores, Inc. v. United States, 679 F.2d 1350 (11th Cir. 1982). In Lynn's Food Stores, the Eleventh Circuit held there are only two ways to settle wage and hour claims under the FLSA: 1) supervised settlements by the Department of Labor, and 2) court supervised settlements. Id. at 1352-53. This is because employers have more power than employees. Without some kind of supervised settlement provision, there will be a higher possibility of extortionate or coerced settlement agreements. Id.

The Lynn's Food Stores case provided ample evidence of why settlements must be supervised. The employer entered into private settlements with its employees paying one-tenth what was owed. Some employees spoke no English and they were told by the employer that they were entitled to nothing. Id. at 1354.

The prohibition on private settlement agreements under the FLSA was discussed most recently by the court in Walton v. United Consumers Club, Inc., 786 F.2d 303 (7th Cir. 1986). There the court reasoned that private settlements are prohibited because the FLSA prohibits negotiating wages below the federal minimum. The court therefore concluded:

> Once the [FLSA] makes it impossible to agree on the

> amount of pay, it is necessary to ban private settlements of disputes about pay. Otherwise the parties' ability to settle disputes would allow them to establish sub-minimum wages. Courts therefore have refused to enforce wholly private settlements.

Id. at 306.

The provision in Alaska law for private settlement agreements would frustrate the purposes of the FLSA. It would give employers the power to coerce settlement agreements. Employees with few resources would be at a decided disadvantage. Thus, the provision in the proposed legislation for private settlement agreements is at odds with the FLSA and therefore is void. What's more, if Alaska employers rely on a private settlement provision, they may find themselves exposed to further liability under the FLSA when the employee brings suit to void the settlement agreement under the holdings of Lynn's Food Stores and Walton. From the employers' perspective, it would make sense to have the settlement supervised from the beginning.

V. CONCLUSION

The Alaska Wage and Hour Act has been in existence since 1959. It is based on the Fair Labor Standards Act. It gives greater rights to employees than the Fair Labor Standards Act because of the abuses that were well-known at the time of statehood that occurred here in Alaska. In 1959, there was no excuse for any employer not to follow the mandates of the Fair Labor Standards Act, and now, in 1995, there is no excuse for any employer not to follow the mandates of the Wage and Hour Act.

The enactment of this proposed legislation will encourage employers to violate the Wage and Hour Act in order to get a competitive advantage against those employers who are complying with the mandates of the Act and treating their employees with dignity and respect. For those employers who do not follow the Act, they will gain a competitive advantage by using as capital the wages not paid until such time as they are caught. Hodgson v. Wheaton Glass Co., 446 F.2d 527, 535 (3rd Cir. 1971); Martin v. Tango's Restaurant, Inc., 969 F.2d 1319, 1324 (1st Cir. 1992).

There is ample case authority which indicate that these bills proposed by the Legislature are contrary to the mandates of the Fair Labor Standards Act and will be deemed void as a matter of law.

The Fair Labor Standards Act of 1938, as Amended

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1318
Revised August 1991

THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED[1]

(29 U.S.C. 201, et seq.)

[1]This publication contains the original text of the Fair Labor Standards Act of 1938 as set forth in 52 Stat. 1060, revised to reflect the changes effected by the amendments listed in this footnote, which may be found in official text at the cited pages of the Statutes at Large.

This publication contains 52 Stat. 1060, as amended by:

(1)	The Act of August 9, 1939	53 Stat. 1266
(2)	Section 404 of Reorganization Plan No. II of 1939	53 Stat. 1436
(3)	Sections 3(c)-3(f) of the Act of June 26, 1940	54 Stat. 615
(4)	The Act of October 29, 1941	55 Stat. 756
(5)	Reorganization Plan No. 2 of 1946	60 Stat. 1095
(6)	The Portal-to-Portal Act of 1947	61 Stat. 84
(7)	The Act of July 20, 1949	63 Stat. 446
(8)	The Fair Labor Standards Amendments of 1949	63 Stat. 910
(9)	Reorganization Plan No. 6 of 1950	64 Stat. 1263
(10)	The Fair Labor Standards Amendments of 1955	69 Stat. 711
(11)	The American Samoa Labor Standards Amendments of 1956	70 Stat. 1118
(12)	The Act of August 30, 1957	71 Stat. 514
(13)	The Act of August 25, 1958	72 Stat. 844
(14)	Section 22 of the Act of August 28, 1958	72 Stat. 948
(15)	The Act of July 12, 1960	74 Stat. 417
(16)	The Fair Labor Standards Amendments of 1961	75 Stat. 65
(17)	The Equal Pay Act of 1963	77 Stat. 56
(18)	The Fair Labor Standards Amendments of 1966	80 Stat. 830
(19)	Section 8 of the Department of Transportation Act	80 Stat. 931
(20)	The Act of September 11, 1967, amending Title 5 of the U.S.C.	81 Stat. 222
(21)	Section 906 of the Education Amendments of 1972	86 Stat. 235
(22)	The Fair Labor Standards Amendments of 1974	88 Stat. 55
(23)	The Fair Labor Standards Amendments of 1977	91 Stat. 1245
(24)	Section 1225 of the Panama Canal Act of 1979	93 Stat. 468
(25)	The Fair Labor Standards Amendments of 1985	99 Stat. 787
(26)	The Act of October 16, 1986	100 Stat. 1229
(27)	The Fair Labor Standards Amendments of 1989	103 Stat. 938
(28)	Omnibus Budget Reconciliation Act of 1990	104 Stat. 1388-29
(29)	The Act of November 15, 1990	104 Stat. 2871

The original text of the Fair Labor Standards Act of 1938, as revised by the amendments through 1960, is set in the "Century" typeface. Added or amended language as enacted by subsequent amendments is represented by several different typefaces as follows:

Amendments	*Typeface Used*	*Public Law*	*Date Enacted*	*Statute Citation*
Pre-1961	Century Light			
1961	**Century Boldface**	**87-30**	**5/5/61**	**75 Stat. 65**
1966	*Century Light Italics*	*89-601*	*9/23/66*	*80 Stat. 830*
1972	***Century Boldface Italics***	***92-318***	***6/23/72***	***86 Stat. 235 at 375***
1974	***Century Boldface Italics***	***93-259***	***4/8/74***	***88 Stat. 55***
1977	Helvetica Light	95-151	11/1/77	91 Stat. 1245
1985	**Helvetica Boldface**	**99-150**	**11/13/85**	**99 Stat. 787**
1986	*Helvetica Italics*	*99-486*	*10/16/86*	*100 Stat. 1229*
1989	***Helvetica Boldface Italics***	***101-157***	***11/17/89***	***103 Stat. 938***
1990	***Helvetica Boldface Italics***	***101-508***	***11/5/90***	***104 Stat. 1388-29***
1990	***Helvetica Boldface Italics***	***101-583***	***11/15/90***	***104 Stat. 2871***

In cases where annual changes are to be made in provisions, as in the case of the gradual phase-out of exemptions, the changes are shown immediately following the provision to which they apply and are inclosed in brackets.

The footnotes in this revision show where prior changes have been made and refer to the specific amendments relied upon so that a comparison may be made with the official text.

This revised text has been approved by the Office of the Solicitor, U.S. Department of Labor.

FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED

(29 U.S.C. 201, et seq.)

To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Act of 1938."

Finding and Declaration of Policy

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce. ***The Congress further finds that the employment of persons in domestic service in households affects commerce.***

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.[2]

Definitions

SEC. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.[3]

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee ***and includes a public agency,***[4] ***but does not include*** any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e)(1) Except as provided in paragraphs (2), (3), **and** **(4),** ***the term*** "employee" ***means*** any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—

(A) any individual employed by the Government of the United States—

(i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),

(ii) in any executive agency (as defined in section 105 of such title),

(iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,

(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or

(v) in the Library of Congress;

(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

(ii) who—

(I) holds a public elective office of that State, political subdivision, or agency,

(II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level,

(IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, **or**

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[1] As amended by section 2 of the Fair Labor Standards Amendments of 1949.

[2] As amended by section 3(a) of the Fair Labor Standards Amendments of 1949.

[4] Public agencies were specifically excluded from the Act's coverage until the Fair Labor Standards Amendments of 1966, when Congress extended coverage to "employees of a State or a political subdivision thereof, employed (1) in a hospital, institution, or school referred to in the last sentence of subsection (r) of this section, or (2) in the operation of a railway or carrier referred to in such sentence * * *"

(V)[4a] is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.[5]

(4)[5a] (A) The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate government agency, if—

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, ***or other activity, or branch or group thereof,*** in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.[6]

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation,[7] or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor[8] shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor[9] certifying that such person is above the oppressive child labor age. The Secretary of Labor[10] shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than

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[4a] As added by section 5 of the Fair Labor Standards Amendments of 1985, effective April 15, 1986.

[5] Similar language was added to the Act by the Fair Labor Standards Amendments of 1966. Those amendments also excluded from the definition of employee "any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (B) commutes daily from his permanent residence to the farm on which he is so employed, and (C) has been employed in agriculture less than thirteen weeks during the preceding calendar year." These individuals are now included.

[5a] As added by section 4(a) of the Fair Labor Standards Amendments of 1985, effective April 15, 1986.

[6] As amended by section 3(b) of the Fair Labor Standards Amendments of 1949.

[7] As amended by section 3(c) of the Fair Labor Standards Amendments of 1949.

[8] Reorganization Plan No. 2 of 1946 provided that the functions of the Children's Bureau and of the Chief of the Children's Bureau under the Act as originally enacted be transferred to the Secretary of Labor.

[9] Ibid.

[10] Ibid.

manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor[11] determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Secretary of Labor,[12] to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: ***Provided,*** **That the cost of board, lodging or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further,* That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, 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 employee.** *In determining the wage of a tipped employee, the amount paid such employee 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 (1) 45 percent of the applicable minimum wage rate during the year beginning April 1, 1990, and (2) 50 percent of the applicable wage rate after March 31, 1991,***[12a] *except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.*

(n) "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided,* That the sale is recognized as a bona fide retail sale in the industry.[13]

(o) Hours worked.—In determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.[14]

(p) "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

(q) "Secretary" means the Secretary of Labor.

(r)(1) "Enterprise" means the related activities performed (either through unified operation or common control)by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor. Within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement,

(A) **that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or**

(B) **that it will join with other such establishments in the same industry for the purpose of collective purchasing, or**

(C) **that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.**

(2) For purposes of paragraph (1), *the activities performed by any person or persons—*

(A) *in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children,* ***a preschool,***[15] *elementary or secondary school, or an institution of higher education (regardless of whether or not*

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[11] Ibid.

[12] As amended by Reorganization Plan No. 6 of 1950, set out under section 4(a).

[12a] As amended by section 5 of the Fair Labor Standards Amendments of 1989, effective April 1, 1990. Prior to April 1, 1990, the percentage amount was 40.

[13] [14] Section 3(d) of the Fair Labor Standards Amendments of 1949. (The original language of section 3(m) was restored by the Fair Labor Standards Amendments of 1966.)

[15] "A preschool" was added by the Education Amendments of 1972.

such hospital, institution, or school is operated for profit or not for profit), or

(B)** in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a state or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit, **or

***(C) in connection with the activities of a public agency,** shall be deemed to be activities performed for a business purpose.*

(s)(1) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that—

(A)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);[16]

(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(C) is an activity of a public agency.

(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

(t) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.[17]

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State, or any interstate governmental agency.

Administration[18]

SEC. 4. (a) There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this Act referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of $\_\_\_\_\_$[19] a year.

Excerpts From Reorganization Plan No. 6 of 1950, 64 Stat. 1263

"Except as otherwise provided [with respect to hearing examiners], there are hereby transferred to the Secretary of Labor all functions of all other officers of the Department of Labor and all functions of all agencies and employees of such Department * * *. The Secretary of Labor may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of Labor of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan."

(b) The Secretary of Labor[20] may, subject to the civil service laws, appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the

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[16] As amended by section 3(a) of the Fair Labor Standards Amendments of 1989. Prior to April 1, 1990, the dollar volume test for enterprise coverage (except in the case of an enterprise comprised exclusively of one or more retail or service establishments; or one engaged in construction or reconstruction; or one engaged in laundering, cleaning, or repairing clothing or fabrics; or one described in section 3(s)(1)(B) or (C)) was $250,000. For retail enterprises, the dollar volume test was $362,500. There was no dollar volume test for the other enterprises.

[17] As amended by section 3(a) of the Fair Labor Standards Amendments of 1977, effective January 1, 1978. Prior to January 1, 1978, the dollar amount was $20.

[18] Heading revised to reflect changes made by Reorganization Plan No. 6 of 1950.

[19] Pursuant to 5 U.S.C. 5316, the Administrator of the Wage and Hour Division is classified under Level V of the Executive Schedule, for which the annual rate of basic pay is determined under 2 U.S.C. Chapter 11, as adjusted by 5 U.S.C. 5318.

[20] As amended by section 404 of Reorganization Plan No. II of 1939 (53 Stat. 1436) and by Reorganization Plan No. 6 of 1950 (64 Stat.1263).

