ASSEMBLY, No. 470

STATE OF NEW JERSEY

INTRODUCED APRIL 4, 1933

By Miss TRUBE

Referred to Committee on Ways and Means

AN ACT to provide for the investigation and study of wages of women and minors employed in trade and industry in the State of New Jersey; and for the determination and establishment of minimum fair wage standards for such workers; and for the purpose of preventing unfair and oppressive exploitation of such workers; and for other purposes.

WHEREAS, The employment of women and minors in trade and industry in the State of New Jersey at wages unreasonably low and not fairly commensurate with the value of the services rendered is a matter of grave and vital public concern; (Many women and minors employed for gain in the State of New Jersey are not as a class upon a level of equality in bargaining with their employers in regard to minimum fair wage standards, and "freedom of contract" as applied to their relations with their employers is illusory;) and

WHEREAS, Since a very large percentage of such workers are obliged from their week to week wages to support themselves and others who are dependent upon them in whole or in part they are, by reason of their necessitous circumstances, forced to accept whatever wages are offered them. Judged by any reasonable standard, wages are in many cases fixed by chance and caprice and the wages accepted are often found to bear no relation to the fair value of the service rendered. Women and minors employed for gain are peculiarly subject to the overreaching of inefficient, harsh or ignorant employers and under unregulated competi-

tion where no adequate machinery exists for the effective regulation and maintenance of minimum fair wage standards, the standards such as exist tend to be set by the least conscionable employers. In the absence of any effective minimum fair wage rates for women and minors, the constant lowering of wages by unscrupulous employers constitutes a serious form of unfair competition against other employers, reduces the purchasing power of the workers and threatens the stability of industry. The evils of oppressive, unreasonable and unfair wages as they affect women and minors employed in the State of New Jersey are such as to render imperative the exercise of the police power of the State for the protection of industry and of the women and minors employed therein and of the public interest of the community at large in their health and well-being and in the prevention of the deterioration of the race; therefore,

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. As used in this act:

(a) "Commissioner" shall mean the Commissioner of Labor.

(b) "Director" shall mean the director or any deputy director of the minimum wage division, which shall be set up as a separate division in the Department of Labor by the Commissioner with a director in charge and with such deputy directors and other assistants and employees as the Commissioner may deem desirable.

(c) "Wage Board" shall mean a board created as provided in section six of the act.

(d) "Women" shall mean a female of twenty-one years or over.

(e) "Minor" shall mean a person of either sex under the age of twenty-one years.

(f) "Occupation" shall mean an industry, trade or business or branch thereof or class of work therein in which women or minors are gainfully employed, but shall not include domestic service in the home of the employer or labor on a farm.

(g) "An oppressive and unreasonable wage" shall mean a wage which is both less than the fair and reasonable value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health.

(h) "A fair wage" shall mean a wage fairly and reasonably commensurate with the value of the service or class of service rendered. In establishing a minimum fair wage for any service or class of service under this act the Commissioner and the wage board without being bound by any technical rules of evidence or procedure (1) may take into account all relevant circumstances affecting the value of the service or class of service rendered, and (2) may be guided by like considerations as would guide a court in a suit for the reasonable value of services rendered where services are rendered at the request of an employer without contract as to the amount of the wage to be paid, and (3) may consider the wages paid in the State for work of like or comparable character by employers who voluntarily maintain minimum fair wage standards.

(i) "A directory order" shall mean an order the nonobservance of which may be published as provided in section ten of this act.

(j) "A mandatory order" shall mean an order the violation of which shall be subject to the penalties prescribed in section fifteen (b) of this act.

2. It is hereby declared to be against public policy for any employer to employ any woman or minor in an occupation in this State at an oppressive and unreasonable wage as defined in section two of this act, and any contract, agreement or understanding for or in relation to such employment shall be null and void.

