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93D CONGRESS } SENATE { REPORT
1st Session } { No. 93-358

LEGISLATIVE COUNSEL
FILE COPY

FAIR LABOR STANDARDS AMENDMENTS OF 1973

JULY 28, 1973.—Ordered to be printed

Mr. WILLIAMS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 7935]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7935) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rates under that Act, to expand the coverage of that Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE; REFERENCES TO ACT

SECTION 1. (a) This Act may be cited as the "Fair Labor Standards Amendments of 1973".

(b) Unless otherwise specified, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the section or other provision amended or repealed is a section or other provision of the Fair Labor Standards Act of 1938 (29 U.S.C. 201–219).

INCREASE IN MINIMUM WAGE RATE FOR EMPLOYEES COVERED BEFORE 1966

SEC. 2. Section 6(a)(1) is amended to read as follows:

"(1) not less than $2 an hour during the period ending June 30, 1974, and not less than $2.20 an hour after June 30, 1974, except as otherwise provided in this section;".

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Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

INCREASE IN MINIMUM WAGE RATE FOR NONAGRICULTURAL EMPLOYEES COVERED IN 1966 AND 1973

SEC. 3. Section 6(b) is amended (1) by inserting ", title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1973" after "1966", and (2) by striking out paragraphs (1) through (5) and inserting in lieu thereof the following:

"(1) not less than $1.80 an hour during the period ending June 30, 1974,

"(2) not less than $2 an hour during the year beginning July 1, 1974, and

"(3) not less than $2.20 an hour after June 30, 1975."

INCREASE IN MINIMUM WAGE RATE FOR AGRICULTURAL EMPLOYEES

SEC. 4. Section 6(a)(5) is amended to read as follows:

"(5) if such employee is employed in agriculture, not less than—

"(A) $1.60 an hour during the period ending June 30, 1974,

"(B) $1.80 an hour during the year beginning July 1, 1974,

"(C) $2 an hour during the year beginning July 1, 1975, and

"(D) $2.20 an hour after June 30, 1976."

INCREASE IN MINIMUM WAGE RATES FOR EMPLOYEES IN PUERTO RICO AND THE VIRGIN ISLANDS

SEC. 5. (a) Section 5 is amended by adding at the end thereof the following new subsection:

"(e) The provisions of this section, section 6(c), and section 8 shall not apply with respect to the minimum wage rate of any employee employed in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands, (2) by an establishment which is a hotel, motel, or restaurant, or (3) by any other retail or service establishment which 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. The minimum wage rate of such an employee shall be determined under this Act in the same manner as the minimum wage rate for employees employed in a State of the United States is determined under this Act. As used in the preceding sentence, the term 'State' does not include a territory or possession of the United States."

(b) Effective on the date of the enactment of the Fair Labor Standards Amendments of 1973, subsection (c) of section 6 is amended by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following:

(2) Except as provided in paragraphs (4) and (5), in the case of any employee who is covered by such a wage order on the date of enactment of the Fair Labor Standards Amendments of 1973 and to whom the rate or rates prescribed by subsection (a) or (b) would otherwise apply, the wage rate applicable to such employee shall be increased as follows:

"(A) Effective on the effective date of the Fair Labor Standards Amendments of 1973, the wage order rate applicable to such employee on the day before such date shall—

"(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

"(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour,

except that, in the case of an employee whose wage order rate was increased (pursuant to the recommendations of a special industry committee convened under section 8) during the period beginning on July 26, 1973, and ending before the effective date of the Fair Labor Standards Amendments of 1973, the wage order rate applicable to such employee shall be increased only if the amount of the increase during such period was less than the otherwise applicable increase prescribed by clause (i) or (ii) of this subparagraph and only to the extent of the difference between the increase during such period and such otherwise applicable increase.

"(B) Effective on the first day of the second and each subsequent year after such date, the highest wage order rate applicable to such employees on the day before such first day shall—

"(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

"(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour.

In the case of any employee employed in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5, to whom the rate or rates prescribed by subsection (a)(5) would otherwise apply, and whose hourly wage is increased above the wage rate prescribed by such wage order by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the increases prescribed by this paragraph shall be applied to the sum of the wage rate in effect under such wage order and the amount by which the employee's hourly wage rate is increased by the subsidy (or income supplement) above the wage rate in effect under such wage order.

"(3) In the case of any employee employed in Puerto Rico or the Virgin Islands to whom this section is made applicable by the amendments made to this Act by the Fair Labor Standards Amendments of 1973, the Secretary shall, as soon as practicable after the date of enactment of the Fair Labor Standards Amendments of 1973, appoint a special industry committee in accordance with section 5 to recommend the highest minimum wage rate or rates, which shall be not less than 60 per centum of the otherwise applicable minimum wage rate in effect under subsection (b) or $1.00 an hour, whichever is greater, to be applicable to such employee in lieu of the rate or rates prescribed by subsection (b). The rate recommended by the special industry committee shall (A) be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation, but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1973, and (B) except in the case of employees of the government of Puerto Rico or any political subdivision thereof, be increased in accordance with paragraph (2)(B).

"(4)(A) Notwithstanding paragraph (2)(A) or (3), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(A) or (3) of this subsection, shall, on the effective date of the wage increase under paragraph (2)(A) or of the wage rate recommended under paragraph (3), as the case may be, be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) or $1.00, whichever is higher.

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

"(B) *Notwithstanding paragraph (2)(B), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(B), shall, on and after the effective date of the first wage increase under paragraph (2)(B), be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) or $1.00, whichever is higher.*

"(5) *If the wage rate of an employee is to be increased under this subsection to a wage rate which equals or is greater than the wage rate under subsection (a) or (b) which, but for paragraph (1) of this subsection, would be applicable to such employee, this subsection shall be inapplicable to such employee and the applicable rate under such subsection shall apply to such employee.*

"(6) *Each minimum wage rate prescribed by or under paragraph (2) or (3) shall be in effect unless such minimum wage rate has been superseded by a wage order (issued by the Secretary pursuant to the recommendation of a special industry committee convened under section 8) fixing a higher minimum wage rate.*"

(c)(1) *The last sentence of section 8(b) is amended by striking out the period at the end thereof and inserting in lieu thereof a semicolon and the following: "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(c), unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years or in the case of employees of public agencies other appropriate information, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage.*"

(2) *The third sentence of section 10(a) is amended by inserting after "modify" the following: "(including provision for the payment of an appropriate minimum wage rate)".*

(d) *Section 8 is amended (1) by striking out "the minimum wage prescribed in paragraph (1) of section 6(a) in each such industry" in the first sentence of subsection (a) and inserting in lieu thereof "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)", (2) by striking out "the minimum wage rate prescribed in paragraph (1) of section 6(a)" in the last sentence of subsection (a) and inserting in lieu thereof "the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 6(a)", and (3) by striking out "prescribed in paragraph (1) of section 6(a)" in subsection (c) and inserting in lieu thereof "in effect under paragraph (1) or (5) of section 6(a) (as the case may be)".*

FEDERAL AND STATE EMPLOYEES

SEC. 6. (a)(1) *Section 3(d) is amended to read as follows:*

"(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, 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.*"

(2) *Section 3(e) is amended to read as follows:*

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

"(2) *In the case of an individual employed by a public agency, such*

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

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 office holder to serve on a policy making level, or

"(IV) who is an immediate advisor to such an office holder with respect to the constitutional or legal powers of his office."