Classification Act of 1949[21] as amended. The Secretary[22] may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Secretary[23] in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Secretary,[24] no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) The principal office of the Secretary[25] shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d)*(1)* The Secretary[26] shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages ***and overtime coverage*** established by this Act, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent.[27] ***Such report shall also include a summary of the special certificates issued under section 14(b).***

(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 13 of this Act, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.

(3) The Secretary shall conduct a continuing study on means to prevent curtailment of employment opportunities for manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate). The first report of the results of such study shall be transmitted to the Congress not later than one year after the effective date of the Fair Labor Standards Amendments of 1974. Subsequent reports on such study shall be transmitted to the Congress at two-year intervals after such effective date. Each such report shall include suggestions respecting the Secretary's authority under section 14 of this Act.

(e) Whenever the Secretary has reason to believe that in any industry under this Act the competition of foreign producers in United States markets or in markets abroad, or both, has resulted, or is likely to result, in increased unemployment in the United States, he shall undertake an investigation to gain full information with respect to the matter. If he determines such increased unemployment has in fact resulted, or is in fact likely to result, from such competition, he shall make a full and complete report of his findings and determinations to the President and to the Congress: *Provided*, That he may also include in such report information on the increased employment resulting from additional exports in any industry under this Act as he may determine to be pertinent to such report.

(f) The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to individuals employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this Act with respect to such individuals. Notwithstanding any other provision of this Act, or any other law, the Civil Service Commission[28] is authorized to administer the provisions of this Act with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, Postal Rate Commission, or the Tennessee Valley Authority). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages under section 16(b) of this Act.

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[21] As amended by section 1104 of the Act of October 23, 1949 (63 Stat. 972).
[22] See footnote 20.
[23] Ibid.
[24] Ibid.
[25] As amended by Reorganization Plan No. 6 of 1950.
[26] Ibid.
[27] Section 2 of the Fair Labor Standards Amendments of 1955.

[28] The Civil Service Commission was renamed the Office of Personnel Management by Reorganization Plan No. 2 of 1978 (92 Stat. 3783).

Special Industry Committees for *American Samoa*

SEC. 5.[29] (a) The Secretary of Labor[30] shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 6 to employees in ***American Samoa***[31] engaged in commerce or in the production of goods for commerce **or employed in any enterprise engaged in commerce or in the production of goods for commerce,** or the Secretary[32] may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 6 to employees therein engaged in commerce or in the production of goods for commerce **or employed in any enterprise engaged in commerce or in the production of goods for commerce** in particular industries. An industry committee appointed under this subsection shall be composed of residents of ***American Samoa*** where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of ***American Samoa.*** In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees[33] shall be subject to the provisions of section 8.

(b) An industry committee shall be appointed by the Secretary[34] without any regard to any other provisions of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the Secretary[35] shall designate as chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Secretary[36] shall give due regard to the geographical regions in which the industry is carried on.

(c) Two-thirds of the members of an industry committee shall constitute a quorum, and the decision of the committee shall require a vote of not less than a majority of all its members. Members of an industry committee shall receive as compensation for their services a reasonable per diem, which the Secretary[37] shall by rules and regulations prescribe, for each day actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and other expenses. The Secretary[38] shall furnish the committee with adequate legal, stenographic, clerical, and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(d) The Secretary[39] shall submit to an industry committee from time to time such data as he may have available on the matters referred to it, and shall cause to be brought before it in connection with such matters any witnesses whom he deems material. An industry committee may summon other witnesses or call upon the Secretary[40] to furnish additional information to aid it in its deliberations.

Minimum Wages

SEC. 6. (a) Every employer shall pay to each of his employees who **in any workweek** is engaged in commerce or in the production of goods for commerce, *or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:*

(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending March 31, 1990, not less than $3.80 an hour during the year beginning April 1, 1990, and not less than $4.25 an hour after March 31, 1991;[41]

(2) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Secretary of Labor,[42] or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the

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[29] Section 5 as amended by section 3(c) of the Act of June 26, 1940 (54 Stat. 615); by section 5 of the Fair Labor Standards Amendments of 1949; by section 4 of the Fair Labor Standards Amendments of 1961; by section 5 of the Fair Labor Standards Amendments of 1974; by section 4(a) of the Fair Labor Standards Amendments of 1989; and as further amended as noted. Paragraphs (b), (c), and (d), (except for the substitution of "Secretary" for "Administrator") read as in the original Act.

[30] See footnote 25.

[31] As amended by section 4(a)(1) of the Fair Labor Standards Amendments of 1989. Prior to November 17, 1989, special industry committee procedures also applied to Puerto Rico and the Virgin Islands, until such time as the mainland minimum wage level was reached.

[32] See footnote 25.

[33] As amended by section 5(a) of the Fair Labor Standards Amendments of 1955.

[34] See footnote 25.

[35] Ibid.

[36] Ibid.

[37] Ibid.

[38] Ibid.

[39] Ibid.

[40] Ibid.

[41] As amended by section 2 of the Fair Labor Standards Amendments of 1989.

[42] See footnote 25.

proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers;[43]

(3) if such employee is employed in American Samoa, in lieu of the rate or rates provided by this subsection or subsection (b), not less than the applicable rate established by the Secretary of Labor in accordance with recommendations of a special industry committee or committees which he shall appoint *pursuant to sections 5 and 8.* The minimum wage rate thus established shall not exceed the rate prescribed in paragraph (1) of this subsection;[44]

(4) if such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement); or

(5) if such employee is employed in agriculture, not less than the minimum wage rate in effect under paragraph (1) after December 31, 1977.

*(b) Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) applies) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this Act by the Fair Labor Standards Amendments of 1966, **title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974,*** wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1).

(c)[45](1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico who is employed by—

(A) the United States,

(B) an establishment that is a hotel, motel or restaurant,

(C) any other retail or service establishment that employs such employee 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 or counter service, to the public, to employees, or to members or guests of members of clubs, or

(D) any other industry in which the average hourly wage is greater than or equal to $4.65 an hour.

(2) In the case of any employee in Puerto Rico who is employed in an industry in which the average hourly wage is not less than $4.00 but not more than $4.64, the minimum wage rate applicable to such employee shall be increased on April 1, 1990, and each April 1 thereafter through April 1, 1994, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on April 1, 1994.

(3) In the case of an employee in Puerto Rico who is employed in an industry in which the average hourly wage is less than $4.00, except as provided in paragraph (4), the minimum wage rate applicable to such employee shall be increased on April 1, 1990, and each April 1 thereafter through April 1, 1995, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on April 1, 1995.

(4) In the case of any employee of the Commonwealth of Puerto Rico, or a municipality or other governmental entity of the Commonwealth, in which the average hourly wage is less than $4.00 an hour and who was brought under the coverage of this section pursuant to an amendment made by the Fair Labor Standards Amendments of 1985 (Public Law 99-150), the minimum wage rate applicable to such employee shall be increased on April 1, 1990, and each April 1 thereafter through April 1, 1996, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on April 1, 1996.

(d)[46] (1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and

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[43] Section 3(f) of the Act of June 26, 1940 (54 Stat. 616).

[44] Section 2 of the American Samoa Labor Standards Amendments of 1956, as amended by section 5 of the Fair Labor Standards Amendments of 1961, and by section 4(b)(1)(A) of the Fair Labor Standards Amendments of 1989.

[45] As amended by section 4(b)(2) of the Fair Labor Standards Amendments of 1989.

[46] Subsection (d) added by Equal Pay Act of 1963, 77 Stat. 56 (effective on and after June 11, 1964 except for employees covered by collective bargaining agreements in certain cases).

responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this Act.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages. rates of pay, hours of employment, or conditions of work.

(e)(1) Notwithstanding the provisions of section 13 of this Act (except subsections (a)(1) and (f) thereof), every employer providing any contract services (other than linen supply services) under a contract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by the Service Contract Act of 1965 (41 U.S.C. 351-357) or to whom subsection (a)(1) of this section is not applicable, wages at rates not less than the rates provided for in subsection (b) of this section.

(2) Notwithstanding the provisions of section 13 of this Act (except subsections (a)(1) and (f) thereof) and the provisions of the Service Contract Act of 1965, every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b), except that if more than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or subcontracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a)(1) of this section.

(f) Any employee—

(1) who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under section 6(b) unless such employee's compensation for such service would not because of section 209(g) of the Social Security Act constitute wages for the purposes of title II of such Act, or

(2) who in any workweek—

(A) is employed in domestic service in one or more households, and

(B) is so employed for more than 8 hours in the aggregate,

shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under section 6(b).

Maximum Hours

SEC. 7.[47*] (a)(1) Except as otherwise provided in this section, no employer shall employ any of his employees who **in any workweek** is engaged in commerce or in the production of goods for commerce, *or is employed in an enterprise engaged in commerce or in the production of goods for commerce,* for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweeks is brought within the purview of this subsection by the amendments made to this Act by the Fair Labor Standards Amendments of 1966—

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

[47*] Section 7 as amended by section 7 of the Fair Labor Standards Amendments of 1949 and as further amended as noted. Single asterisk (*) indicates provision amended by the 1949 Act; double asterisk (**) indicates provision added by the 1949 Act. Bold face type indicates amendment made by the Fair Labor Standards Amendments of 1961. Italic type indicates amendment made by the Fair Labor Standards Amendments of 1966. Bold face italic type indicates amendment made by the Fair Labor Standards Amendments of 1974. Helvetica boldface type indicates amendment made by the Fair Labor Standards Amendments of 1985. Helvetica boldface italic type indicates amendment made by the Fair Labor Standards Amendments of 1989.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

*(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks, or

*(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in **excess of the maximum workweek applicable to such employee under subsection (a)** or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

(3)[48] *by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if—*

(A) the annual gross volume of sales of such enterprise is less than $1,000,000 exclusive of excise taxes,

(B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

(C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale,

and such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 6,

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c) * * * (Repealed)

[Note: Section 7(c) (relating to employers employing employees in an industry found by the Secretary to be of a seasonal nature) was repealed by Section 19 of the Fair Labor Standards Amendments of 1974, effective December 31, 1976.]

(d) * * * (Repealed)

[Note: Section 7(d) (relating to employers who do not qualify for the exemption in subsection (c) who employ employees in an industry found by the Secretary "(A) to be characterized by marked annual recurring peaks of operation * * *, or (B) to be of a seasonal nature and engaged in the handling, packing, storing, preparing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state * * *") was repealed by Section 19 of the Fair Labor Standards Amendments of 1974, effective December 31, 1976.]

**(e) As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include—

**(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

**(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

**(3) sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Secretary of Labor[49] set forth in ap-

[48] Section 212 of the Fair Labor Standards Amendments of 1966 substituted this provision for the complete exemption from overtime contained in former section 13(b)(10) enacted in the 1961 amendments. Former clause (3) of section 7(b) as enacted in the 1938 Act was replaced by new section 7(c) as enacted by section 204(c) of the Fair Labor Standards Amendments of 1966.

[49] See footnote 25.

propriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Secretary[60]) paid to performers, including announcers, on radio and television programs;

**(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or **in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

*(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;[61] or

*(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding **the maximum workweek applicable to such employee under subsection (a))**, where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek.[62]

(f) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of **the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in **subsection (a) or (b) of section 6 (whichever may be applicable)** and compensation at not less than one and one-half times such rate for all hours worked in excess of **such maximum** workweek, and (2) provided a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(g) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of **the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of **the maximum workweek applicable to such employee under such subsection—**

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided,* That the rate so established shall be authorized by regulation by the Secretary of Labor[63] as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

**(h)* Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection *(e)* shall be creditable toward overtime compensation payable pursuant to this section.[64]

(i) **No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the**

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[60] Ibid.

[61] Paragraphs (6) and (7) together with section 7(h) continue in effect provisions of section 1 of the Act of July 20, 1949 (63 Stat. 446), which Act was repealed as of the effective date of the Fair Labor Standards Amendments of 1949.

[62] Ibid.

[63] See footnote 25.

[64] Amendment provided by section 7 of the Fair Labor Standards Amendments of 1949. See also footnote 51.

regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 6, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. *In determining the proportion of compensation representing commission, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.*

(j) No employer engaged in the operation of a hospital or ***an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises*** *shall be deemed to have violated subsection (a) if, pursuant to an agreement or understanding arrived at between the employer and employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.*

(k)[55] No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to Section 6(c)(3) of the Fair Labor Standards Amendments of 1974)[56] in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(l) No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a).

(m) For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer—

(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco,

(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

(C) in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek, compensation at a rate not less than one and one-half times the regular rate at which he is employed.

An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section.

(n) In the case of an employee of an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such

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[55] Effective January 1, 1975, the complete overtime exemption provided by section 6(c)(2)(A) of the Fair Labor Standards Amendments of 1974 was replaced by the more limited exemption in section 7(k). The present overtime standard—the lesser of 216 hours or the average number of hours (as determined by the Secretary of Labor) in tours of duty of employees in work periods of 28 consecutive days—became effective on January 1, 1978. During calendar year 1977 the overtime standard was 216 hours, during 1976 the overtime standard was 232 hours, and during 1975 the overtime standard was 240 hours. The complete overtime exemption remains applicable only to public agencies employing less than 5 employees in fire protection or law enforcement activities. See section 13(b)(20), infra.

