

CHAPTER 1104

S.B. No. 601

AN ACT

relating to the minimum wage.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 2, Texas Minimum Wage Act of 1970, as amended (Article 5159d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. SHORT TITLE. This Act may be cited as the Texas Minimum Wage Act [~~of 1970~~].

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SECTION 2. Subsection (1), Section 3, Texas Minimum Wage Act of 1970, as amended (Article 5159d, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Range production of livestock" includes any livestock operation, regardless of size or type of location, where the land produces forage or feedstuffs either revegetated naturally or artificially and shall be considered to include the breeding, feeding, watering, containing, maintaining, and caring for livestock, and all other activities necessary or useful to the raising of livestock; provided that "range production of livestock" does ~~not~~ include production of livestock in feed lots.

SECTION 3. Subsections (b) and (c), Section 4, Texas Minimum Wage Act of 1970 (Article 5159d, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) Employers are exempt from the provisions of this Act with respect to employment of the following:

(1) any person who is a member of a religious order while performing any service for or at the direction of the order and any duly ordained, commissioned, or licensed minister, priest, rabbi, sexton, or Christian Science reader while performing services as such for a church, synagogue, or religious organization;

(2) any person who is less than 18 years of age and is not a high school graduate or a graduate of a vocational training program, and any person who is less than 20 years of age and who is a student regularly enrolled in a high school, college, university, or vocational training program. Provided, that this exemption shall not apply to persons employed in agriculture who are paid on a piece rate basis;

(3) any person employed in a bona fide executive, administrative, or professional capacity;

(4) any person employed as an outside salesman or collector and who is paid on a commission basis;

(5) any person who performs services for a political subdivision as an elected official or as a member of a legislative body ~~[switchboard operator employed by an independently owned public telephone company which has not more than 750 stations];~~

(6) any person who performs domestic services in or about a private home, including any person performing the duties of baby sitting in or out of the home of the employer, and any person who lives in or about the private home and furnishes personal care for any resident of the home;

(7) any person who performs any services while imprisoned in the state penitentiary or confined in a local jail;

(8) any person engaged in the activities of an educational, charitable, religious, or nonprofit organization in which the employer-employee relationship does not in fact exist or in which the services are rendered to the organization gratuitously;

(9) any person employed by his brother, sister, brother-in-law, sister-in-law, son, daughter, spouse, parent, or parent-in-law, guardian, or person in loco parentis;

(10) any handicapped person who is not more than 21 years of age and who is a client of vocational rehabilitation and is participating in a cooperative school-work program;

(11) any employee employed by an establishment which is an amusement or recreational establishment, if it does not operate for more than seven months in any calendar year, or during the preceding calendar year, its average receipts for any six months of such year were not more than thirty-three and one-third percent of its average receipts for the other six months of the year;

(12) any person employed by organizations known as Boy Scouts of America, Girl Scouts of America, or any local organization affiliated with these organizations;

(13) any person who is employed by any camp of a religious, educational, charitable, or nonprofit organization; *and*

(14) any person employed in dairy farming.

(c) Except with respect to employment of persons in agriculture, employers who are not subject to liability for payment of contributions to the Unemployment Compensation

Fund under the provisions of the Texas Unemployment Compensation Act, as amended, are exempt from the provisions of this Act.