"(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."

(3) Section 3(h) is amended to read as follows:

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

(4) Section 3(r) is amended by inserting "or" at the end of paragraph (2) and by inserting after that paragraph the following new paragraph:

"(3) in connection with the activities of a public agency,".

(5) Section 3(s) is amended—

(A) by striking out in the matter preceding paragraph (1) "including employees handling, selling, or otherwise working on goods" and inserting in lieu thereof "or employees handling, selling, or otherwise working on goods or materials",

(B) by striking out "or" at the end of paragraph (3),

(C) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; or",

(D) by adding after paragraph (4) the following new paragraph:

"(5) is an activity of a public agency.", and

(E) by adding after the last sentence the following new sentence: "The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce."

(6) Section 3 is amended by adding after subsection (w) the following:

"(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."

(b) Section 4 is amended by adding at the end thereof the following new subsection:

"(f) The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to any individual 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 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, or Postal Rate Commission). 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.".

(c) Section 7 is amended by adding at the end thereof the following new subsection:

"(k) No public agency shall be deemed to have violated subsection (a) with regard to any employee engaged in fire protection or law enforcement activities (including security personnel in correctional institutions) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of twenty-eight consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed for his employment in excess of—

"(1) one hundred and ninety-two hours in each such twenty-eight day period during the first year from the effective date of the Fair Labor Standards Amendments of 1973;

"(2) one hundred and eighty-four hours in each such twenty-eight day period during the second year from such date;

"(3) one hundred and seventy-six hours in each such twenty-eight day period during the third year from such date;

"(4) one hundred and sixty-eight hours in each such twenty-eight day period during the fourth year from such date; and

"(5) one hundred and sixty hours in each such twenty-eight day period thereafter."

(d)(1) The second sentence of section 16(b) is amended to read as follows: "Action to recover such liability 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.".

(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:

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

"(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 1973, 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."

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

DOMESTIC SERVICE WORKERS

SEC. 7. (a) Section 2(a) is amended by inserting at the end the following new sentence: "The Congress further finds that the employment of persons in domestic service in households affects commerce."

(b)(1) Section 6 is amended by adding after subsection (e) the following new subsection:

"(f) Any employee 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 purposes of title II of such Act."

(2) Section 7 is amended by adding after the subsection added by section 6(c) of this Act the following new subsection:

"(l) Subsection (a)(1) shall apply with respect to any employee who in any workweek is employed in domestic service in a household unless such employee's compensation for such work would not because of section 209(g) of the Social Security Act constitute 'wages' for purposes of title II of such Act."

(3) Section 13(a) is amended by adding at the end the following new paragraph:

"(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)."

(4) Section 13(b) is amended by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or" and by adding after that paragraph the following new paragraph:

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

RETAIL AND SERVICE ESTABLISHMENTS

SEC. 8. (a) Effective July 1, 1974, section 13(a)(2) (relating to employees of retail and service establishments) is amended by striking out "$250,000" and inserting in lieu thereof "$225,000".

(b) Effective July 1, 1975, such section is amended by striking out "$225,000" and inserting in lieu thereof "$200,000".

(c) Effective July 1, 1976, such section is amended by striking out "or such establishment has an annual dollar volume of sales which is less than $200,000 (exclusive of excise taxes at the retail level which are separately stated)".

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

TOBACCO EMPLOYEES

Sec. 9. (a) Section 7 is amended by adding after the subsection added by section 7(b)(2) of this Act the following:

"(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."

(b)(1) Section 13(a)(14) is repealed.

(2) Section 13(b) is amended by adding after the paragraph added by section 7(b)(4) of this Act the following new paragraph:

"(21) any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco; or".

TELEGRAPH AGENCY EMPLOYEES

Sec. 10. (a) Section 13(a)(11) (relating to telegraph agency employees) is repealed.

(b)(1) Section 13(b) is amended by adding after the paragraph added by section 9(b)(2) of this Act the following new paragraph:

"(22) any employee or proprietor in a retail or service establishment, which qualifies as an exempt retail or service establishment under paragraph (2) of subsection (a) with respect to whom the provisions of sections 6 and 7 would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

message revenue of such agency does not exceed $500 a month and receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or".

(2) Effective one year after the effective date of the Fair Labor Standards Amendments of 1973, section 13(b)(22) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(3) Effective two years after such date, section 13(b)(22) is repealed.

SEAFOOD CANNING AND PROCESSING EMPLOYEES

SEC. 11. (a) Section 13(b)(4) (relating to fish and seafood processing employees) is amended by inserting "who is" after "employee", and by inserting before the semicolon the following: ", and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed".

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1973, section 13(b)(4) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours."

(c) Effective two years after such date, section 13(b)(4) is repealed.

NURSING HOME EMPLOYEES

SEC. 12. (a) Section 13(b)(8) (insofar as it relates to nursing home employees) is amended by striking out "any employee who (A) is employed by an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises" and the remainder of that paragraph.

(b) Section 7(j) is amended by inserting after "a hospital" the following: "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".

HOTEL, MOTEL, AND RESTAURANT EMPLOYEES AND TIPPED EMPLOYEES

SEC. 13. (a) Section 13(b)(8) (insofar as it relates to hotel, motel, and restaurant employees) (as amended by section 12) is amended (1) by striking out "any employee" and inserting in lieu thereof "(A) any employee (other than an employee of a hotel or motel who is employed to perform maid or custodial services) who is", (2) by inserting before the semicolon the following: "and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed", and (3) by adding after such section the following:

"(B) any employee who is employed by a hotel or motel to perform maid or custodial services and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or".

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1973, subparagraphs (A) and (B) of section 13(b)(8) are each amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-six hours".

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

(c) Effective two years after such date, subparagraph (B) of section 13(b)(8) is amended by striking out "forty-six hours" and inserting in lieu thereof "forty-four hours".

(d) Effective three years after such date, subparagraph (B) of section 13(b)(8) is repealed and such section is amended by striking out "(A)".

(e) The last sentence of section 3(m) is amended to read as follows. "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 50 per centum of the applicable minimum wage rate, 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 section, and (2) all tips received by such employee have been retained by the employee, except that nothing herein shall prohibit the pooling of tips among employees who customarily and regularly receive tips."

SALESMEN, PARTSMEN, AND MECHANICS

SEC. 14. Section 13(b)(10) (relating to salesmen, partsmen, and mechanics) is amended to read as follows:

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

"(B) any partsman primarily engaged in selling parts for automobiles, trucks, or farm implements and any mechanic primarily engaged in servicing such vehicles, if they are employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; or".

FOOD SERVICE ESTABLISHMENT EMPLOYEES

SEC. 15 (a) Section 13(b)(18) (relating to food service and catering employees) is amended by inserting immediately before the semicolon the following: "and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed".

(b) Effective one year after the effective date of the Fair Labor Standards Amendments of 1973, such section is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(c) Effective two years after such date, such section is repealed.

BOWLING EMPLOYEES

SEC. 16. (a) Effective one year after the effective date of the Fair Labor Standards Amendments of 1973, section 13(b)(19) (relating to employees of bowling establishments) is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(b) Effective two years after such date, such section is repealed.

SUBSTITUTE PARENTS FOR INSTITUTIONALIZED CHILDREN

SEC. 17. Section 13(b) is amended by inserting after the paragraph added by section 10(b)(1) of this Act the following new paragraph:

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

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

"(A) who are orphans or one of whose natural parents is deceased, and

"(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".