[56] The results of the Secretary's study were published in the Federal Register on September 8, 1983. The Secretary determined hours standards for law enforcement employees at 171 and for fire protection employees at 212 in a 28-day period (48 FR 40,518).

employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment.

(o)[57](1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only—

(A) pursuant to—

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employees engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee, whichever is higher.

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(6) For purposes of this subsection—

(A) the term "overtime compensation" means the compensation required by subsection (a), and

(B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(p)[58](1) If an individual who is employed by a State, political subdivision of a State, or an interstate governmental agency in fire protection or law enforcement activities (including activities of security personnel in correctional institutions) and who, solely at such individual's option, agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime

[57] As added by section 2(a) of the Fair Labor Standards Amendments of 1985, effective April 15, 1986.

[58] As added by section 3 of the Fair Labor Standards Amendments of 1985, effective April 15, 1986.

compensation under this section if the public agency—

(A) requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,

(B) facilitates the employment of such employees by a separate and independent employer, or

(C) otherwise affects the condition of employment of such employees by a separate and independent employer.

(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(3) If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(q)[59] Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if during such period or periods the employee is receiving remedial education that is—

(1) provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(2) designed to provide reading and other basic skills at an eighth grade level or below; and

(3) does not include job specific training.

[59] As added by section 7 of the Fair Labor Standards Amendments of 1989.

Wage Orders in American Samoa

SEC. 8[60] (a) The policy of this Act with respect to industries **or enterprises** in ***American Samoa*** engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of ***the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 6(a) but for section 6(c).***

The Secretary of Labor[61] shall from time to time convene an industry committee or committees, appointed pursuant to section 5, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers in ***American Samoa*** engaged in commerce or in the production of goods for commerce **or in any enterprise engaged in commerce or in the production of goods for commerce** in any such industry or classification therein, ***and who but for section 6 (a)(3) would be subject to the minimum wage requirements of section 6 (a)(1).*** Minimum rates of wages established in accordance with this section which are not equal to ***the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) or section 6(a)*** shall be reviewed by such a committee once during each biennial period, beginning with the biennial period commencing July 1, 1958, except that the Secretary,[62] in his discretion, may order an additional review during any such biennial period.[63]

(b) Upon the convening of any such industry committee, the Secretary[64] shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act.[65] The committee shall recommend to the Secretary[66] the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry

[60] Section 8 as amended by section 8 of the Fair Labor Standards Amendments of 1949; by section 7 of the Fair Labor Standards Amendments of 1961; by section 5(d) of the Fair Labor Standards Amendments of 1974; by section 2(d)(3) of the Fair Labor Standards Amendments of 1977; by section 4(e) of the Fair Labor Standards Amendments of 1989; and as further amended as noted. Prior to November 17, 1989, wage order procedures also applied to Puerto Rico and the Virgin Islands until such time as the mainland minimum wage level was reached. Paragraphs (b), (c), (d), (e), and (f) as amended by the 1949 Act read substantially the same as paragraphs (b)and (c) (except for the parenthetical reference to the minimum wage rate provided in section 6(a), (d), (f) and (g) in the original Act).

[61] See footnote 25.

[62] Act of August 25, 1958 (72 Stat. 844)

[63] As amended by Act of August 25, 1958 (72 Stat. 844).

[64] See footnote 25.

[65] As amended by section 5(b) of the Fair Labor Standards Amendments of 1955.

[66] See footnote 25.

in ***American Samoa*** a competitive advantage over any industry in the United States outside of ***American Samoa; except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 6(a) or 6(b), which would be applicable but for section 6(a)(3), unless there is evidence in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions.***[66a]

(c) The industry committee shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of that ***in effect under paragraph (1) or (5) of section 6(a) (as the case may be)***) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classifications shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee[67] shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

(d) The industry committee shall file with the Secretary a report containing its findings of fact and recommendations with respect to the matters referred to it. Upon the filing of such report, the Secretary shall publish such recommendations in the Federal Register and shall provide by order that the recommendations contained in such report shall take effect upon the expiration of 15 days after the date of such publication.[68]

(e) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Secretary[69] finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein.[70]

(f) Due notice of any hearing provided for in this section shall be given by publication in the Federal Register and by such other means as the Secretary[71] deems reasonably calculated to give general notice to interested persons.

Attendance of Witnesses

SEC. 9. For the purpose of any hearing or investigation provided for in this Act, the provisions of section 9 and 10 (relating to the attendance of witnesses and the production of books, papers and documents) of the Federal Trade Commission Act of September 16, 1914 as amended (U.S.C., 1934 edition, title 15, sec. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary of Labor[72] and the industry committees.

Court Review

SEC. 10.[73] (a) Any person aggrieved by an order of the Secretary issued under section 8 may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify ***(including provision for the payment of an appropriate minimum wage rate),*** or set aside such order in whole or in part, so far as it is applicable to the petitioner.[74] The review by the court shall be limited to questions of law, and findings of fact by such industry com-

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[66a] As amended by section 1 of the Act of November 15, 1990.

[67] As amended by sections 5(c) and 5(d) of the Fair Labor Standards Amendments of 1955 (eliminating review by the Secretary of Labor of the recommendations of the industry committee).

[68] Ibid.

[69] See footnote 25.

[70] As amended by section 5(e) of the Fair Labor Standards Amendments of 1955.

[71] See footnote 25.

[72] Ibid.

[73] Section 10(a) as amended by section 5(f) of the Fair Labor Standards Amendments of 1955, and as further amended as noted.

[74] Section 22 of the Act of August 28, 1958 (72 Stat. 948).

mittee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceedings before such industry committee, the court may order such additional evidence to be taken before an industry committee and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Such industry committee may modify the initial findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's[75] order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect.

Investigations, Inspections, Records, and Homework Regulations

SEC. 11. (a) The Secretary of Labor[76] or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act. Except as provided in section 12 and in subsection (b) of this section, the Secretary[77] shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 12, the Secretary[78] shall bring all actions under section 17 to restrain violations of this Act.

(b) With the consent and cooperation of State agencies charged with the administration of State labor laws, the Secretary of Labor[79] may, for the purpose of carrying out his functions and duties under this Act, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Secretary[80] as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder. **The employer of an employee who performs substitute work described in section 7 (p) (3) may not be required under this subsection to keep a record of the hours of the substitute work.**[81]

(d)The Secretary is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act, and all existing regulations or orders of the Administrator relating to industrial homework are hereby continued in full force and effect.[82]

Child Labor Provisions

SEC. 12. (a) No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired

[75] See footnote 25.
[76] Ibid.
[77] Ibid.
[78] Ibid.
[79] See footnotes 8 and 25.
[80] See footnote 25
[81] Added by section 3(c)(2) of the Fair Labor Standards Amendments of 1985, effective April 15, 1986.
[82] Section 9 of the Fair Labor Standards Amendments of 1949, as amended by Reorganization Plan No. 6 of 1950.

them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.[83]

(b) The Secretary of Labor,[84] or any of his authorized representatives, shall make all investigations and inspections under section 11(a) with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 17 to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this Act relating to oppressive child labor.

(c) No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce **or in any enterprise engaged in commerce or in the production of goods for commerce.**[85]

(d) In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age.

Exemptions

SEC. 13.[86] (a) The provisions of sections 6 ***(except section 6(d) in the case of paragraph (1) of this subsection)***[87] and 7 shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity *(including any employee 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, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee 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 or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or**

(2) (Repealed)***

[Note: Section 13(a)(2) (relating to employees employed by certain retail or service establishments) was repealed, effective April 1, 1990, by section 3(c)(1) of the Fair Labor Standards Amendments of 1989.]

(3) any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center,[88] *if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33⅓ per centum of its average receipts for the other six months of such year,* except that the exemption from sections 6 and 7 provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 6, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture;[89] *or*

(4) (Repealed)***

[Note: Section 13(a)(4) (relating to employees employed by certain retail establishments) was repealed, effective April 1, 1990, by section 3(c)(1) of the Fair Labor Standards Amendments of 1989.]

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, 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 employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent,

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[83] As amended by section 10(a) of the Fair Labor Standards Amendments of 1949.

[84] See footnotes 8 and 25.

[85] Section 10(b) of the Fair Labor Standards Amendments of 1949 as amended by section 8 of the Fair Labor Standards Amendments of 1961.

[86] Section 13 as amended by section 11 of the Fair Labor Standards Amendments of 1949; by Reorganization Plan No. 6 of 1950; and as further amended by the Fair Labor Standards Amendments of 1961, 1966, 1974, 1977, and 1989.

[87] As amended by the Education Amendments of 1972, 86 Stat. 235 at 375, effective July 1, 1972.

[88] Added by section 11 of the Fair Labor Standards Amendments of 1977, effective November 1, 1977.

[89] The last clause of section 13(a)(3) of the Act was added by section 4(a) of the Fair Labor Standards Amendments of 1977, effective January 1, 1978. See also section 13(b)(29) of the Act, as added by the 1977 Amendments.

spouse, child , or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock;[90] *or*

(7) any employee to the extent that such employee is exempted by regulations, order, *or certificate* of the Secretary issued under section 14; or

(8)[91] any employee employed in connection with the publication of any weekly, semi-weekly, 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; or

*(9) * * * (Repealed)*

[Note: Section 13(a)(9) (relating to motion picture theater employees) was repealed by section 23 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for such employees from the overtime provisions only in section 13(b)(27).]

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

*(11) * * * (Repealed)*

[Note: Section 13(a)(11) (relating to telegraph agency employees) was repealed by section 10 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption from the overtime provisions only in section 13(b)(23), which was repealed effective May 1, 1976.]

(12) any employee employed as a seaman on a vessel other than an American vessel; or

*(13) * * * (Repealed)*

[Note: Section 13(a)(13) (relating to small logging crews) was repealed by section 23 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for such employees from the overtime provisions only in Section 13(b)(28).]

*(14) * * * (Repealed)*

[Note: Section 13(a)(14) (relating to employees employed in growing and harvesting of shade grown tobacco) was repealed by section 9 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for certain tobacco producing employees from the overtime provisions only in section 13(b)(22). The section 13(b)(22) exemption was repealed, effective January 1, 1978, by section 5 of the Fair Labor Standards Amendments of 1977.]

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary).

(b) The provisions of section 7 shall not apply with respect to—

(1) any employee with respect to whom the Secretary of Transportation[92] has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935: [92a]; or

(2) any employee of an employer *engaged in the operation of a common carrier by rail and* subject to the provisions of part I of the Interstate Commerce Act; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or

*(4) * * * (Repealed)*

[Note: Section 13(b)(4) (relating to employees 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 byproduct thereof) was repealed, effective May 1, 1976, by section 11 of the Fair Labor Standards Amendments of 1974.]

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

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[90] Prior to the Fair Labor Standards Amendments of 1966, the section 13(a)(6) exemption was applicable to all agricultural employees.

[91] As amended by the Fair Labor Standards Amendments of 1966 (which deleted the words "printed and" which formerly preceded the word "published").

[92] As amended by the Department of Transportation Act, 80 Stat. 931, which substituted "Secretary of Transportation" for "Interstate Commerce Commission".

[92a] Section 204 of the original Motor Carrier Act is now codified at 49 U.S.C. 3102.

(6) any employee employed as a seaman; or

*(7) * * * (Repealed)*

[Note: Section 13(b)(7) (relating to any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier) was repealed, effective May 1, 1976, by section 21 of the Fair Labor Standards Amendments of 1974.[93]]

(8) * * * (Repealed)

[Note: Section 13(b)(8) (relating to any employee employed by a hotel, motel, or restaurant) was repealed, effective January 1, 1979, by section 14 of the Fair Labor Standards Amendments of 1977.]

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decenial 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 (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(10)(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;[94] or

(11) any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 7(a); *or*

(12) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agriculture purposes,[95] or

(13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 6(a)(1);[96] or

(14) any employee employed within the area of production (as defined by the Secretary) 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 employees are employed in the establishment in such operations;[97] or

(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup;[98] or

(16) any employee engaged (A) in the transportation and preparation for transportation of fruits and vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables;[99] or

(17) any driver employed by an employer engaged in the business of operating taxicabs;[100] or

(18) * * * (Repealed)

[Note: Section 13(b)(18) (relating to any employee of a retail or service establishment who is employed 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,

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[92] Prior to the Fair Labor Standards Amendments of 1966, employees of local transit companies were exempt from both the Act's minimum wage and overtime requirements.

[93] Boats were added by the Fair Labor Standards Amendments of 1974. Prior to these Amendments, the overtime exemption in subsection (B) also applied to partsmen and mechanics. An earlier minimum wage exemption for any employee of a retail or service establishment which is primarily engaged in the business of selling automobiles, trucks or farm implements was repealed by the Fair Labor Standards Amendments of 1966.

[94] A minimum wage exemption for these employees was repealed by the Fair Labor Standards Amendments of 1966.

[95] Ibid.

[96] Ibid.

[97] The exemption applicable to the ginning of cotton and the processing of sugar beets and sugar cane was deleted from section 13(b)(15) by the Fair Labor Standards Amendments of 1974 and provision was made for such employees in sections 13(b)(2a) and 13(b)(26). The exemptions in sections 13(b)(25) and 13(b)(26) were repealed, effective January 1, 1978, by the Fair Labor Standards Amendments of 1977, and provision was made for such employees in sections 13(i) and 13(j), which were added to the Act by those Amendments.