~~[The Texas Employment Commission, during the months of January and June of each year, shall furnish to the Bureau of Labor Statistics a list of the names and addresses of all employers in this state who are then liable for the payment of contributions to the Unemployment Compensation Fund under the provisions of the Texas Unemployment Compensation Act as disclosed by the records of the Texas Employment Commission. Each list of employers shall be retained by the Bureau of Labor Statistics for a period of two years.] Upon written request, the Commissioner of [the Bureau of] Labor and Standards [Statistics] shall furnish to any person applying therefor, a certificate stating whether or not [the name and address of] a specified employer is an employer in this state who is liable for the payment of contributions to the Unemployment Compensation Fund under the provisions of the Texas Unemployment Compensation Act. The Texas Employment Commission shall provide the Department of Labor and Standards with such certificate upon request by the Department of Labor and Standards [appears on any list or lists of employers furnished by the Texas Employment Commission during the two years preceding the date of the request and, if so, the date of the list or lists upon which it appears]. The certificates shall be admissible in evidence in any cause of action brought by an employee or employees under the provisions of Section 13 of this Act, and, in the absence of evidence to the contrary, it shall be presumed that the facts stated in such certificates are true and the certificate shall be conclusive as to the issue of whether or not the named employer is exempt from the provisions of this Act under Section 4(c). [Except for the furnishing of certificates with respect to a specified employer as provided in this section, the lists of the names and addresses of employers provided to the Bureau of Labor Statistics by the Texas Employment Commission shall be confidential and shall not be removed from the office of the Bureau of Labor Statistics or released to any person nor shall the Commissioner of the Bureau of Labor Statistics permit any person to make a copy of any such list and remove it from his office.] The Commissioner of [the Bureau of] Labor and Standards [Statistics] may require payment of a fee not to exceed \$5 for the issuance of a certificate as provided in this section and all fees collected for issuing certificates shall be deposited in the State Treasury to the credit of the General Revenue Fund. The issuance of a certificate by the Texas Employment Commission under this subsection and reimbursement for the administrative expenses incurred by that commission in providing the certificate are subject to the terms of an interagency agreement entered into between the Texas Department of Labor and Standards and the Texas Employment Commission.~~

SECTION 4. Subsections (a) and (c), Section 5, Texas Minimum Wage Act of 1970 (Article 5159d, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Except as provided in *Section* [Sections] 6 [and 7] of this Act, every employer shall pay to each of his employees [(1)] not less than \$3.35 [\$1.25] an hour [on and after February 1, 1970; and (2) not less than \$1.40 an hour on and after February 1, 1971].

(c) The reasonable cost to the employer of furnishing meals or lodging, or both, to an employee may be included in computing the wages paid to the employee if meals or lodging are customarily furnished by the employer to his employees, provided that the costs [cost] of the meals and of the lodging are separately stated and identified in the earnings statement furnished to the employee under the provisions of Section 11 of this Act.

SECTION 5. Section 6, Texas Minimum Wage Act of 1970 (Article 5159d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. MINIMUM WAGE FOR AGRICULTURAL EMPLOYEES. *Each [(a)]—Except for persons covered by Subsections (b) and (c) of this section and Section 7 of this Act, any] person employed in agriculture is [on and after February 1, 1970, shall be] entitled to receive for each hour that he works not less than \$3.35 an hour [20 cents less than the federal hourly minimum wage for agriculture as provided in the Fair Labor Standards Act of 1938, as amended, but in no event shall the minimum hourly wage established in this Act for agriculture exceed the amount specified in Section 5 of this Act].*

~~[(b) On and after February 1, 1970, when a person employed in agriculture lives on the premises of the employer in quarters furnished by the employer, the employer, in addition to furnishing living quarters and other benefits, shall pay to the employee in cash a minimum weekly salary of not less than \$30 a week.]~~

~~[(c) When a person is employed as provided in Subsection (b) of this section and the employer, in addition to furnishing on-premises living quarters for the employee also furnishes on-premises living quarters for members of the employee's family, any member of the employee's family living in the quarters may be employed in agriculture by the employer without regard to the minimum wage and salary provisions of this Act.]~~

~~[(d) The provisions of this section take effect on February 1, 1970.]~~

SECTION 6. Subsections (a), (b), and (h), Section 7, Texas Minimum Wage Act of 1970 (Article 5159d, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) *Each* ~~[On and after February 1, 1971, any]~~ person employed in agriculture as a piece rate worker to harvest a commodity for which a piece rate has been established by the commissioner under the provisions of this section is ~~[shall be]~~ entitled to receive not less than the *minimum hourly wage established under Section 6 of this Act* ~~[piece rate established by the commissioner for harvesting the particular commodity involved].~~