EMPLOYEES OF CONGLOMERATES

Sec. 18. Section 13 is amended by adding at the end thereof the following:

"(g) The exemption from section 6 provided by paragraphs (2) and (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), except that the exemption from section 6 provided by subparagraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which has an annual dollar volume of sales which would permit it to qualify for the exemption provided in paragraph (2) of subsection (a) if it were in an enterprise described in section 3(s)."

SEASONAL INDUSTRY EMPLOYEES

Sec. 19. (a) Effective January 1, 1974, sections 7(c) and 7(d) are each amended—

(1) by striking out "ten workweeks" and inserting in lieu thereof "seven workweeks", and

(2) by striking out "fourteen workweeks" and inserting in lieu thereof "ten workweeks".

(b) Effective January 1, 1974, section 7(c) is amended by striking out "fifty hours" and inserting in lieu thereof "forty-eight hours".

(c) Effective January 1, 1975, sections 7(c) and 7(d) are each amended—

(1) by striking out "seven workweeks" and inserting in lieu thereof "five workweeks", and

(2) by striking out "ten workweeks" and inserting in lieu thereof "seven workweeks".

(d) Effective January 1, 1976, sections 7(c) and 7(d) are each amended—

(1) by striking out "five workweeks" and inserting in lieu thereof "three workweeks", and

(2) by striking out "seven workweeks" and inserting in lieu thereof "five workweeks".

(e) Effective December 31, 1976, sections 7(c) and 7(d) are repealed.

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

COTTON GINNING AND SUGAR PROCESSING EMPLOYEES

SEC. 20. (a) Effective January 1, 1974, section 13(b)(15) is amended to read as follows:

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

(b)(1) Effective January 1, 1974, section 13(b) is amended by adding after paragraph (23) the following new paragraph:

"(24) any employee who is engaged in ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities and who receives compensation for employment in excess of—

"(A) seventy-two hours in any workweek for not more than six workweeks in a year,

"(B) sixty-four hours in any workweek for not more than four workweeks in that year,

"(C) fifty-four hours in any workweek for not more than two workweeks in that year, and

"(D) forty-eight hours in any other workweek in that year, at a rate not less than one and one-half times the regular rate at which he is employed; or".

(2) Effective January 1, 1975, section 13(b)(24) is amended—

(A) by striking out "seventy-two" and inserting in lieu thereof "sixty-six";

(B) by striking out "sixty-four" and inserting in lieu thereof "sixty";

(C) by striking out "fifty-four" and inserting in lieu thereof "fifty";

(D) by striking out "and" at the end of subpargraph (C); and

(E) by striking out "forty-eight hours in any other workweek in that year" and inserting in lieu thereof the following: "forty-six hours in any workweek for not more than two workweeks in that year, and

"(E) forty-four hours in any other workweek in that year,".

(3) Effective January 1, 1976, section 13(b)(24) is amended—

(A) by striking out "sixty-six" and inserting in lieu thereof "sixty";

(B) by striking out "sixty" and inserting in lieu thereof "fifty-six";

(C) by striking out "fifty" and inserting in lieu thereof "forty-eight";

(D) by striking out "forty-six" and inserting in lieu thereof "four-four"; and

(E) by striking out "forty-four" and inserting in lieu thereof "forty".

(c)(1) Effective January 1, 1974, section 13(b) is amended by adding after paragraph (24) the following new paragraph:

"(25) any employee who is engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup and who receives compensation for employment in excess of—

"(A) seventy-two hours in any workweek for not more than six workweeks in a year,

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

"(B) sixty-four hours in any workweek for not more than four workweeks in that year,

"(C) fifty-four hours in any workweek for not more than two workweeks in that year, and

"(D) forty-eight hours in any other workweek in that year,

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

(2) Effective January 1, 1975, section 13(b)(25) is amended—

(A) by striking out "seventy-two" and inserting in lieu thereof "sixty-six";

(B) by striking out "sixty-four" and inserting in lieu thereof "sixty";

(C) by striking out "fifty-four" and inserting in lieu thereof "fifty";

(D) by striking out "and" at the end of subparagraph (C); and

(E) by striking out "forty-eight hours in any other workweek in that year" and inserting in lieu thereof the following: "forty-six hours in any workweek for not more than two workweeks in that year, and

"(E) forty-four hours in any other workweek in that year,".

(3) Effective January 1, 1976, section 13(b)(25) is amended—

(A) by striking out "sixty-six" and inserting in lieu thereof "sixty";

(B) by striking out "sixty" and inserting in lieu thereof "fifty-six";

(C) by striking out "fifty" and inserting in lieu thereof "forty-eight";

(D) by striking out "forty-six" and inserting in lieu thereof "forty-four"; and

(E) by striking out "forty-four" and inserting in lieu thereof "forty".

LOCAL TRANSIT EMPLOYEES

SEC. 21. (a) Section 7 is amended by adding after the subsection added by section 9(a) of this Act the following new subsection:

"(n) In the case of an employee of an employer engaged in the business of operating a street, surburban 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 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."

(b)(1) Section 13(b)(7) (relating to employees of street, suburban, or interurban electric railways or local trolley or motorbus carriers) is amended by striking out ", if the rates and services of such railway or

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

carrier are subject to regulation by a State or local agency" and inserting in lieu thereof the following: "(regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed".

(2) Effective one year after the effective date of the Fair Labor Standards Amendments of 1973, such section is amended by striking out "forty-eight hours" and inserting in lieu thereof "forty-four hours".

(3) Effective two years after such date, such section is repealed.

COTTON AND SUGAR SERVICES EMPLOYEES

SEC. 22. Section 13 is amended by adding after the subsection added by section 18(a) the following:

"(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; and

"(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."

OTHER EXEMPTIONS

SEC. 23. (a)(1) Section 13(a)(9) (relating to motion picture theater employees) is repealed.

(2) Section 13(b) is amended by adding after paragraph (25) the following new paragraph:

"(26) any employee employed by an establishment which is a motion picture theater;".

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

(b)(1) Section 13(a)(13) (relating to small logging crews) is repealed.

(2) Section 13(b) is amended by adding after paragraph (26) the following new paragraph:

"(27) 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."

(c) Section 13(b)(2) (insofar as it relates to pipeline employees) is amended by inserting after "employer" the following: "engaged in the operation of a common carrier by rail and".

EMPLOYMENT OF STUDENTS

SEC. 24. (a) Section 14 is amended by striking out subsections (a), (b), and (c) and inserting in lieu thereof the following:

"SEC. 14. (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 (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6(c)), 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), the proportion of student hours of employment under special certificates issued under subparagraph (A) to the total hours of employment of all employees in any retail or service establishment may not exceed (i) such proportion for the corresponding month of the twelve-month period preceding May 1, 1961, (ii) 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) are covered by this Act for the first time on or after the effective date of the Fair Labor Standards Amendments of 1966 or the Fair Labor Standards Amendments of 1973, such proportion for the corresponding month of the twelve-month period immediately prior to the applicable effective date, or (iii) in the case of a retail or service establishment coming into existence after May 1, 1961, or a retail or service establishment for which records of student hours worked are not available, a proportion of student hours of employment to total hours of employment of all employees based on the practice during the twelve-month period preceding May 1, 1961, in similar establishments of the same employer in the same general

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

metropolitan area in which the new establishment is located, similar establishments of the same employer in the same or nearby counties if the new establishment is not in a metropolitan area, or other establishments of the same general character operating in the community or the nearest comparable community. For the purposes of the preceding sentence, the term 'student hours of employment' means student hours worked at less than $1.00 an hour, except that such term shall include, in States whose minimum wages were at or above $1.00 an hour in the base year, hours worked by students at the State minimum wage in the base year.