[98] See footnote 95.

[99] Ibid.

banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs) was repealed, effective May 1, 1976, by section 15 of the Fair Labor Standards Amendments of 1974.][101]

*(19) * * * (Repealed)*

[Note: Section 13(b)(19) (relating to any employee of a bowling establishment) was repealed, effective May 1, 1976, by section 16 of the Fair Labor Standards Amendments of 1974.]

(20) any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be;[102] *or*

[Note: Section 6(c)(3) of the Fair Labor Standards Amendments of 1974 provided as follows: "The Secretary of Labor shall in the calendar year beginning January 1, 1976, conduct (A) a study of the average number of hours in tours of duty in work periods in the preceding calendar year of employees (other than employees exempt from section 7 of the Fair Labor Standards Act of 1938 by section 13(b)(20) of such Act) of public agencies who are employed in fire protection activities, and (B) a study of the average number of hours in tours of duty in work periods in the preceding calendar year of employees (other than employees exempt from section 7 of the Fair Labor Standards Act of 1938 by section 13(b)(20) of such Act) of public agencies who are employed in law enforcement activities (including security personnel in correctional institutions). The Secretary shall publish the results of each such study in the Federal Register." The results of the Secretary's study were published in the Federal Register on September 8, 1983. The Secretary determined hours standards for law enforcement employees at 171 and for fire protection employees at 212 in a 28-day period (48 FR 40,518)]

(21) any employee who is employed in domestic service in a household and who resides in such household; or

(22) * * * (Repealed)

[Note: Section 13(b)(22) (relating to employees employed in the growing and harvesting of shade grown tobacco[103]) was repealed, effective January 1, 1978, by section 5 of the Fair Labor Standards Amendments of 1977.]

*(23) * * * (Repealed)*

[Note: Section 13(b)(23) (relating to any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under section 13(a)(2), who is engaged in handling telegraphic messages for the public[104]*) was repealed, effective May 1, 1976, by section 10 of the Fair Labor Standards Amendments of 1974.]*

(24) any employee who is employed with his spouse by a non-profit educational institution to serve as the parents of children—

(A) who are orphans or one of whose natural parents is deceased, or[105]

(B) who are enrolled in such institution and reside in residential facilities of the institution, while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or

(25) * * * (Repealed)

[Note: Section 13(b)(25) (relating to any employee engaged in ginning cotton for market in any place of employment located in a county where cotton is grown in commercial quantitites[106]) was repealed by section 6(a) of the Fair Labor Standards Amendments of 1977, and is replaced by new section 13(i), added by section 6(b) of those Amendments, which provides a more limited overtime exemption for such employees. Both changes were effective January 1, 1978.]

(26) * * * (Repealed)

[Note: Section 13(b)(26) (relating to any employee who is engaged in the processing of sugar beets, sugar beet molasses, or sugarcane into sugar (other than refined sugar) or syrup was repealed by section 7(a) of the Fair Labor Standards Amendments of 1977, and is replaced by new section 13(j), added by section 7(b) of those Amendments, which provides a more limited overtime exemption for such employees. Both changes were effective January 1, 1978.]

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[101] Ibid.

[102] Prior to January 1, 1975, section 13(b)(20) exempted "any employee of a public agency who is employed in fire protection or law enforcement activities (including security personnel in correctional institutions)". A partial overtime exemption for public agencies having 5 or more such employees is provided by section 7(k) of the Act.

[103] A minimum wage exemption for these employees was repealed by the Fair Labor Standards Amendments of 1974.

[104] Ibid.

[105] 120 Cong. Rec. H8600 (March 28, 1974, statement of Congressman Dent) indicates that the word "and" was intended in place of "or".

[106] A minimum wage exemption for these employees was repealed by the Fair Labor Standards Amendments of 1960.

(27) any employee employed by an establishment which is a motion picture theater;[107] ***or***

(28) any employee employed 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 employees employed by his employer in such forestry or lumbering operations does not exceed eight;[108] or

(29)[109] any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee (A) is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and (B) receives compensation for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed.

(c)(1) Except as provided in paragraphs (2) or (4)*, the provisions of section 12 relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed,* ***if such employee—***

(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of section 13(a)(6)(A)) required to be paid at the wage rate prescribed by section 6(a)(5),

(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

(2) The provisions of section 12 relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 12 relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(4)[110] (A) An employer or group of employers may apply to the Secretary for a waiver of the application of section 12 to the employment for not more than eight weeks in any calendar year of individuals who are less than twelve years of age, but not less than ten years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that—

(i) the crop to be harvested is one with a particularly short harvesting season and the application of section 12 would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

(ii) the employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

(iii) the level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

(iv) individuals age twelve and above are not available for such employment; and

(v) the industry of such employer or group of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that—

(i) the individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) such individuals be employed under such waiver (I) for not more than eight weeks between June 1 and October 15 of any calendar year, and (II) in accordance

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[107] A minimum wage exemption for these employees was repealed by the Fair Labor Standards Amendments of 1974.

[108] Ibid.

[109] Added by section 4(b) of the Fair Labor Standards Amendments of 1977, effective January 1, 1978.

[110] As added by section 8 of the Fair Labor Standards Amendments of 1977, effective November 1, 1977.

with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

(d) The provisions of sections 6, 7, and 12 shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer **or to any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).**

(e) The provisions of section 7 shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 6(a)(3), except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 7 if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 6(a)(3), that economic conditions warrant such action.[111]

(f) The provisions of sections 6, 7, 11, and 12 shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; *Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.*[112, 112a]

(g) The exemption from section 6 provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated.)

(h) The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

(1) is employed by such employer—

(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek;

compensation at a rate not less than one and one-half times the regular rate at which he is employed. Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 7.

(i)[113] The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek, compensation at a rate not less than one and one-half times the regular rate at which he is employed. No

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[111] Section 3 of the American Samoa Labor Standards Amendments of 1956.

[112] Section 1(l) of the Act of August 30, 1957 (71 Stat. 514), as amended by section 21(b) of the Act of July 12, 1960 (74 Stat. 417), and by section 213 of the Fair Labor Standards Amendments of 1966, and by Section 1225 of the Panama Canal Act of 1979 (93 Stat. 468).

[112a] Pursuant to Public Law 99-239, 99 Stat. 1770, the Fair Labor Standards Act no longer applies to Eniwetok Atoll and Kwajalein Atoll, effective October 21, 1986. Additionally, pursuant to Public Law 94-241, 90 Stat. 263 (48 U.S.C. 1681, note), effective March 24, 1976, the Fair Labor Standards Act, except for section 6, applies to the Northern Mariana Islands.

[113] Added by section 6(h) of the Fair Labor Standards Amendments of 1977, effective January 1, 1978.

week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

(j)[114] The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek, compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

Learners, Apprentices, Students, and Handicapped Workers

SEC. 14.[115] *(a) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.*

(b)(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of employment of all employees in such establishment may not exceed—

(i) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this Act before the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater;

(ii) in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of hours of employment of students in such establishment to the total hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments,

(II) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater; or

(iii) in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in (I) similar establishments of the same employer in the same general

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[114] Added by section 7(b) of the Fair Labor Standards Amendments of 1977, effective January 1, 1978.

[115] As amended by section 24 of the Fair Labor Standards Amendments of 1974.

metropolitan area in which such establishment is located, (II) similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or (III) other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term "student hours of employment" means hours during which students are employed in a retail or service establishment under certificates issued under this subsection.

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 6(a)(5) or not less than $1.30 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

(4)(A) A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or 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.

(B)[116] *If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed* six, *the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed* six—

(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

(ii) in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate.

(D)[117] To minimize paperwork for, and to encourage, small businesses to employ students under special certificates issued under paragraphs (1) and (2), the Secretary shall, by regulation or order, prescribe a simplified application form to be used by employers in applying for such a certificate for the employment of not more than six full-time students. Such an application shall require only--

(i) a listing of the name, address, and business of the applicant employer,

(ii) a listing of the date the applicant began business, and

(iii) the certification that the employment of such full-time students will not reduce the full-time employment

[116] As amended by section 12 of the Fair Labor Standards Amendments of 1977, effective November 1, 1977. The 1977 amendments substituted "six" for "four."

[117] Added by section 13 of the Fair Labor Standards Amendments of 1977, effective November 1, 1977.

opportunities of persons other than persons employed under special certificates.

(c)[117](1) The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, at wages which are—

(A) lower than the minimum wage applicable under section 6,

(B) commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and

(C) related to the individual's productivity.

(2) The Secretary shall not issue a certificate under paragraph (1) unless the employer provides written assurances to the Secretary that—

(A) in the case of individuals paid on an hourly rate basis, wages paid in accordance with paragraph (1) will be reviewed by the employer at periodic intervals at least once every six months, and

(B) wages paid in accordance with paragraph (1) will be adjusted by the employer at periodic intervals, at least once each year, to reflect changes in the prevailing wage paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work.

(3) Notwithstanding paragraph (1), no employer shall be permitted to reduce the hourly wage rate prescribed by certificate under this subsection in effect on June 1, 1986, of any handicapped individual for a period of two years from such date without prior authorization of the Secretary.

(4) Nothing in this subsection shall be construed to prohibit an employer from maintaining or establishing work activities centers to provide therapeutic activities for handicapped clients.

(5)(A) Notwithstanding any other provision of this subsection, any employee receiving a special minimum wage at a rate specified pursuant to this subsection or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. An employee or the employee's parent or guardian may file such a petition for and in behalf of the employee or in behalf of the employee and other employees similarly situated. No employee may be a party to any such action unless the employee or the employee's parent or guardian gives consent in writing to become such a party and such consent is filed with the Secretary.

(B) Upon receipt of a petition filed in accordance with subparagraph (A), the Secretary within ten days shall assign the petition to an administrative law judge appointed pursuant to section 3105 of title 5, United States Code. The administrative law judge shall conduct a hearing on the record in accordance with section 554 of title 5, United States Code, with respect to such petition within thirty days after assignment.

(C) In any such proceeding, the employer shall have the burden of demonstrating that the special minimum wage rate is justified as necessary in order to prevent curtailment of opportunities for employment.

(D) In determining whether any special minimum wage rate is justified pursuant to subparagraph (C), the administrative law judge shall consider—

(i) the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured, and

(ii) the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity.

(E) The administrative law judge shall issue a decision within thirty days after the hearing provided for in subparagraph (B). Such action shall be deemed to be a final agency action unless within thirty days the Secretary grants a request to review the decision of the administrative law judge. Either the petitioner or the employer may request review by the Secretary within fifteen days of the date of issuance of the decision by the administrative law judge.

(F) The Secretary, within thirty days after receiving a request for review, shall review the record and either adopt the decision of the administrative law judge or issue exceptions. The decision of the administrative law judge, together with any exceptions, shall be deemed to be a final agency action.

(G) A final agency action shall be subject to judicial review pursuant to chapter 7 of title 5, United States Code. An action seeking such review shall be brought within thirty days of a final agency action described in subparagraph (F).

(d) The Secretary may by regulation or order provide that sections 6 and 7 shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws.

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[117] As amended by the Act of October 16, 1986 (100 Stat. 1229).

Prohibited Acts

SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Secretary of Labor[118] issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful;[119]

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Secretary[120] issued under section 14;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;[120a]

(4) to violate any of the provisions of section 12;

(5) to violate any of the provisions of section 11(c) or any regulation or order made or continued in effect under the provisions of section 11(d), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.[121]

(b) For the purposes of subsection (a)(1) proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

Penalties[122]

SEC. 16. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 15(a)(3) of this Act shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 15(a)(3), including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained ***against any employer (including a public agency)*** in any ***Federal or State*** court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.[123] The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. **The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 17 in which** (1) **restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation as the case may be, owing to such employee under section 6 or section 7 of this Act by an employer liable therefor under the provisions of this subsection** or (2) legal or equitable

[118] See footnote 25.
[119] As amended by section 13(a) of the Fair Labor Standards Amendments of 1949.
[120] See footnote 25.
[120a] Section 8 of the Fair Labor Standards Amendments of 1985 contains special discrimination provisions applicable to public agencies.
[121] As amended by section 13(b) of the Fair Labor Standards Amendments of 1949.
[122] The Portal-to-Portal Act of 1947 relieves employers from certain liabilities and punishments under this Act in circumstances specified in that Act. See also section 2(c) of the Fair Labor Standards Amendments of 1985, which relieves certain public agencies of certain liabilities under this Act prior to April 15, 1986.
[123] Amendment provided by section 5(a) of the Portal-to-Portal Act of 1947.

relief is sought as a result of alleged violations of section 15(a)(3).[124]

(c) The Secretary[125] is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 6 or 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of ***the unpaid minimum wages or overtime compensation and an equal amount as liquidated damages.***[126] ***The right provided by subsection (b) to bring an action by or on behalf of any employee*** to recover the liability specified in the first sentence of such subsection ***and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 6 and 7 or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary.*** Any sums thus recovered by the Secretary on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary under this subsection for the purposes of the *statutes*[127] of limitations provided in section 6(a) of the Portal-to-Portal Act of 1947, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.[128]

(d) In any action or proceeding commenced prior to, on, or after the date of enactment of this subsection, no employer shall be subject to any liability or punishment under this Act or the Portal-to-Portal Act of 1947 on account of his failure to comply with any provision or provisions of such Acts (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 13(f) is applicable, (2) with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in section 6(a) (3) at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.[129]

(e) Any person who violates the provisions of section 12, relating to child labor, or any regulation issued under that section, shall be subject to a civil penalty of not to exceed $10,000 for each employee who was the subject of such a violation. Any person who repeatedly or willfully violates section 6 or 7 shall be subject to a civil penalty of not to exceed $1,000 for each such violation.[130] ***In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be—***

(1) deducted from any sums owing by the United States to the person charged;

(2) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(3) ordered by the court, in an action brought for a violation of section 15(a)(4) or a repeated or willful violation of section 15(a)(2)[131]***, to be paid to the Secretary.***

Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated

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[124] The Fair Labor Standards Amendments of 1977 amended subsection 16(b), effective January 1, 1978, to authorize a private right of action for violations of subsection 15(a)(3) of the Act. Prior to this amendment, only the Secretary of Labor was authorized to bring an action for violations of subsection 15(a)(3).