(b) The commissioner shall determine a piece rate for each agricultural commodity commercially produced in substantial quantity in this state in the manner provided in this section. The piece rate in each case shall be equivalent to the minimum hourly wage for other agricultural workers, as provided for in Section 6 ~~[6(a)]~~ of this Act, in that when payment by unit of production is applied to a worker of average ability and diligence in harvesting a particular commodity he shall receive an amount equal to the minimum hourly wage for agricultural workers. It is the intent and understanding of the legislature that if a piece rate worker *harvests more than* ~~[does not harvest]~~ the number of units of a particular commodity that would provide the minimum wage as established for a worker of average ability and diligence, ~~[none the less]~~ that worker *must* ~~[need]~~ be paid for the total ~~[only those]~~ number of units of production harvested by him. *An employer may not pay a piece rate worker at a piece rate less than the rate determined by the commissioner.*

(h) After the establishment of any piece rate or rates the order establishing same shall be kept on file in the office of the commissioner in Austin, Texas, and shall be available for public inspection. The commissioner shall make copies available to anyone on request and may charge a reasonable amount to cover the cost of making and distributing the copies. A copy of each order establishing a piece rate or rates shall be furnished by the commissioner to the *Texas Department of Labor and Standards* ~~[Bureau of Labor Statistics].~~

SECTION 7. Section 8, Texas Minimum Wage Act of 1970 (Article 5159d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. AGRICULTURAL EXEMPTION. The provisions of Sections 5, 6 and 7 shall not apply to any agricultural employer ~~[who during any calendar quarter during the preceding calendar year did not use more than 300 man-days of agricultural labor, nor to any agricultural employer]~~ with respect to employees engaged in the production of livestock and in activities in support thereof.

SECTION 8. Subsection (c), Section 13, Texas Minimum Wage Act of 1970 (Article 5159d, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) At the trial of any cause of action brought under this section, the plaintiff shall recover if the jury or the court finds from a preponderance of the evidence that:

- (1) the plaintiff or plaintiffs are or have been employed by the defendant at any time during the two years immediately preceding the institution of the suit;
- (2) ~~[the defendant has failed, up until the time of the filing of the suit, to furnish plaintiff or plaintiffs a statement or statements of earnings as required by Section 11 of this Act;~~

~~[(9)]~~ the original petition filed by or on behalf of plaintiff or plaintiffs is verified ~~[and contains a demand for the defendant to furnish the statement or statements of wages paid]; and~~

~~(3) [(4) the defendant persisted in failing or refusing to furnish the statement or statements; and~~

~~[(5) that] the defendant had failed to pay to plaintiff or plaintiffs the minimum wage as set forth in [Section 5, 6, 7 or 9 of] this Act.~~

SECTION 9. Section 15, Texas Minimum Wage Act of 1970 (Article 5159d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. DISSEMINATION OF INFORMATION. The *Texas Department of Labor and Standards* ~~[Bureau of Labor Statistics]~~ shall disseminate information to the public regarding the provisions of this Act to the end that both employers and employees in this state will be fully aware of their respective rights and responsibilities, the exemptions specified, and the penalties and liabilities which may be incurred for violations of the provisions of this Act.

SECTION 10. Subsection (i) of Section 3 and Section 12, Texas Minimum Wage Act of 1970 (Article 5159d, Vernon's Texas Civil Statutes), are repealed.

SECTION 11. This Act takes effect September 1, 1987.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 13, 1987, by a viva-voce vote; and that the Senate concurred in House amendment on May 29, 1987, by a viva-voce vote. Passed the House, with amendment, on May 25, 1987, by a non-record vote.

Approved June 19, 1987.

Effective Sept. 1, 1987.