"(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 (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the wage rate in effect under section 6(c)(3)), 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 (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 5(e), at a wage rate not less than 85 per centum of the wage rate in effect under section 6(c)), 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) 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 four, 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 four—

"(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

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

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."

(b) Section 14 is further amended by redesignating subsection (d) as subsection (c) and by adding at the end the following new subsection:

"(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."

(c) Section 4(d) is amended by adding at the end thereof the following new sentence: "Such report shall also include a summary of the special certificates issued under section 14(b)."

CHILD LABOR

SEC. 25. (a) Section 12 (relating to child labor) is amended by adding at the end thereof the following new subsection:

"(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."

(b) Effective January 1, 1974, section 13(c)(1) (relating to child labor in agriculture) is amended to read as follows:

"(c)(1) Except as provided in paragraph (2), 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

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

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."

(c) Section 16 is amended by adding at the end thereof the following new subsection:

"(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 $1,000 for each such violation. In determining the amount of such penalty, 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 such penalty, 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 under section 15(a)(4), to be paid to the Secretary.

Any administrative determination by the Secretary of the amount of such penalty 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 by the Secretary. 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 provisions 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)."

SUITS BY SECRETARY FOR BACK WAGES

SEC. 26. The first three sentences of section 16(c) are amended to read as follows: "The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under sections 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. The right provided by subsection (b) to bring an action by or on behalf of any employee 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 provision of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary."

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

ECONOMIC EFFECTS STUDIES

SEC. 27. Section 4(d) is amended by—

(1) inserting "(1)" immediately after "(d)",

(2) inserting in the second sentence after the term "minimum wages" the following: "and overtime coverage"; and

(3) by adding at the end thereof the following new paragraph:

"(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."

EFFECTIVE DATE

SEC. 28. (a) Except as otherwise specifically provided, the amendments made by this Act shall take effect on the first day of the second full month which begins after the date of the enactment of this Act.

(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.

And the Senate agree to the same.

HARRISON A. WILLIAMS, Jr.,
JENNINGS RANDOLPH,
CLAIBORNE PELL,
GAYLORD NELSON,
THOMAS F. EAGLETON,
HAROLD E. HUGHES,
WILLIAM D. HATHAWAY,
J. JAVITS,
RICHARD S. SCHWEIKER,
ROBERT T. STAFFORD,
Managers on the Part of the Senate.

CARL D. PERKINS,
FRANK THOMPSON, Jr.,
JOHN H. DENT,
DOMINICK V. DANIELS,
PHILLIP BURTON,
JOSEPH M. GAYDOS,
W. L. CLAY,
MARIO BIAGGI,
ROMANO L. MAZZOLI,
Managers on the Part of the House.

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7935) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rates under that Act, to expand the coverage of that Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

The House bill provided the following dollar amounts for the minimum wage:

1. Nonagricultural Employees:

A. Covered before 1966	$2.00 an hour during the period ending June 30, 1974. $2.20 an hour after June 30, 1974.
B. Covered in 1966 or 1973	$1.80 an hour during the period ending June 30, 1974. $2.00 an hour during the year beginning July 1, 1974. $2.20 an hour after June 30, 1975. (NOTE.—Presently covered Federal employees would receive two-step increase described in item 1A.)
2. Agricultural Employees	$1.60 an hour during the period ending June 30, 1974. $1.80 an hour during the year beginning July 1, 1974. $2.00 an hour during the year beginning July 1, 1975. $2.20 an hour after June 30, 1976.

The Senate amendment provided the following dollar amounts for the minimum wage:

1. Nonagricultural Employees:

A. Covered before 1966	$2.00 an hour during 1st year. $2.20 an hour thereafter.

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

B. Covered in 1966 or 1973	$1.80 an hour during 1st year. $2.00 an hour during 2d year. $2.20 an hour thereafter. (NOTE.—Presently covered Federal employees would receive two-step increase described in item 1A.)
2. Agricultural Employees	$1.60 an hour during 1st year. $1.80 an hour during 2d year. $2.00 an hour during 3d year. $2.20 an hour thereafter.

The Senate receded.

Both the House bill and the Senate amendment contained provisions relating to employees in Puerto Rico and the Virgin Islands. Both provided for hotel, motel, restaurant and food service employees on the islands to be treated for wage computation as if employed on the United States mainland. In addition, the House bill provided that Federal Government and Virgin Islands Government employees be treated for wage computation as if employed on the mainland. The Senate amendment differed by mandating mainland rates for employees of Puerto Rico, the Virgin Islands, and their political subdivisions. The House bill also contained a provision that employees of conglomerates be treated for wage computation as if employed on the United States mainland. The Senate amendment had no such provision.

For other covered workers in Puerto Rico and the Virgin Islands, the House bill provided wage order rates as follows:

1. Nonagricultural employees covered before 1966 to be increased by 25 percent of the pre-1973 rate and by 12.5% of such rate after one year after the first increase takes effect;
2. Nonagricultural employees covered in 1966 to be increased by three annual increases of 12.5% of such rate;
3. Agricultural employees to be increased by three annual increases of 15.4% of such rate (subsidized employees will have their increases applied to their wage rate as subsidized); and
4. Newly covered employees' rates to be set by special industry committees appointed under section 5.

No wage rate under a wage order could be less than 60 percent of the otherwise applicable wage rate in effect for U.S. mainland employees.

The Senate amendment provided as follows:

1. In first year for employees covered before 1973.—Any rate less than $0.80 an hour to be increased to $1. Subsidized agricultural employees will have their increase applied to their wage rate as increased by the subsidy. Any rate more than $0.80 an hour to be increased by $0.20 an hour.
2. In first year for employees covered in 1973.—Special industry committee to set rate at not less than $1.60 an hour, except that if an industry (or predominant portion thereof) established its inability to pay, wage rate to be not less than $1 an hour.
3. In second year and in each year thereafter for all employees.—Wage rate to be increased by $0.20 an hour in each year until the wage rate under section 6(a) is reached.

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

4. No wage rate under a wage order may result in reducing the increases provided in the Senate amendment.

The House bill retained the special industry committees which can adjust upward the wage rate increases required under the Act, and set rates for newly covered industries. It also retained the hardship review committees which could lower the amount of the mandated raises, in the face of documentary evidence of an inability to pay the mandated rates.

The Senate amendments retained the special industry committees which could raise the wage order rates above the mandated level, but not lower them. Hardship review committees would be discontinued. Special industry committees were authorized to establish wage rates for newly covered industries.

The Senate recedes with an amendment as follows:

(1) Effective on the effective date of the legislation, presently covered employees are to receive the following increases:

(A) increases of 12 cents an hour if their wage order rates are less than $1.40 an hour; and

(B) increase of 15 cents an hour if their wage order rates are $1.40 an hour or higher.