[125] See footnote 25.

[126] The provision for liquidated damages was added by the Fair Labor Standards Amendments of 1974. These Amendments also deleted the prior requirements that section 16(c) suits be brought only on the written request of the employee and if the case did not involve any issue of law which had not been finally settled by the courts.

[127] Amended by section 601 of the Fair Labor Standards Amendments of 1966.

[128] Section 14 of the Fair Labor Standards Amendments of 1949, as amended by Reorganization Plan No. 6 of 1950 and the Fair Labor Standards Amendments of 1966.

[129] Section 4 of the American Samoa Labor Standards Amendments of 1956, as amended by section 1(2) of the Act of August 30, 1957 (71 Stat. 514), effective November 27, 1957.

[130] As added by section 9 of the Fair Labor Standards Amendments of 1989, and amended by section 3103 of the Omnibus Budget Reconciliation Act of 1990.

[131] As added by section 9 of the Fair Labor Standards Amendments of 1989.

by the Secretary. Except for civil penalties collected for violations of section 12, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 2 of an Act entitled "An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof, and for other purposes" (29 U.S.C. 9a). Civil penalties collected for violations of section 12 shall be deposited in the general fund of the Treasury.[131a]

Injunction Proceedings

SEC. 17. The district courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 15, including in the case of violations of section 15(a)(2) the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this Act (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 6 of the Portal-to-Portal Act of 1947).[132]

Relation to Other Laws

SEC. 18. *(a)* No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

(b) Notwithstanding any other provision of this Act (other than section 13(f)) or any other law—

(1) any Federal employee in the Canal Zone engaged in employment of the kind described in section 5102(c)(7) of title 5, United States Code, or[133]

(2) any employee employed in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,[134]

shall have his basic compensation fixed or adjusted at a wage rate which is not less than the appropriate wage rate provided for in section 6(a)(1) of this Act (except that the wage rate provided for in section 6(b) shall apply to any employee who performed services during the workweek in a work place within the Canal Zone), and shall have his overtime compensation set at an hourly rate not less than the overtime rate provided for in section 7(a)(1) of this Act.

Separability of Provisions

SEC. 19. If any provision of this Act or the application of such provision to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Approved, June 25, 1938.[135]

[131a] As amended by section 3103 of the Omnibus Budget Reconciliation Act of 1990.

[132] As amended by section 12 of the Fair Labor Standards Amendments of 1961.

[133] Paragraph (1), as amended by Public Law 98-83, 81 Stat. 222, omits reference to other employees covered under paragraph (1) of this subsection as enacted in the Fair Labor Standards Amendments of 1966, section 306, whose compensation requirements under such Amendments are now incorporated in 5 U.S.C. 5341 and 5 U.S.C. 5544.

[134] Paragraph (2) was formerly paragraph (3) of subsection (b) as enacted in the Fair Labor Standards Amendments of 1966, section 306. It was renumbered in the amendment by Public Law 98-83, 81 Stat. 222, which omitted the former paragraph (2) referring to employees described in 10 U.S.C. 7474 because of repeal of the latter provision by Public Law 89-554, 80 Stat. 663.

[135] The Fair Labor Standards Amendments of 1949 were approved October 26, 1949; the Fair Labor Standards Amendments of 1955 were approved August 12, 1955; the American Samoa Labor Standards Amendments were approved August 8, 1956; the Fair Labor Standards Amendments of 1961 were approved May 5, 1961; the Fair Labor Standards Amendments of 1966 were approved September 23, 1966; the Fair Labor Standards Amendments of 1974 were approved April 8, 1974; the Fair Labor Standards Amendments of 1977 were approved November 1, 1977; the Fair Labor Standards Amendments of 1985 were approved November 13, 1985; and the Fair Labor Standards Amendments of 1989 were approved November 17, 1989.

ADDITIONAL PROVISIONS OF THE ACT OF NOVEMBER 15, 1990
(104 Stat. 2871)

[PUBLIC LAW 101-583]

[101ST CONGRESS] [FIRST SESSION]

AN ACT

To eliminate "substantial documentary evidence" requirement for minimum wage determination for American Samoa, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled.

[Section 1 of the Act of November 15, 1990 amends the Fair Labor Standards Act of 1938, and is incorporated in its proper place in the Act.]

SEC. 2. REGULATIONS CONCERNING CERTAIN EMPLOYEES.

Not later than 90 days after the date of enactment of this Act, the Secretary of Labor shall promulgate regulations that permit computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers as defined in such regulations to qualify as exempt executive, administrative, or professional employees under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)). Such regulations shall provide that if such employees are paid on an hourly basis they shall be exempt only if their hourly rate of pay is at least 6½ times greater than the applicable minimum wage rate under section 6 of such Act (29 U.S.C. 206).

Approved November 15, 1990.

LEGISLATIVE HISTORY—S. 2930:

CONGRESSIONAL RECORD, Vol. 136 (1990):
Aug. 4, considered and passed Senate.
Oct. 18, considered and passed House, amended.
Oct. 27, Senate concurred in House amendments.

ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1989

(103 Stat. 938)

[PUBLIC LAW 101-157]

[101ST CONGRESS] [FIRST SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938 to increase the minimum wage, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1989."

[Sections 2; 3(a), (c), and (d); 4; 5; 7; and 9 of the Fair Labor Standards Amendments of 1989 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

PRESERVATION OF COVERAGE

*SEC. 3 * * **

(b)PRESERVATION OF COVERAGE.—

(1) IN GENERAL.—Any enterprise that on March 31, 1990, was subject to section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) and that because of the amendment made by subsection (a) is not subject to such section shall—

(A) pay its employees not less than the minimum wage in effect under such section on March 31, 1990;

(B) pay its employees in accordance with section 7 of such Act (29 U.S.C. 207); and

(C) remain subject to section 12 of such Act (29 U.S.C. 212).

(2) VIOLATIONS.— A violation of paragraph (1) shall be considered a violation of section 6, 7, or 12 of the Fair Labor Standards Act of 1938, as the case may be.

* * * * * *

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective on April 1, 1990.

TRAINING WAGE

SEC. 6. TRAINING WAGE.

(a) IN GENERAL.—

(1) AUTHORITY.—Any employer may, in lieu of the minimum wage prescribed by section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206), pay an eligible employee the wage prescribed by paragraph (2)—

(A) while such employee is employed for the period authorized by subsection (g)(1)(B)(i), or

(B) while such employee is engaged in on-the-job training for the period authorized by subsection (g)(1)(B)(ii).

(2) WAGE RATE.—The wage referred to in paragraph (1) shall be a wage—

(A) of not less than $3.35 an hour during the year beginning April 1, 1990; and

(B) beginning April 1, 1991, of not less than $3.35 an hour or 85 percent of the wage prescribed by section 6 of such Act, whichever is greater.

(b) WAGE PERIOD.—An employer may pay an eligible employee the wage authorized by subsection (a) for a period that—

(1) begins on or after April 1, 1990;

(2) does not exceed the maximum period during which an employee may be paid such wage as determined under subsection (g)(1)(B); and

(3) ends before April 1, 1993.

(c) WAGE CONDITIONS.—No eligible employee may be paid the wage authorized by subsection (a) by an employer if—

(1) any other individual has been laid off by such employer from the position to be filled by such eligible employee or from any substantially equivalent position; or

(2) such employer has terminated the employment of any regular employee or otherwise reduced the number of employees with the intention of filling the vacancy so created by hiring an employee to be paid such wage.

(d) LIMITATIONS.—

(1) EMPLOYEE HOURS.— During any month in which employees are to be employed in an establishment under this section, the proportion of employee hours of employment to the total hours of employment of all employees in such establishment may not exceed a proportion equal to one-fourth of the total hours of employment of all employees in such establishment.

(2) DISPLACEMENT.—

(A) PROHIBITION.—No employer may take any action to displace employees (including partial

displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in subsection (a).

(B) DISQUALIFICATION.—If the Secretary determines that an employer has taken an action in violation of subparagraph (A), the Secretary shall issue an order disqualifying such employer from employing any individual at such wage.

(e) NOTICE.—Each employer shall provide to any eligible employee who is to be paid the wage authorized by subsection (a) a written notice before the employee begins employment stating the requirements of this section and the remedies provided by subsection (f) for violations of this section. The Secretary shall provide to employers the text of the notice to be provided under this subsection.

(f) ENFORCEMENT.—Any employer who violates this section shall be considered to have violated section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)). Sections 16 and 17 of such Act (29 U.S.C. 216 and 217) shall apply with respect to the violation.

(g) DEFINITIONS.—For purposes of this section:

(1) ELIGIBLE EMPLOYEE.—

(A) IN GENERAL.—The term "eligible employee" means with respect to an employer an individual who—

(i) is not a migrant agricultural worker or a seasonal agricultural worker (as defined in paragraphs (8) and (10) of section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802 (8) and (10)) without regard to subparagraph (B) of such paragraphs and is not a nonimmigrant described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a));

(ii) has not attained the age of 20 years; and

(iii) is eligible to be paid the wage authorized by subsection (a) as determined under subparagraph (B).

(B) DURATION.—

(i) An employee shall initially be eligible to be paid the wage authorized by subsection (a) until the employee has been employed a cumulative total of 90 days at such wage.

(ii) An employee who has been employed by an employer at the wage authorized by subsection (a) for the period authorized by clause (i) may be employed by another employer for an additional 90 days if the employer meets the requirements of subsection (h).

(iii) The total period, as authorized by clauses (i) and (ii), that an employee may be paid the wage authorized by subsection (a) may not exceed 180 days.

(iv) For purposes of this subparagraph, the term "employer" means with respect to an employee an employer who is required to withhold payroll taxes for such employee.

(C) PROOF.—

(i) IN GENERAL.—An individual is responsible for providing the requisite proof of previous period or periods of employment with other employers. An employer's good faith reliance on the proof presented to the employer by an individual shall constitute a complete defense to a charge that the employer has violated subsection (b)(2) with respect to such individual.

(ii) REGULATIONS.—The Secretary of Labor shall issue regulations defining the requisite proof required of an individual. Such regulations shall establish minimal requirements for requisite proof and may prescribe that an accurate list of the individual's employers and a statement of the dates and duration of employment with each employer constitute requisite proof.

(2) ON-THE-JOB TRAINING.—The term "on-the-job training" means training that is offered to an individual while employed in productive work that provides training, technical and other related skills, and personal skills that are essential to the full and adequate performance of such employment.

(h) EMPLOYER REQUIREMENTS.—An employer who wants to employ employees at the wage authorized by subsection (a) for the period authorized by subsection (g)(1)(B)(ii) shall—

(1) notify the Secretary annually of the positions at which such employees are to be employed at such wage,

(2) provide on-the-job training to such employees which meets general criteria of the Secretary issued by regulation after consultation with the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives and other interested persons,

(3) keep on file a copy of the training program which the employer will provide such employees,

(4) provide a copy of the training program to the employees,

(5) post in a conspicuous place in places of employment a notice of the types of jobs for which the employer is providing on-the-job training, and

(6) send to the Secretary on an annual basis a copy of such notice.

The Secretary shall make available to the public upon request notices provided to the Secretary by employers in accordance with paragraph (6).

(i) REPORT.—The Secretary of Labor shall report to Congress not later than March 1, 1993, on the effectiveness of the wage authorized by subsection (a). The report shall include—

(1) an analysis of the impact of such wage on employment opportunities for inexperienced workers;

(2) any reduction in employment opportunities for experienced workers resulting from the employment of employees under such wage;

(3) the nature and duration of the training provided under such wage; and

(4) the degree to which employers used the authority to pay such wage.

APPLICATION OF FLSA TO CONGRESSIONAL AND ARCHITECT OF THE CAPITOL EMPLOYEES

SEC. 8. APPLICATION OF RIGHTS AND PROTECTIONS OF FAIR LABOR STANDARDS ACT OF 1938 TO CONGRESSIONAL AND ARCHITECT OF THE CAPITOL EMPLOYEES.

(a) HOUSE EMPLOYEES.—

(1) IN GENERAL.—Not later than 180 days after the date the minimum wage rate prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is increased pursuant to the amendment made by section 2, the rights and protections under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) shall apply with respect to any employee in an employment position in the House of Representatives and to any employing authority of the House of Representatives.

(2) ADMINISTRATION.—In the administration of this subsection, the remedies and procedures under the Fair Employment Practices Resolution shall be applied. As used in this paragraph, the term "Fair Employment Practices Resolution" means House Resolution 558, One Hundredth Congress, agreed to October 4, 1988, as continued in effect by House Resolution 15, One Hundred First Congress, agreed to January 3, 1989.

(b) ARCHITECT OF THE CAPITOL EMPLOYEES.—

Not later than 180 days after the date the minimum wage rate prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is increased pursuant to the amendment made by section 2, the rights and protections under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) shall apply with respect to individuals employed under the Office of the Architect of the Capitol.

APPROVED NOVEMBER 17, 1989

ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1985

(99 Stat. 787)

[PUBLIC LAW 99-150]

[99TH CONGRESS] [FIRST SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938 to provide rules for overtime compensatory time off for certain public agency employees, to clarify the application of that Act to volunteers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1985."

[Sections 2(a), 3, 4(a) and 5 of the Fair Labor Standards Amendments of 1985 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

COMPENSATORY TIME

SEC. 2. * * *

(b) EXISTING COLLECTIVE BARGAINING AGREEMENTS —A collective bargaining agreement which is in effect on April 15, 1986, and which permits compensatory time off in lieu of overtime compensation shall remain in effect until its expiration date unless otherwise modified, except that compensatory time shall be provided after April 14, 1986, in accordance with section 7(o) of the Fair Labor Standards Act of 1938 (as added by subsection (a)).

(c) LIABILITY AND DEFERRED PAYMENT—(1) No State, political subdivision of a State, or interstate governmental agency shall be liable under section 16 of the Fair Labor Standards Act of 1938 for a violation of section 6 (in the case of a territory or possession of the United States), 7, or 11(c) (as it relates to section 7) of such Act occurring before April 15, 1986, with respect to any employee of the State, political subdivision, or agency who would not have been covered by such Act under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in sections 775.2 and 775.4 of title 29 of the Code of Federal Regulations.

(2) A State, political subdivision of a State, or interstate governmental agency may defer until August 1, 1986, the payment of monetary overtime compensation under section 7 of the Fair Labor Standards Act of 1938 for hours worked after April 14, 1986.

VOLUNTEERS

(b) REGULATIONS.—Not later than March 15, 1986, the Secretary of Labor shall issue regulations to carry out paragraph (4) of section 3(e) (as amended by subsection (a) of this section).

(c) CURRENT PRACTICE.—If, before April 15, 1986, the practice of a public agency was to treat certain individuals as volunteers, such individuals shall until April 15, 1986, be considered, for purposes of the Fair Labor Standards Act of 1938, as volunteers and not as employees. No public agency which is a State, a political subdivision of a State, or an interstate governmental agency shall be liable for a violation of section 6 occurring before April 15, 1986, with respect to services deemed by that agency to have been performed for it by an individual on a voluntary basis.

EFFECTIVE DATE

SEC. 6. The amendments made by this Act shall take effect April 15, 1986. The Secretary of Labor shall before such date promulgate such regulations as may be required to implement such amendments.

EFFECT OF AMENDMENTS

SEC. 7. The amendments made by this Act shall not affect whether a public agency which is a State, political subdivision of a State, or an interstate governmental agency is liable under section 16 of the Fair Labor Standards Act of 1938 for a violation of section 5, 7, or 11 of such Act occurring before April 15, 1986, with respect to any employee of such public agency who would have been covered by such Act under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in section 775.3 of title 29 of the Code of Federal Regulations.

DISCRIMINATION

SEC. 8. A public agency which is a State, political subdivision of a State, or an interstate governmental agency and which discriminates or has discriminated against an employee with respect to the employee's

wages or other terms or conditions of employment because on or after February 19, 1985, the employee asserted coverage under section 7 of the Fair Labor Standards Act of 1938 shall be held to have violated section 15(a)(3) of such Act. The protection against discrimination afforded by the preceding sentence shall be available after August 1, 1986, only for an employee who takes an action described in section 15(a)(3) of such Act.

Approved November 13, 1985

ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1977

(91 Stat. 1245)

[PUBLIC LAW 95-151]

[95TH CONGRESS] [FIRST SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1977".

[Sections 2(a) through 2(d) and sections 3 through 14, inclusive, of the Fair Labor Standards Amendments of 1977 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

Increase in Minimum Wage

SEC. 2. * * *

(e)(1) There is established the Minimum Wage Study Commission (hereinafter in this subsection referred to as the "Commission") which shall conduct a study of the Fair Labor Standards Act of 1938 and the social, political, and economic ramifications of the minimum wage, overtime, and other requirements of that Act. Such study shall include but not be limited to—

(A) the beneficial effects of the minimum wage, including its effect in ameliorating poverty among working citizens;

(B) the inflationary impact (if any) of increases in the minimum wage prescribed by that Act;

(C) the effect (if any) such increases have on wages paid employees at a rate in excess of the rate prescribed by that Act;

(D) the economic consequence (if any) of authorizing an automatic increase in the rate prescribed in that Act on the basis of an increase in a wage, price, or other index;

(E) the employment and unemployment effects (if any) of providing a different minimum wage for youth, and the employment and unemployment effects (if any) on handicapped and aged individuals of an increase in such rate and of providing a different minimum wage rate for such individuals;

(F) the effect (if any) of the full-time student certification program on employment and unemployment;

(G) the employment and unemployment effects (if any) of the minimum wage;

(H) the exemptions from the minimum wage and overtime requirements of that Act;

(I) the relationship (if any) between the Federal minimum wage rates and public assistance programs, including the extent to which employees at such rates are also eligible to receive food stamps and other public assistance;

(J) the overall level of noncompliance with that Act; and

(K) the demographic profile of minimum wage workers.

(2) The Commission shall conduct a study concerning the extent to which the exemptions from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938 may apply to employees of conglomerates, and shall make a report, within one year after the date of the appointment of the members of the Commission, of the results of such study. For the purposes of this paragraph a "conglomerate" means an establishment (A) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to the activities of the establishment employing such employees and (B) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $100,000,000 (exclusive of excise taxes at the retail level which are separately stated). The report shall include an analysis of the effects of eliminating the exemptions from the minimum wage and overtime requirements of such Act that may currently apply to the employees of such conglomerates.

(3) The Commission shall make a report of the results of the study conducted pursuant to paragraph (1) thirty-six months after the date of the appointment of the members of the Commission. The report shall include such recommendations for legislation as the Commission determines are appropriate. The Commission may make interim or additional reports which it determines are appropriate. Each report shall be made to the President and to the Congress. The Commission shall cease to exist thirty days after the submission of the report required by this paragraph.

(4)(A) The Commission shall consist of eight members as follows:

(i) Two members appointed by the Secretary of Labor.

(ii) Two members appointed by the Secretary of Commerce.

(iii) Two members appointed by the Secretary of Agriculture.

(iv) Two members appointed by the Secretary of Health, Education, and Welfare.

The appointments authorized under this paragraph shall be made within 180 days after the date of enactment of this subsection.

(B) The Chairperson shall be selected by the members of the Commission. Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(C)(i) Except as provided in clause (ii), members of the Commission who are officers or employees of the Federal Government shall serve without compensation. Other members, while engaged in the activities of the Commission, shall be paid at a rate equal to the per diem equivalent of the annual rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(ii) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(5)(A) The Commission may prescribe such rules as may be necessary to carry out its duties under this subsection.

(B) The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it deems advisable.

(C) Upon request of the Commission, the head of any Federal department or agency is authorized to detail, on a reimbursable basis, any of the personnel of such department or agency to the Commission to assist it in carrying out its duties under this subsection.

(D) The Department of Labor shall furnish such professional, technical, and research assistance as required by the Commission.

(E) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request to carry out its duties under this subsection.

(F) The Commission may secure directly from any department or agency of the United States such information as the Commission may require to carry out its duties under this subsection. Upon request of the Commission, the head of any such department or agency shall furnish such information to the Commission.

(G) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(6)(A) The Chairperson may appoint an executive director of the Commission who shall perform such duties as the Chairperson may prescribe.

(B) With approval of the Chairperson, the executive director may appoint and fix the pay of such clerical personnel as are necessary for the Commission to carry out its duties.

(C) The executive director and staff shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates but at rates not in excess of the annual rate payable for grade GS-18 of the General Schedule under section 5332 of such title.

(D) The executive director, with the concurrence of the Chairperson, may obtain temporary and intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

Effective Date

SEC. 15. (a) Except as provided in sections 3, 14, and subsection (b) of this section, the amendments made by this Act shall take effect January 1, 1978.

(b) The amendments made by sections 8, 9, 11, 12, and 13 shall take effect on the date of the enactment of this Act.

(c) On and after the date of the enactment of this Act, the Secretary of Labor shall take such administrative action as may be necessary for the implementation of the amendments made by this Act.

Approved November 1, 1977.

ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1974

(88 Stat. 55)

[PUBLIC LAW 93-259]

[93RD CONGRESS] [2ND SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1974".

[Sections 2 through 6(d)(1) and sections 7 through 27, inclusive, of the Fair Labor Standards Amendments of 1974 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act. Section 6(d)(2)(A) and (B) amends the Portal-to-Portal Act of 1947 and is set forth below.]

Federal and State Employees

SEC. 6. * * *

(2)(A) Section 6 of the Portal-to-Portal Pay Act of 1947 is amended by striking out the period at the end of paragraph (c) and by inserting in lieu thereof a semicolon and by adding after such paragraph the following:

"(d) with respect to any cause of action brought under section 16(b) of the Fair Labor Standards Act of 1938 against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspensions shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction."

(B) Section 11 of such Act is amended by striking out "(b)" after "section 16".

Effective Date

SEC. 29. (a) Except as otherwise specifically provided, the amendments made by this Act shall take effect on May 1, 1974.

(b) Notwithstanding subsection (a), on and after the date of the enactment of this Act the Secretary of Labor is authorized to prescribe necessary rules, regulations, and orders with regard to the amendments made by this Act.

Approved April 8, 1974.

ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1966

(80 Stat. 830)

[PUBLIC LAW 89-601]

[89TH CONGRESS] [2ND SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938 to extend its protection to additional employees, to raise the minimum wage, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1966".

[Sections 101 to 501, inclusive, and section 601 (a) of the Fair Labor Standards Amendments of 1966 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

STATUTE OF LIMITATIONS

SEC. 601. * * *

(b) Section 6(a) of the Portal-to-Portal Act of 1947 (Public Law 49, Eightieth Congress) is amended by inserting before the semicolon at the end thereof the following: ", except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued".

EFFECTIVE DATE

SEC. Except as otherwise provided in this Act, the ...ts made by this Act shall take effect on February ... and after the date of the enactment of this Act the Secretary is authorized to promulgate necessary rules, regulations, or orders with regard to the amendments made by this Act.

STUDY OF EXCESSIVE OVERTIME

SEC. 603. The Secretary of Labor is hereby instructed to commence immediately a complete study of present practices dealing with overtime payments for work in excess of forty hours per week and the extent to which such overtime work impedes the creation of new job opportunities in American industry. The Secretary is further instructed to report to the Congress by July 1, 1967, the findings of such survey with appropriate recommendations.

CANAL ZONE EMPLOYEES AND PANAMA CANAL STUDY

SEC. 604. The Secretary of Labor, in cooperation with the Secretary of Defense and the Secretary of State, shall (1) undertake a study with respect to (A) wage rates payable to Federal employees in the Canal Zone engaged in employment of the kind described in paragraph (7) of section 202 of the Classification Act of 1949 (5 U.S.C. 1082(7)) and (B) the requirements of an effective and economical operation of the Panama Canal, and (2) report to the Congress not later than July 1, 1968, the results of his study together with such recommendations as he may deem appropriate.

STUDY OF WAGES PAID HANDICAPPED CLIENTS IN SHELTERED WORKSHOPS

SEC. 605. The Secretary of Labor is hereby instructed to commence immediately a complete study of wage payments to handicapped clients of sheltered workshops and of the feasibility of raising existing wage standards in such workshops. The Secretary is further instructed to report to the Congress by July 1, 1967, the findings of such study with appropriate recommendations.

PREVENTION OF DISCRIMINATION BECAUSE OF AGE

SEC. 606. The Secretary of Labor is hereby directed to submit to the Congress not later than January 1, 1967, his specific legislative recommendations for implementing the conclusions and recommendations contained in his report on age discrimination in employment made pursuant to section 715 of Public Law 88-352. Such legislative recommendations shall include, without limitation, provisions specifying appropriate enforcement procedures, a particular administering agency, and the standards, coverage, and exemptions, if any, to be included in the proposed enactment.

Approved September 23, 1966.

ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1961

(75 Stat. 65)

[PUBLIC LAW 87-30]

[87TH CONGRESS] [1ST SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938, as amended, to provide coverage for employees of large enterprises engaged in retail trade or service and of other employers engaged in commerce or in the production of goods for commerce, to increase the minimum wage under the Act to $1.25 an hour, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1961".