An exception to this first increase is provided in the case of employees whose wage orders are increased during the period July 26 to the effective date of the legislation. With respect to such employees they are to receive this first increase only if the increase which they received during such period was less than this first increase and if it was less they are to receive the difference between the two increases.

(2) Newly covered employees (including commonwealth and municipal employees) are to have their wage rates set by special industry committees and this wage rate may not be less than 60 percent of the otherwise applicable rate under section 6(b) or $1.00 an hour, whichever is greater.

(3) All employees (other than commonwealth and municipal employees) will receive, beginning one year after the effective date of this legislation, yearly increases as follows:

(A) increases of 12 cents an hour per year if their wage order rates are less than $1.40, and

(B) increases of 15 cents an hour per year if their wage order rates are $1.40 an hour or higher.

Under this provision, when an employee's wage rate reaches $1.40 he will then receive the 15 cents annual increase. If such an increase for any employee will result in a wage order rate less than 60 percent of the otherwise applicable minimum wage or $1.00 an hour, whichever is greater, then the increase for such employee will be such greater figure.

(4) If a prescribed increase in the wage order rate of an employee would result in a rate equal to or greater than the otherwise applicable minimum wage rate of section 6 (a) or (b), the minimum wage rate for that employee will be governed by such section and such employee will no longer be covered under a wage order.

(5) It is made clear that special industry committees may, in accordance with section 8, also provide increases in wage order

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

rates (including rates for commonwealth and municipal employees).

(6) The authority for hardship review of the increases by special committees is discontinued.

(7) The following employees in Puerto Rico and the Virgin Islands are to have their rates set as if they were employed in the United States mainland: hotel, motel, restaurant and food services employees and United States employees and employees of the government of the Virgin Islands.

The House bill also provided that special industry committees shall recommend the otherwise applicable rate under section 6(a) or 6(b) except where substantial documentary evidence, including pertinent financial information, demonstrates an inability to pay such rate. The Senate amendment provided that the same substantial documentary evidence is required before a special industry committee could recommend less than $1.60 an hour for newly covered employees. The Senate receded.

The House bill further provided that a court of appeals may upon review of a wage order specify the minimum wage rate to be included in such wage order. The Senate amendment has no corresponding provision. The Senate receded.

With respect to Canal Zone employees, the House bill provided that the increase in the minimum wage prescribed by the 1973 Amendments would not apply to Canal Zone employees. The Senate amendment had no corresponding provision. The House receded.

The Senate amendment repealed the provision excluding the annual gross volume of so-called "Mom and Pop" stores which are part of enterprises from computation of annual gross volume of such enterprises, but continued the exclusion from coverage for such stories. The House bill contained no corresponding provision. The Senate receded.

The Senate amendment exempted from the Act's child labor provisions newsboys delivering shopping news and advertising material published by the newspaper, and repealed the child labor, minimum wage, and overtime exemptions currently applicable to homeworkers engaged in the making of holly wreaths from evergreens. The House bill had no corresponding provision. The Senate receded.

The House bill contained a minimum wage and overtime exemption for couples who serve as house-parents for children placed in an institution primarily operated to provide for their care and education. Individuals would have to be paid not less than $5,000 a year in cash wages and couples would have to be paid not less than $10,000 a year in cash wages. Couples would have to reside on the premises and receive their board and lodging without cost but with a provision allowing up to 30 percent credit against wages for board and lodging. The Senate amendment provided only an overtime exemption, applied only to couples who must be paid not less than $10,000 a year in cash wages, reside on the premises and receive their board and lodging without cost, and required that employees be employed to serve as parents of children who are orphans or have on parent decreased. The House receded.

The House bill required workers employed under service contracts with the U.S. whose wage rate is prescribed by section 6(e) to be paid

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

at the section 6(a) rate. Presently, such employees are to be paid at the section 6(b) rate unless employed under certain linen supply contracts with the U.S., in which event they are to be paid at the section 6(a) rate. The Senate amendment required that all such employees be paid at the section 6(b) rate. Provision for the section 6(a) rate for certain linen supply contract employees would be repealed. The House and Senate agreed to retain the present language of section 6(e).

With regard to youth, the House bill changed existing laws (secs. 14 (b) and (c)) respecting employment of full-time students at less than the minimum wage by—

(1) expanding employment permitted under these provisions from retail or service establishments and agriculture to any occuption other than a specified one or one determined by the Secretary to be particularly hazardous and removing the limit on the proportion of student hours of employment to total hours of employment for all employees;

(2) prescribing a new wage floor of the higher of 85 percent of the otherwise applicable minimum wage or $1.60 (or $1.30 in the case of agriculture), except for employment in Puerto Rico or the Virgin Islands where the floor is 85 percent of the otherwise applicable minimum; and

(3) except in the case of educational institutions, requiring (A) a finding of no substantial probability of job displacement if 5 or more students are to be employed, and (B) a certification by employer of no reduction in fulltime employment opportunities if less than 5 students are to be employed. The bill also required a summary of certificates issued to be included in the annual report.

The Senate amendment changed such law by expanding employment permitted to include private institutions of higher learning (but retaining for employment in retail or service establishments the existing limit on proportion of student hours of employment, except that in determining student hours of employment for purposes of such limit only those student hours (A) worked at less than $1.00 an hour, or (B) if the applicable State minimum wage law was in the base year at or above $1.00 an hour, worked in the base year at that minimum wage, would be included). The amendment retained the existing floor of 85 percent of the otherwise applicable minimum and made no change in the requirement of a finding of no substantial probability of job displacement before employment permitted, except that in the case of private institutions of higher learning no prior certification would be required unless such institutions violate the Secretary's requirements. The Senate receded with an amendment.

Under the amendment sections 14(a)–(c) will permit the employment at less than the minimum wage as follows:

1. The Secretary of Labor, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, apprentices, and for messengers employed primarily in delivering letters and messages, under special certificates at such wages lower than the minimum wage applicable under section 6, and subject to such limitation as to time, number, proportion, and length of service as the Secretary shall prescribe.

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

2. A. Full time students may be employed in retail and service establishments, at rates not less than 85 percent of the applicable minimum wage, or $1.60, whichever is higher (or 85 percent of the section 6(c) rate in the case of employment in Puerto Rico or the Virgin Islands) for a period of up to 20 hours per week (full time during vacation periods). Up to 4 students may be hired without the need for traditional pre-certification procedure (that is, a finding of no substantial probability of job displacement before the issuance of certificates) or the need to meet the historical experience test concerning the proportion of student hours worked during a base year, as set forth below. If more than four students are hired, the existing pre-certification procedure will continue to apply and the proportion of student hours of employment (including for this purpose the first four students), to total hours of employment of all employees, shall not exceed such proportion for the corresponding twelve month period before the establishment was covered by the Act.

B. Full time students may be employed in agriculture at rates not less than 85 percent of the applicable minimum wage, or $1.30, whichever is higher (or 85 percent of the section 6(c) rate in the case of employment in Puerto Rico or the Virgin Islands) for a period of up to 20 hours per week (full time during vacation periods). For each student so employed, after the fourth, the Secretary of Labor must find that such employment will not reduce the full-time employment of non-students before issuing certificates.

C. Full time students may be employed in higher educational institutions, at rates not less than 85 percent of the applicable minimum wage, or $1.60, whichever is higher, for a period of up to 20 hours per week (full time during vacation periods).