[Sections 2 to 12, inclusive, of the Fair Labor Standards Amendments of 1961 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

EFFECTIVE DATE

SEC. 14. The amendments made by this Act shall take effect upon the expiration of one hundred and twenty days after the date of its enactment, except as otherwise provided in such amendments and except that the authority to promulgate necessary rules, regulations, or orders with regard to amendments made by this Act, under the Fair Labor Standards Act of 1938 and amendments thereto, including amendments made by this Act, may be exercised by the Secretary on and after the date of enactment of this Act.

Approved May 5, 1961.

ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1949

(63 Stat. 917)

[PUBLIC LAW 398—81ST CONGRESS]

[CHAPTER 736—1ST SESSION]

AN ACT

To provide for the amendment of the Fair Labor Standards Act of 1938, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1949".

[Sections 2 to 15, inclusive, of the Fair Labor Standards Amendments of 1949 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

MISCELLANEOUS AND EFFECTIVE DATE

SEC. 16. (a) The amendments made by this Act shall take effect upon the expiration of ninety days from the date of its enactment; except that the amendment made by section 4 shall take effect on the date of its enactment.

(b) Except as provided in section 3(o) and in the last sentence of section 16(c) of the Fair Labor Standards Act of 1938, as amended, no amendment made by this Act shall be construed as amending, modifying, or repealing any provision of the Portal-to-Portal Act of 1947.

(c) Any order, regulation, or interpretation of the Administrator of the Wage and Hour Division or of the Secretary of Labor, and any agreement entered into by the Administrator or the Secretary, in effect under the provisions of the Fair Labor Standards Act of 1938, as amended, on the effective date of this Act, shall remain in effect as an order, regulation, interpretation, or agreement of the Administrator or the Secretary, as the case may be, pursuant to this Act, except to the extent that any such order, regulation, interpretation, or agreement may be inconsistent with the provisions of this Act, or may from time to time be amended, modified, or rescinded by the Administrator or the Secretary, as the case may be, in accordance with the provisions of this Act.[1]

(d) No amendment made by this Act shall affect any penalty or liability with respect to any act or omission occurring prior to the effective date of this Act; but, after the expiration of two years from such effective date, no action shall be instituted under section 16(b) of the Fair Labor Standards Act of 1938, as amended, with respect to any liability accruing thereunder for any act or omission occurring prior to the effective date of this Act.

(e) No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended (in any action or proceeding commenced prior to or on or after the effective date of this Act), on account of the failure of said employer to pay an employee compensation for any period of overtime work performed prior to July 20, 1949, if the compensation paid prior to July 20, 1949 for such work was at least equal to the compensation which would have been payable for such work had section 7(d) (6) and (7) and section 7(g) of the Fair Labor Standards Act of 1938, as amended, been in effect at the time of such payment.

(f) Public Law 177, Eighty-first Congress, approved July 20, 1949, is hereby repealed as of the effective date of this Act.[2]

Approved, October 26, 1949.

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[1] Effective May 24, 1950, all functions of Administrator were transferred to the Secretary of Labor by Reorganization Plan No. 6 of 1950, 64 Stat. 1263. See text set out under section 1(a) of the Fair Labor Standards Act.

[2] The provisions of the repealed statute are now contained in substance in sections 7(e)(5), (6), (7), and (h) of the Fair Labor Standards Act, as amended.

PERTINENT PROVISIONS AFFECTING THE FAIR LABOR STANDARDS ACT FROM THE PORTAL-TO-PORTAL ACT OF 1947

(61 Stat. 84)

[PUBLIC LAW 49—80TH CONGRESS]

[CHAPTER 52—1ST SESSION]
[H.R. 2157]

AN ACT

To relieve employers from certain liabilities and punishments under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, and the Bacon-Davis Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PART I

FINDINGS AND POLICY

SECTION 1. (a) The Congress hereby finds that the Fair Labor Standards Act of 1938, as amended, has been interpreted judicially in disregard of long-established customs, practices, and contracts between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation, upon employers with the results that, if said Act as so interpreted or claims arising under such interpretations were permitted to stand, (1) the payment of such liabilities would bring about financial ruin of many employers and seriously impair the capital resources of many others, thereby resulting in the reduction of industrial operations, halting of expansion and development, curtailing employment, and the earning power of employees; (2) the credit of many employers would be seriously impaired; (3) there would be created both an extended and continuous uncertainty on the part of industry, both employer and employee, as to the financial condition of productive establishments and a gross inequality of competitive conditions between employers and between industries; (4) employees would receive windfall payments, including liquidated damages, of sums for activities performed by them without any expectation of reward beyond that included in their agreed rates of pay; (5) there would occur the promotion of increasing demands for payment to employees for engaging in activities no compensation for which had been contemplated by either the employer or employee at the time they were engaged in; (6) voluntary collective bargaining would be interfered with and industrial disputes between employees and employers and between employees and employees would be created; (7) the courts of the country would be burdened with excessive and needless litigation and champertous practices would be encouraged; (8) the Public Treasury would be deprived of large sums of revenues and public finances would be seriously deranged by claims against the Public Treasury for refunds of taxes already paid; (9) the cost to the Government of goods and services heretofore and hereafter purchased by its various departments and agencies would be unreasonably increased and the Public Treasury would be seriously affected by consequent increased cost of war contracts; and (10) serious and adverse effects upon the revenues of Federal, State, and local governments would occur.

The Congress further finds that all of the foregoing constitutes a substantial burden on commerce and a substantial obstruction to the free flow of goods in commerce.

The Congress, therefore, further finds and declares that it is in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this Act be enacted.

The Congress further finds that the varying and extended periods of time for which, under the laws of the several States, potential retroactive liability may be imposed upon employers, have given and will give rise to great difficulties in the sound and orderly conduct of business and industry.

The Congress further finds and declares that all of the results which have arisen or may arise under the Fair Labor Standards Act of 1938, as amended, as aforesaid, may (except as to liability for liquidated damages) arise with respect to the Walsh-Healey and Bacon-Davis Acts and that it is therefore, in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this Act shall apply to the Walsh-Healey Act and the Bacon-Davis Act.

(b) It is hereby declared to be the policy of the Congress in order to meet the existing emergency and to correct existing evils (1) to relieve and protect interstate commerce from practices which burden and obstruct it; (2) to protect the right of collective bargaining; and (3) to define and limit the jurisdiction of the courts.

* * * * *

PART III

FUTURE CLAIMS

SEC. 4. RELIEF FROM CERTAIN FUTURE CLAIMS UNDER THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED, THE WALSH-HEALEY ACT, AND THE BACON-DAVIS ACT.—

(a) Except as provided in subsection (b), no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any of the following activities of such employee engaged in on or after the date of the enactment of this Act—

(1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and

(2) activities which are preliminary to or postliminary to said principal activity or activities,

which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

(b) Notwithstanding the provisions of subsection (a) which relieve an employer from liability and punishment with respect to an activity, the employer shall not be so relieved if such activity is compensable by either—

(1) an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee is employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

(c) For the purposes of subsection (b), an activity shall be considered as compensable under such contract provision or such custom or practice only when it is engaged in during the portion of the day with respect to which it is so made compensable.

(d) In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended, of the Walsh-Healey Act, or of the Bacon-Davis Act, in determining the time for which an employer employs an employee with respect to walking, riding, traveling or other preliminary or postliminary activities described in subsection (a) of this section, there shall be counted all that time, but only that time, during which the employee engages in any such activity which is compensable within the meaning of subsections (b) and (c) of this section.

PART IV

MISCELLANEOUS

* * * * *

SEC. 6. STATUTE OF LIMITATIONS.—Any action commenced on or after the date of the enactment of this Act to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act—

(a) if the cause of action accrues on or after the date of the enactment of this Act—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, *except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;*[1]

* * * * *

(d) with respect to any cause of action brought under section 16(b) of the Fair Labor Standards Act of 1938 against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction.[2]

SEC. 7. DETERMINATION OF COMMENCEMENT OF FUTURE ACTIONS.—In determining when an action is commenced for the purposes of section 6, an action commenced on or after the date of the enactment of this Act

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[1] As amended by section 601 of the Fair Labor Standards Amendments of 1966, 80 Stat. 830.

[2] Added by the Fair Labor Standards Amendments of 1974, 88 Stat. 55.

under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, shall be considered to be commenced on the date when the complaint is filed; except that in the case of a collective or class action instituted under the Fair Labor Standards Act of 1938, as amended, or the Bacon-Davis Act, it shall be considered to be commenced in the case of any individual claimant—

(a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or

(b) if such written consent was not so filed or if his name did not so appear—on the subsequent date on which such written consent is filed in the court in which the action was commenced.

* * * * *

SEC. 10. RELIANCE IN FUTURE ON ADMINISTRATIVE RULINGS, ETC.—

(a) In any action or proceeding based on any act or omission on or after the date of the enactment of this Act, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the agency of the United States specified in subsection (b) of this section, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) The agency referred to in subsection (a) shall be—

(1) in the case of the Fair Labor Standards Act of 1938, as amended—the Administrator of the Wage and Hour Division of the Department of Labor;

* * * * *

SEC. 11. LIQUIDATED DAMAGES.—In any action commenced prior to or on or after the date of the enactment of this Act to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 16[4] of such Act.

* * * * *

SEC. 13. DEFINITIONS.—

(a) When the terms "employer", "employee", and "wage" are used in this Act in relation to the Fair Labor Standards Act of 1938, as amended, they shall have the same meaning as when used in such Act of 1938.

* * * * *

(e) As used in section 6 the term "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

SEC. 14 SEPARABILITY.—If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 15. SHORT TITLE.—This Act may be cited as the "Portal-to-Portal Act of 1947".

Approved May 14, 1947.

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[4] The Fair Labor Standards Amendments of 1974 struck "(b)" after "section 16".

ADDITIONAL PROVISIONS OF EQUAL PAY ACT OF 1963

(77 Stat. 56)

[PUBLIC LAW 88-38]

[88TH CONGRESS, S. 1409]

[JUNE 10, 1963]

AN ACT

To prohibit discrimination on account of sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Pay Act of 1963".

DECLARATION OF PURPOSE

SEC. 2. (a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex—

(1) depresses wages and living standards for employees necessary for their health and efficiency;

(2) prevents the maximum utilization of the available labor resources;

(3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;

(4) burdens commerce and the free flow of goods in commerce; and

(5) constitutes an unfair method of competition.

(b) It is hereby declared to be the policy of this Act, through exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct the conditions above referred to in such industries.

[Section 3 of the Equal Pay Act of 1963 amends section 6 of the Fair Labor Standards Act by adding a new subsection (d). The amendment is incorporated in the revised text of the Act.]

EFFECTIVE DATE

SEC. 4. The amendments made by this Act shall take effect upon the expiration of one year from the date of its enactment: *Provided,* That in the case of employees covered by a bona fide collective bargaining agreement in effect at least thirty days prior to the date of enactment of this Act, entered into by a labor organization (as defined in section 6(d)(4) of the Fair Labor Standards Act of 1938, as amended), the amendments made by this Act shall take effect upon the termination of such collective bargaining agreement or upon the expiration of two years from the date of enactment of this Act, whichever shall first occur.

Approved June 10, 1963, 12 m.

CARR GOTTSTEIN FOODS CO.

LEGAL DEPARTMENT
Michael Moxness, General Counsel

February 15, 1995

Representative Pete Kott
State Capitol
Room 409
Juneau, Alaska 99801-1182

VIA FAX 465-2819

Re: Support of HB 115

Dear Representative Kott:

We just received word of the introduction of House Bill 115, and I wanted to let you know that we at Carrs wholeheartedly support its passage. As you know, this legislation brings much needed reform to Alaska's wage and hour statutes by returning to the Department of Labor the ability to supervise mutually agreeable settlements in wage disputes and by replacing mandatory punitive damages with a flexible approach that can be used by the courts to achieve fairness.

As you know, the current law makes wage and hour disputes unique in the legal world by prohibiting the parties from settling their differences. This results in "all or nothing" litigation when reasoned discussion and settlement is called for. HB 115, and its partner, SB45, would allow the Department of Labor to supervise settlements of the parties, or, in the alternative, allow limited settlements when the employee has been advised in writing of his right to consult counsel and a "cooling-off" period has past. Where an employee's interests are protected, there is no reason to prohibit the parties from reaching a private agreement. Under the current system, the employer has absolutely no reason not to litigate every case to the bitter end, which is surely not a situation that promotes the welfare of employees.

The current law requires any back wage award be doubled. We have had situations where a good, reliable, full time employee applies for extra work in an entirely different division. Although we need the help, we have to refuse them, due to the overtime exposure. For example, our security department once hired a woman from our headquarters accounting staff to work phones in the evening. The woman was from an immigrant family, and she wanted the extra money to help a younger brother go to college. The security supervisor assumed that since the employee's two jobs were in two different divisions with different facilities, supervision, duties and hours, no overtime was payable. He was wrong. When the temporary phone work was over, the employee filed an overtime claim and received double her overtime wages. Our well-meaning security supervisor intended to do the employee a favor and wound up costing our company several thousand dollars in mandatory penalties. Results like this are silly. The courts should have the flexibility to waive penalties when the employer acts in good faith.