The conferees emphasize that the Secretary is to look to the number of students employed by an employer at any one time and not in a cumulative sense, in determining which certification procedure applies and the applicability of the historical proportion of student employment pursuant to the provision.

The House bill will also provide a minimum wage and overtime exemption for students employed by an elementary or secondary school if the employment constitutes an integral part of the school's regular education program. The Senate amendment contained no corresponding provision. The Senate receded with an amendment which provides that the employment must satisfy applicable child labor provisions.

Both the House and Senate versions of the bill expanded the coverage of the Fair Labor Standards Act.

The House bill extended minimum wage and overtime protection to all employees in domestic service unless such employees' compensation would not, because of section 209(g) of the Social Security Act (requiring $50 in a calendar quarter for social security coverage), constitute wages for purposes of title II of that Act. Such employees who reside in a household would be excluded from coverage. The Senate amendment covered both day workers and "live-in" domestics, but provided only minimum wage protection for such employees and excluded babysitters from coverage.

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

The Senate receded to the House provision with an amendment to include "live-in" household service employees for minimum wage purposes but exclude them from overtime coverage. The amendment also contains a new exemption provision for certain babysitters and companions.

It is the intent of the conferees to include within the coverage of the Act all employees whose vocation is domestic service. However, the exemption reflects the intent of the conferees to exclude from coverage babysitters for whom domestic service is a casual form of employment and companions for individuals who are unable because of age and infirmity to care for themselves. But it is not intended that trained personnel such as nurses, whether registered or practical, shall be excluded.

The conferees believe that the people who will be employed in the excluded categories are not regular bread-winners or responsible for their families' support. The fact that these people performing casual services as babysitters or services as companions do some incidental household work does not keep them from being casual babysitters or companions for purposes of this exclusion.

The Senate amendment extended minimum wage and overtime protection to civilian employees in the military departments, employees in executive agencies, employees of the U.S. Postal Service and the Postal Rate Commission, legislative and judicial employees in the competitive service, Library of Congress employees, and employees employed by any State or political subdivision of a State other than elected officials and certain aides not covered by civil service or by any interstate governmental agency. In addition, a limited overtime exemption was provided for policemen, firemen, and employees of correctional institutions if under an agreement entered into between the employer and the employee a work period of 28 consecutive days is accepted in lieu of a workweek of 7 consecutive days and if overtime compensation is to be paid for employment in excess of 192 hours in such work period during the first year, 184 hours in such period during the second year, 176 hours in such period during the third year, 168 hours in such period during the fourth year, and 160 hours in such period thereafter.

The Senate amendment also provided that the Civil Service Commission would administer application of the Act to Federal employees other than Postal employees and Library of Congress employees. The House bill provided minimum wage and overtime protection to employees of States and their political subdivisions, and minimum wage protection to all United States employees. Overtime protection extended to certain United States employees in 1966 was retained. The House bill also provided an overtime exemption for State and political subdivision employees engaged in fire protection or law enforcement activities, and made no specific provision for administration of the Act. The Secretary of Labor would administer the Act to Federal employees.

The House receded with an amendment to treat Federal employees working as policemen, firemen, or in correctional institutions in the same manner as such State employees for the purposes of overtime.

These special overtime provisions are applicable to Federal law enforcement and fire protection activities. The conferees note, however,

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

that such professional Federal employees as criminal investigators for the Federal Bureau of Investigation will be exempt by virtue of the provision of section 13(a)(1).

The conferees intend that the provisions of section 5341 of title 5, United States Code, requiring the section 6(a)(1) rate for prevailing rate system employees, will continue to apply.

The Senate amendment expanded the coverage of large retail and service activities to include employees of all establishments of chain operations in which the chain enterprise has gross annual sales of more than $250,000. The House bill had no similar provision. The Senate receded with an amendment that phased out the dollar volume establishment test in sec. 13(a)(2) as follows:

1. $250,000 until July 1, 1974.
2. $225,000 on and after July 1, 1974.
3. $200,000 on and after July 1, 1975.
4. Repealed July 1, 1976.

This provision is applicable equally to employees of certain establishments which are part of covered enterprises, whether those enterprises are complete business entities in and of themselves, or parts of other unrelated business activities such as in a so-called conglomerate.

With regard to agricultural employees the Senate amendment repealed the minimum wage exemption for local seasonal hand harvest laborers. Further, the days in which an employer employs seasonal hand harvest laborers would be included in determining if an employer uses the minimum number of man-days of labor which is required before minimum wage applies (500 man-days). The House bill contained no such provision. The Senate receded with an amendment to maintain the exemption for seasonal hand harvest laborers from minimum wage, but to include such workers as employees for purposes of the man-day test for coverage.

The Senate amendment repealed the limited overtime exemption provided by sections 7(c) and 7(d) for employees or industries found to be of a seasonal nature or characterized by marked annually recurring seasonal peaks of operation. The House bill contained no such provision. The Senate receded with an amendment which provided for a phase out of section 7(c) and 7(d) exemptions other than for cotton processing and sugar processing, as follows:

1. On January 1, 1974 the seasonal periods for exemption are reduced from 10 weeks to 7 weeks and from 14 weeks to 10 weeks.
2. On such date, the workweek exemptions are reduced from 50 hours to 48 hours.
3. Effective 1 year after such date, the seasonal periods for exemption are reduced from 7 weeks to 5 weeks and from 10 weeks to 7 weeks.
4. Effective 2 years after such date, the seasonal periods for exemption are reduced from 5 weeks to 3 weeks and from 7 weeks to 5 weeks.
5. Effective three years after such date, sections 7(c) and 7(d) are repealed.

The Senate amendment provided that the overtime exemption for cotton ginning and sugar processing employees (other than employees

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

engaged in processing maple sap into maple syrup or maple sugar) be repealed. The House bill contained no such provision. The Senate receded with an amendment to phase down the overtime exemption for cotton ginning and sugar processing employees as follows:

1. In 1973, there is no change in the present overtime exemption.
2. In 1974, the workweek exemption is as follows: 72 hours each week for 6 weeks of the year; 64 hours each week for 4 weeks of the year; 54 hours each week for 2 weeks of the year; 48 hours each week for the balance of the year.
3. In 1975, the workweek exemption is as follows: 66 hours each week for 6 weeks of the year; 60 hours each week for 4 weeks of the year; 50 hours each week for 2 weeks of the year; 46 hours each week for 2 weeks of the year; 44 hours each week for the balance of the year.
4. In 1976, the workweek exemption is as follows: 60 hours each week for 6 weeks of the year; 56 hours each week for 4 weeks of the year; 48 hours each week for 2 weeks of the year; 44 hours each week for 2 weeks of the year; 40 hours each week for the balance of the year.

The workweek exemptions are applicable during the actual season within a period of twelve consecutive months as opposed to the calendar year and are not limited to a period of consecutive weeks.

In addition, the cotton processing annd sugar processing exemptions under section 7 of the law are retained but limited to 48 hours during the appropriate weeks. Furthermore, it is provided that an employer who receives an exemption under this subsection will not be eligible for other overtime exemptions under section 13(b)(24) or (25) or section 7.

The Senate amendment repealed the minimum wage and overtime exemption for employees of motion picture theaters. The House bill contained no such provision. The Senate receded with an amendment which repealed the minimum wage exemption and which continues the overtime exemption for these employees.

The Senate amendment repealed the minimum wage exemption applicable to foresty and lumbering operations with 8 or fewer employees. The overtime exemption for such operations is retained. The House bill had no such provision. The House receded.

The House bill provided for a limited overtime exemption (14 weeks, 10 hours per day, and 48 hours per week) for certain employees engaged in activities related to the sale of tobacco. Such employees are currently covered by the section 7(c) exemption pursuant to determination by the Secretary. The Senate amendment had no corresponding provision. The Senate receded.

The Senate amendment repealed the minimum wage and overtime exemption for employees engaged in the processing of shade grown tobacco prior to the stemming process for use as cigar wrapper tobacco. The House bill had no such provision. The Senate receded with an amendment to maintain the overtime exemption for these employees.

The Senate amendment repealed the overtime exemption for employees of oil pipeline transportation companies. The House bill had no such provision. The House receded.

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

The Senate amendment repealed the minimum wage and overtime exemption for persons engaged in handling telegraph messages for the public under an agency or contract arrangement with a telegraph company, if they are so engaged in retail or service establishments exempt under section 13(a)(2) and if the revenues for such messages are less than $500 a month. The House bill contained no corresponding provision. The Senate receded with an amendment to phase out the overtime exemption as follows:

1. 48 hours in the first year after the effective date.
2. 44 hours in the second year.
3. Repealed thereafter.

The Senate amendment repealed the overtime exemption for seafood canning and processing employees. The House bill contained no such provision. The Senate receded with an amendment which phases out the exemption as follows:

1. In the first year after the effective date of the 1973 Amendments, the workweek exemption is 48 hours.
2. In the second year, the workweek exemption is 44 hours.
3. Effective on the beginning of the third year, the exemption is repealed.

With regard to certain local transit operating employees, the House bill phased down the overtime exemption in three steps as follows: During the first year overtime compensation will be required for hours of employment over 48 in a week, during the second year such compensation will be required for hours of employment over 44 in a week, and after the second year such compensation will be required for hours of employment over 42 in a week. In addition, in determining the hours of employment (for purposes of overtime compensation) of a bus driver or other local transit operator, the hours of his employment in charter activities is not to be included if the employment in charter activities was performed pursuant to an agreement with the employer and if such employment is not part of the employee's regular employment. The Senate amendment contained a similar provision but for all local transit employees, with the exemption to be repealed in the third year. The House receded. It is noted that by virtue of the conferees' action on coverage of State and local government employment, together with its action on overtime pay in the local transit industry, operating employees of publicly and privately owned transit companies will be treated identically.

The Senate amendment provided that the overtime exemption for employees employed by hotels, motels, and restaurants be limited as follows: During the first year overtime compensation would be required for hours of employment over 48 in a week, and after the first year such compensation would be required for hours of employment over 46 in a week. The House bill repealed the overtime exemption for maids and custodial employees of hotels. The Senate receded with an amendment which provides that the overtime exemption for hotel, motel, and restaurant employees be limited as follows: during the first year overtime compensation will be required for hours of employment in excess of 48 in a week and after the first year such compensation will be required for hours of employment in excess of 46 in a week. For maids and custodial employees of hotels and motels the phase down is as follows:

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

1. 48 hours in the first year.
2. 46 hours in the second year.
3. 44 hours in the third year.
4. Repealed thereafter.

The Senate amendment revised the tip credit provisions of the Act so that they would not apply unless the employer has informed each of his tipped employees of the tip credit provision and all tips received by a tipped employee have been retained by such tipped employee (either individually or through a pooling arrangement).

The House bill contained no such provision. The House receded.

The conferees intend that the employer explain the tip provision of the Act to the employee, although the explanation may be in the form of a notice posted on a bulletin board accessible and understandable to all such employees.

The House bill replaced the limited overtime exemption for employees of nursing homes (overtime compensation required for hours of employment in excess of 48 in a week) by an overtime exemption (initiated by an agreement between the employer and his employees) which substitutes a 14-consecutive-day work period for the workweek and requires overtime compensation for employment over 8 hours in any workday and for over 80 hours in such work period. The Senate amendment provided that the limited overtime exemption for employees of nursing homes be further limited as follows: During the first year overtime compensation would be required for hours of employment in excess of the current 48 in a week, during the second year such compensation would be required for hours of employment in excess of 46 in a week, and after the second year such compensation would be required for hours of employment in excess of 44 in a week. The Senate receded.

The Senate amendment repealed the 40 percent tolerance for non-exempt activities by executive and administrative employees of retail and service establishments, and thereby made applicable to such employees the 20 percent tolerance for non-exempt activities by all other executive and administrative employees currently in effect under regulations of the Secretary. The House bill contained no corresponding provision. The Senate receded.

The House bill provided that establishments engaged in laundering, cleaning, and repairing of clothing or fabrics are to be considered as service establishments in administration of sections 7(i) (commission employees) and 13(a)(1) (executive and administrative personnel and outside salesmen) of the Act. Such activities are not now considered retail or service under the Act. The Senate amendment contained no corresponding provision. The House receded.

The Senate amendment provided that the existing overtime exemption for partsmen and mechanics in nonmanufacturing establishments primarily engaged in selling automobiles, trailers, or trucks be repealed; that the overtime exemption for salesmen, partsmen, and mechanics in nonmanufacturing establishments engaged in selling aircraft be repealed; that the overtime exemption for salesmen in automobiles, trailer, or truck sales establishments be retained, and that the overtime exemption for salesmen, partsmen, and mechanics in farm implement sales establishments be retained. The House bill contained no similar provisions but added an overtime exemption for salesmen, partsmen, and mechanics who are employed by nonmanufacturing es-

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

tablishments engaged in boat sales and who sell or service boats. The Senate receded with an amendment under which: the overtime exemption for partsmen and mechanics in nonmanufacturing establishments primarily engaged in selling trailers is repealed; the overtime exemption for partsmen and mechanics in nonmanufacturing establishments engaged in selling aircraft is repealed; the overtime exemption for salesmen in automobile, trailer, truck sales and aircraft establishments is retained; the overtime exemption for salesmen, partsmen, and mechanics in farm implement sales establishments is retained; the exemption for partsmen and mechanics in automobile and truck sales establishments is retained and; an overtime exemption is provided for salesmen engaged in selling boats.

The Senate amendment provided that the overtime exemption for food service establishment employees be repealed as follows: During the first year overtime compensation would be required for hours of employment over 48 in a week, during the second year such compensation would be required for hours of employment over 44 in a week, and thereafter such compensation would be required for employment in excess of 40 hours in a week. The House bill contained no such provision. The House receded.

The Senate amendment provided that the limited overtime exemption for employees of bowling establishments (overtime compensation required for hours in excess of 48 in a week) be repealed in two steps as follows: During the second year after enactment overtime compensation would be required for hours in excess of 44 in a week, and thereafter such compensation would be required for hours of employment in excess of 40 in a week. The House bill contained no such provision. The House receded.

The House bill provided that certain of the minimum wage and overtime exemptions provided in sections 13(a) and 13(b) would not apply to a business establishment which controls, is controlled by, or is under common control with, but not related for a common business purpose to another establishment, if the combined sales or business volume of such establishments exceeded $10,000,000. The Senate amendment had no comparable provision. The House receded with an amendment under which the minimum wage exemptions provided in section 13(a)(2) for certain retail and service establishments, and section 13(a)(6) relating to agricultural employees, would not be available to an establishment which controls, is controlled by, or under common control with, another establishment the activities of which are not related for a common business purpose, but materially support the activities of the first establishment and the combined gross volume of the conglomerate is more than $10,000,000. Also the section 13(a)(2) minimum wage exemption, relating to retail and service establishments, would be phased out for establishments which are part of conglomerates on the same schedule as applicable to the phase-out of the same exemption in the case of chain stores.