6411 A STREET, ANCHORAGE, ALASKA 99518

(907) 564-2351
FAX (907) 564-2211

Finally, HB 115 would apply to wage and hour disputes the general rule of allowing a court to award attorneys' fees to the prevailing party. The only argument I have heard against this is that potential claimants would be scared off by the exposure. In the first place, it is unclear to me why a defendant should be liable for attorneys fees if it loses, while the claimant, who chose to bring the action in the first place, is not liable if it loses. Please recall that wage and hour claims are not insurable. Therefore, when a small business is required to spend thousands of dollars defending a false claim, that money comes directly from the earnings of that business. Perhaps even more to the point, I have been litigating cases for fifteen years in Alaska, and I have never had a potential claimant even imply that exposure to the risk of attorneys fees deterred them from bringing a claim. I think if you ask most litigation attorneys, they will tell you that the rule in general litigation imposing attorneys' fees on the losing party has not resulted in any decrease in claims. No one is being scared off.

I urge you to support HB 115.

Very truly yours,

Michael Moxness

MM/mjc

ALASKA
CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union
P. O. Box 201844 Anchorage, AK 99520-1844
Phone: 1-907-258-0044 Fax: 1-907-258-0288

February 14, 1995

The Honorable Representative Brian Porter
Chairman of House Judiciary Committee
State Capitol Building, Room 118
Juneau, AK 99801-1182

Dear Representative Porter:

I am writing to you on behalf of the Board of Directors and members of the Alaska Civil Liberties Union to express concerns about House Bill 138 which is currently pending before the House Judiciary Committee. The AkCLU has serious concerns about this bill and believes that it is unconstitutional and would be defeated if challenged in court.

One of the basic premises of the Fourth Amendment is that a person has the right to be free of governmental searches and seizures unless there is probable cause to believe that a crime has occurred. A determination of probable cause is made by a neutral and detached magistrate: it is the magistrate's responsibility for determining the reliability of the evidence upon which a warrant is based.

House Bill 138 seeks to take away the authority of the magistrate in determining probable cause. House Bill 138 anticipates that any person who makes an anonymous crime stopper report would be presumed to be a reliable source of information and would be placed in a category equal to that of a "citizen informant." The bill states that "once verified by law enforcement," the information provided by the informant would be considered reliable and anonymity would be guaranteed -- no additional inquiry by the magistrate would be required to determine the reliability of the informant.

This provision allows the police officer, not the magistrate, to make the crucial decision regarding the reliability of the informant and the informant's information that is necessary in determining probable cause to issue a warrant. This is a blatant violation of the Fourth Amendment's requirement that a neutral and detached magistrate, not a police officer, have the authority to issue the warrant.

The other part of the bill that is problematic is the requirement that a defendant be required to petition through an in camera proceeding to discover information about the informant. The right of confrontation requires that a defendant know his or her accuser and be able to defend against their charges. The defendant

Accordingly, the AkCLU believes that before DNA identification should be admitted, the prosecution must prove that (1) the general principles underlying the forensic use of the DNA test are accepted as accurate by a consensus of the scientific community; (2) the actual procedures used in an individual case comport with those general principles and, in particular, that the laboratories involved in the testing were sufficiently regulated to ensure the reliability and validity of these results; and (3) the probability derived from the DNA evidence used to identify the defendant was calculated through use of appropriate statistical principles of population genetics and adequately developed data bases. Until this showing can be made, DNA testimony should not be admitted in criminal cases.

The Alaska Civil Liberties Union is not per se opposed to the introduction of DNA evidence in criminal or civil proceedings. Rather, we caution that the aura of infallibility which is associated with DNA testing poses a potentially grave problem. Instead of loosening the requirements for admissibility of DNA evidence, we believe that even tighter protocols should apply when the prosecution seeks to use DNA evidence to convict a defendant. [1] Unless the trier of fact understands the underlying processes of DNA testing to such a degree that it can adequately judge the reliability of the testing, the trier of fact will assume that the test results "conclusively" establish a fact which may not be true.

It is unclear from the language of the bill if, and to what extent, the defendant would be allowed to challenge the validity of the DNA evidence. It is also unclear if this challenge would be in front of the judge or in front of the jury. The bill appears to presume that DNA evidence would automatically be admitted regardless of whether it is scientifically established. This is deeply troubling to the AkCLU.

Part of the confusion stems from the language of Section 1 claims that the legislature wishes to change the standard for admissibility from the standard of Frye v. United States, 293 F. 1013 (D.C. Cir. 1923), to the more recent standard of Daubert v. Merrill Dow Pharmaceutical, Inc., 113 S.Ct. 2786 (1993); unfortunately, however, the language of HB 52 does not follow the holding of the Daubert case.

In Daubert, the U. S. Supreme Court announced a new test for determining the admissibility of evidence in federal court. The Frye test had previously required that before evidence could be admitted in court it first had to reach a general level of acceptance within the scientific community. In the Daubert case,

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[1] A different question is presented when the defendant is the proponent of such evidence. See Chambers v. Mississippi, 410 U.S. 284 (1983).

the trial court had dismissed plaintiff's suit against Dow pharmaceutical for birth defects caused by a drug manufactured by Dow. To establish its case, the plaintiff had called experts who testified that the drug Bendectin had caused the birth defects; the defendants called different experts who refuted those studies and their methodology. The court ruled that the lack of consensus on the testing established that a general level of acceptance had not yet been reached within the scientific community and accordingly dismissed the plaintiff's case.

The United States Supreme Court reversed the lower court's decision, holding that the Federal Rules of Evidence replaced the Frye test and that the Rules were intended to be "flexible" and "liberal" and should allow new and progressive scientific techniques to be considered if certain scientific criteria had been established. The Daubert court did not say that a certain body of evidence (such as DNA) could be admitted in court without any type of scrutiny. Rather, the court laid out numerous criterion to be examined in determining the admissibility of evidence, including: (1) whether the testing hypotheses could be falsified; (2) whether the testing had been subjected to peer review and publication; (3) what the known or potential rate of error in the testing protocol was; and (4) whether the test had been generally accepted within the scientific community.

Instead of the absolute standard established in Frye, the Daubert court set out a standard which weighed many different factors, including the general acceptance of the methodology within the scientific community. The Daubert court still required the judge to determine the admissibility of evidence weighing the above criteria, it did not presume the wholesale admission of one particular type of evidence under any circumstance.

Herein lies our major concern for House Bill 52 -- it is very dangerous to allow the wholesale introduction of one particular type of evidence without the requirement of reliability, both in the underlying scientific theory and in the testing protocol used in each particular case. The civil liberties concern is obvious: if evidence is admitted without the requirement of establishing its validity, innocent persons may be convicted.

Not only is this bill of concern from a civil liberties perspective, it is unnecessary from a legal perspective. Alaska Courts have already ruled in a number of instances that DNA evidence may be admitted in court, even when using the Frye test (which is the current test relied upon by Alaska courts). There is no need to change the rules of evidence to governing the admission of DNA evidence. If the DNA testing protocol is sound, the evidence will be admitted -- if the testing protocol is not sound, then allowing the evidence to be admitted could have disastrous consequences.

In short, there is no need to change the law governing the introduction of DNA evidence. Passing this bill could have extremely negative consequences. Please do not allow this bill to go any further.

Sincerely,

Randall Burns,
Executive Director
Alaska Civil Liberties Union

Stuart Anderson's®
RESTAURANTS

VIA FAX (907-465-3834)

February 13, 1995

Representative Con Bunde
House Judiciary Committee
State Capitol, Room 108
Juneau, AK 99801-1182

RE: Wage and Hour Reform Act

Dear Representative Bunde:

I am writing to urge your strong support of the wage and hour legislation recently introduced in the new session of the Alaska Legislature. We believe Alaska's Wage and Hour Act should be amended in several ways, many of which are covered in the new House Bill.

The new Bill would substantially assist small business owners in today's economic climate, while at the same time assuring employees of fair treatment in the labor market. The Bill provides a much needed good-faith defense to employee overtime claims, which ensures full compensation for employees while acknowledging that employers sometimes make honest mistakes in compensating their employees. Also, by allowing the prevailing party to recover reasonable attorney's fees and court costs, the Bill provides the motivation necessary for potential plaintiffs and plaintiffs' counsel to evaluate the merits of their claims before filing suit. Under the current system, there is little to deter a disgruntled employee from bringing a frivolous action against an employer.

As the manager of a business in Anchorage, and as a resident of Alaska, I believe that passage of this wage and hour reform

legislation is essential to the viability of businesses such as ours, and to Alaska's ability to attract new business in the state. I hope you will give this Bill your full support.

Very truly yours,

John Wilson
General Manager
Stuart Anderson's Cattle Company

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Cramer
3/14/95

CS FOR HOUSE BILL NO. 115(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to settlement and payment of claims for overtime compensation claims and to liquidated damages and attorney fees for overtime compensation claims; and amending Alaska Rules of Civil Procedure 68 and 82."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.10.110(a) is amended to read:

(a) An employer who violates a provision of AS 23.10.060 or 23.10.065 is liable to an employee affected in the amount of unpaid minimum wages, or unpaid overtime compensation, as the case may be, and, except as provided in (d) of this section, in an additional equal amount as liquidated damages.

* Sec. 2. AS 23.10.110(c) is amended to read:

(c) The court in an action brought under this section shall, in addition to a judgment awarded to the plaintiff, allow costs of the action and, except as provided in (e) - (h) of this section, reasonable attorney fees to be paid by the defendant. The attorney fees in the case of actions brought under this section by the commissioner

shall be remitted by the commissioner to the Department of Revenue. The commissioner may not be required to pay the filing fee or other costs. The commissioner in case of suit has power to join various claimants against the same employer in one cause of action.

* Sec. 3. AS 23.10.110 is amended by adding new subsections to read:

(d) In an action under (a) of this section to recover unpaid overtime compensation or liquidated damages for unpaid overtime, if the defendant shows by clear and convincing evidence that the act or omission giving rise to the action was made in good faith and that the employer had reasonable grounds for believing that the act or omission was not in violation of AS 23.10.060, the court may decline to award liquidated damages or may award an amount of liquidated damages less than the amount set out in (a) of this section.

(e) If the plaintiff prevails in an action for unpaid overtime compensation under (a) of this section, the court shall award reasonable attorney fees to the plaintiff unless the defendant

(1) shows by clear and convincing evidence that the act or omission giving rise to the action was made in good faith and that the defendant had reasonable grounds for believing that the act or omission was not in violation of AS 23.10.060, in which case the court may award attorney fees to the plaintiff in accordance with court rules; or (If the action were subject to the state Fair Labor Standards Act

(2) would be entitled to attorney fees under court rules pertaining to offers of judgment, in which case neither the plaintiff nor the defendant is entitled to attorney fees.

(f) If the defendant prevails in an action for unpaid overtime compensation under (a) of this section and had previously made an offer of judgment in accordance with court rules, the court shall award attorney fees to the defendant in accordance with court rules unless the plaintiff proves to the satisfaction of the court that the action was both brought and prosecuted in good faith and that the plaintiff had reasonable grounds for believing that the act or omission was in violation of AS 23.10.060. If attorney fees are awarded to the defendant they shall be awarded in accordance with court rules.

(g) A person may not claim that the person acted in good faith under (d) - (f)

of this section unless the person demonstrates having made a reasonable effort to determine the applicable law of this state.

(h) Subsections (d) - (g) of this section do not apply to an action brought under this section by the commissioner.

(i) The commissioner may supervise the payment of the unpaid overtime compensation owing to an employee under AS 23.10.060. Payment in full in accordance with an agreement by an employee to settle a claim for unpaid overtime compensation or liquidated damages for unpaid overtime compensation constitutes a waiver of any right the employee may have under (a) of this section to unpaid overtime compensation or liquidated damages for unpaid overtime compensation.

(j) In a settlement for unpaid overtime compensation that is not supervised by the department or the court, an employee is entitled to liquidated damages under (a) of this section unless the employee and the employer enter into a written settlement agreement in which the employee expressly waives the right to receive liquidated damages. A private written settlement agreement under this subsection is not valid unless submitted to the department for review. The department shall review the agreement and approve it if it is fair to the parties. If the department does not act within 30 days after receiving the agreement, the agreement is considered approved.

* Sec. 4. APPLICATION OF ACT. (a) AS 23.10.110(i), added by sec. 3 of this Act, applies to agreements entered into on or after the effective date of this Act.

(b) AS 23.10.110(j), added by sec. 3 of this Act, applies to written agreements entered into on or after the effective date of this Act.

(c) Except as provided in (a) and (b) of this section, this Act applies to wages earned for hours worked on or after the effective date of this Act.

* Sec. 5. AMENDMENTS TO COURT RULES. (a) AS 23.10.110(e), enacted by sec. 3 of this Act, has the effect of amending Alaska Rules of Civil Procedure 68 and 82 by limiting the court's discretion in awarding attorney fees to prevailing plaintiffs and to defendants who have made an offer of judgment.

(b) AS 23.10.110(f), enacted by sec. 3 of this Act, has the effect of amending Alaska Rule of Civil Procedure 68 by limiting the court's discretion in awarding attorney fees to prevailing defendants.