It is not the intention of the conferees that this provision shall apply on a mere showing of ownership or common control. Some relationship must exist demonstrating some interdependence for treating otherwise separate businesses as a unit for purposes of denying the exemptions from section 6 which would otherwise be available under

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

sections 13(a)(2) and 13(a)(6). Finally, nothing in this provision affects any overtime exemption or any minimum wage exemption other than those provided for retail and service establishments under subsection 13(a)(2) or agricultural employees under section 13(a)(6).

With regard to child labor the Senate amendment provided as follows:

1. The employment of children under age 12 in agriculture is prohibited unless they are employed on farms owned or operated by their parents or guardians, and children who are 12 or 13 may work in agriculture only if they have the written consent of their parents or guardians or if the parent or guardian is employed on the same farm. Existing law permits the employment (outside of school hours) of children of any age on farms in nonhazardous occupations.

2. Any person who violates the child labor provisions of the Act (or any regulation issued under such provisions) is subject to a civil penalty of not to exceed $1,000 for each such violation.

3. The Secretary of Labor may issue regulations requiring employers to obtain from any employee proof of the employee's age.

The House bill contained no similar provision. The Senate receded with an amendment that the provisions of this section (described in paragraph (1) above) shall not become effective until January 1, 1974, that the provisions prohibiting the employment of children under 12 on farms other than those owned or operated by their parents shall apply only in the case of employment on farms covered by the Act under the 500 man-day test, including conglomerate farms, and that parental consent shall be required for such children on noncovered farms.

The Senate amendment provided that the tip credit provision of the Act is not to apply unless the employer has informed each of his tipped employees of the tip credit provision and all tips received by tipped employees have been retained by them (either individually or through a pooling arrangement). The House bill contained no such provision. The House receded.

The Senate amendment amended the Age Discrimination in Employment Act of 1967 to include within the scope of its coverage Federal, State, and local government employees (other than elected officials and certain aides not covered by civil service), and to expand coverage from employers with 25 or more employees to employers with 20 or more employees. The annual authorization of appropriations ceiling was raised from $3 million to $5 million. The Age Discrimination in Employment Act prohibits discrimination in employment on the basis of age in matters of hiring, job retention, compensation, and other terms, conditions, or privileges of employment. Protection under the Act is limited to individuals who are between the ages of 40 and 65. The House bill contained no similar provisions. The Senate receded.

The Senate amendment amended section 16(c) to authorize the Secretary not only to sue for back wages (which he can do now) but also to sue for an equal amount of liquidated damages without requiring a written request from the employee. The Secretary could also sue even though the suit might involve issues of law that have not been finally settled by the courts. In the event the Secretary brings such an action, the right of an employee provided by 16(b) to bring an

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

action on behalf of himself, or to become party to such an action would terminate, unless such action is dismissed without prejudice, on motion by the Secretary. The House bill contained no similar provision. The House receded.

The Senate amendment amended section 9 of the Walsh-Healey Act to extend to employees of regulated private carriers the exemption from that Act presently applicable to employees of regulated common carriers. The House bill contained no similar provision. The Senate receded.

The Senate amendment contained a provision making clear the right of employees of State and local governments to bring private actions under Section 16(b) in Federal or State courts of competent jurisdiction for recovery under the Act. This provision was intended to overcome the decision of the Supreme Court in *Employees of the Department of Public Health and Welfare* v. *Missouri*, 93 S. Ct. 1614 (April 18, 1973) which held that Congress, in extending coverage under the 1966 amendments to certain employees of State and local governments had not explicitly provided an individual right of action in the Federal courts. The Senate amendment also provided an amendment to the Portal to Portal Act of 1947 which would preserve individual rights of action of State or local government employees which would otherwise be barred by the statute of limitations as a result of the Supreme Court's decision. A further provision made clear the right of Federal employees to bring an action in Federal or State court against the United States under Section 16(b) of the Act, in addition to the administrative remedies provided in the Senate amendment.

The House bill contained no similar provisions. The Senate receded with an amendment providing that employees of a public agency (defined to include the Government and agencies of the United States, a State or political subdivision, or any interstate governmental agency) may maintain an action against that public agency under section 16(b) in any Federal or State court of competent jurisdiction, and suspending the statute of limitations to preserve rights of actions of State or local government employees which would otherwise be barred as a result of the Supreme Court's decision. It is emphasized that this provision is a limited suspension of the statute of limitations and is applicable only to certain public employees.

The Secretary would be required by the Senate amendment to conduct studies (1) on the economic effects of the changes made in the minimum wage and overtime coverage, and (2) on the justification or lack thereof for each of the exemptions provided by sections 13(a) and 13(b). The report on the study described in clause (1) would be due not later than January 1, 1975, and the report on the study described in clause (2) would be due not later than January 1, 1976. The House bill contained no corresponding provision. The Senate receded with an amendment providing that these studies be provided for under section 4(d) of the Act and also requiring that such studies include an examination of the extent to which employees of conglomerates receive the section 13(a) and (b) exemptions and the economic effect of their inclusion in such exemptions.

The Secretary would have been required by the Senate amendment to contract for a study to determine the extent (if any) of the impact

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

on employment of each increase in the minimum wage prescribed by the 1973 Amendments and to develop the necessary information on the probable impact (if any) on employment of future increases in minimum wages. Ninety days prior to the effective date of each increase described by such Amendments, the Secretary is to provide the Congress with an employment impact statement establishing the probable impact on employment by category of employment of each such increase, together with a summary of the basis for each statement. (The House bill contained no corresponding provision.) The Senate receded.

The Senate amendment amended the Economic Stabilization Act of 1970 to provide that the President shall make appropriate adjustments in the maximum price which may be charged under the provisions of Executive Order 11723 (dated June 13, 1973), or any subsequent Executive order promulgated under that Act, for any agricultural commodity (at any point in the distribution chain) as to which the Secretary of Agriculture certifies to the President that the supply of the commodity will be reduced to unacceptably low levels as a result of any price controls or freeze order (or regulation) promulgated under that Act and that alternative means for increasing the supply are not available. The House bill contains no corresponding provision. The Senate receded.

The Senate amendment provided that the effective date of the Act is the 60th day following the date of the enactment of the bill. The Houes bill provided that the effective date is the first day of the second full month which begins after the date of the enactment of the bill, or August 1, 1973, whichever occurs first. The Senate receded with an amendment to make the effective date of the Act the first day of the second full month after the date of enactment.

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Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Approved For Release 2000/09/13 : CIA-RDP75B00380R000600150001-3

Calendar No. 283

93D CONGRESS *1st Session*	SENATE	REPORT No. 93–301

FAIR LABOR STANDARDS AMENDMENTS OF 1973

JULY 6, 1973.—Ordered to be printed
Filed under authority of the order of the Senate of June 30, 1973

Mr. WILLIAMS, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany H.R. 7935]

The Committee on Labor and Public Welfare, to which was referred the bill (H.R. 7935) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rates under that act, to expand the coverage of that act, and for other purposes, having considered the same, reports thereon without recommendation.

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