3. The commissioner or the director or any authorized representative of the director shall have full power and authority:

(a) To investigate and ascertain the wages of women and minors employed in any occupation in the State;

(b) To enter the place of business or employment of any employer of women and minors in any occupation for the purpose of examining and inspecting any and all books, registers, payrolls, and other records of any employer of women or minors that in any way appertain to or have a

bearing upon the question of wages of any such women or minors and for the purpose of ascertaining whether the orders of the Commissioner have been and are being complied with; and

(c) To require from such employer full and correct statements in writing when the Commissioner or the director or any authorized representative of the director deems necessary of the wages paid to all women and minors in his employment.

4. The commissioner or the director shall have the power, and it shall be the duty of the Commissioner on the petition of twenty-five or more residents of the State, to cause an investigation to be made by the director or any authorized representative of the director, of the wages being paid to women or minors in any occupation to ascertain whether any substantial number of women or minors in such occupation are receiving oppressive and unreasonable wages as defined in section two. If, on the basis of information in the possession of the Commissioner or the director, with or without a special investigation, the commissioner is of the opinion that any substantial number of women or minors in any occupation or occupations are receiving oppressive and unreasonable wages as defined in section two, he shall appoint a wage board to report upon the establishment of minimum fair wage rates for such women or minors in such occupation or occupations.

5. (a) A wage board shall be composed of not more than five representatives of the employers in any occupation or occupations, an equal number of representatives of the employees in such occupation or occupations and of not more than five disinterested persons representing the public, one of whom shall be designated as chairman. The Commissioner after conferring with the director shall appoint the members of such wage board, the representatives of the employers and employees to be selected so far as practicable from nominations submitted by employers and employees in such occupation or occupations. Two-thirds of the members of such wage board shall constitute a quorum and the recommendations or report of such wage board shall require a vote of not less than a majority of all its

members. Members of a wage board shall serve without pay, but may be reimbursed for all necessary traveling expenses. The Commissioner after conferring with the director shall make and establish from time to time rules and regulations governing the selection of a wage board and its mode of procedure not inconsistent with this act.

(b) A wage board shall have power to administer oaths and to require by subpœna the attendance and testimony of witnesses, the production of all books, records, and other evidence relative to any matters under investigation. Such subpœnas shall be signed and issued by a member of the wage board and shall be served and have the same effect as if issued out of the Supreme Court. A wage board shall have power to cause depositions of witnesses residing within or without the State to be taken in the manner prescribed for like depositions in civil actions in the Supreme Court.

(c) The commissioner or the director shall present to a wage board promptly upon its organization all the evidence and information in the possession of the Commissioner or director relating to the wages of women and minor workers in the occupation or occupations for which the wage board was appointed and all other information which the commissioner or the director deems relevant to the establishment of a minimum fair wage for such women and minors, and shall cause to be brought before the committee any witnesses whom the commissioner or the director deems material. A wage board may summon other witnesses or call upon the Commissioner or the director to furnish additional information to aid it in its deliberations.

(d) Within sixty days of its organization a wage board shall submit a report including its recommendations as to minimum fair wage standards for the women or minors in the occupation or occupations the wage standards of which the wage board was appointed to investigate. If its report is not submitted within such time the Commissioner may constitute a new wage board.

(e) A wage board may differentiate and classify employments in any occupation according to the nature of the service rendered and recom-

mend appropriate minimum fair rates for different employments. A wage board may also recommend minimum fair wage rates varying with localities if in the judgment of the wage board conditions make such local differentiation proper and do not effect an unreasonable discrimination against any locality.

(f) A wage board may recommend a suitable scale of rates for learners and apprentices in any occupation or occupations, which scale of learners' and apprentices' rates may be less than the regular minimum fair wage rates recommended for experienced women or minor workers in such occupation or occupations.

6. A report from a wage board shall be submitted to the Commissioner who shall within ten days confer with the director and accept or reject such report. If the report is rejected the Commissioner shall resubmit the matter to the same wage board or to a new wage board with a statement of the reasons for the resubmission. If the report is accepted it shall be published, together with such proposed administrative regulations, as the Commissioner after conferring with the director may deem appropriate to implement the report of the wage board and to safeguard the minimum fair wage standards to be established, and notice shall be given of a public hearing to be held by the Commissioner or the director not sooner than fifteen nor more than thirty days after such publication at which all persons in favor of or opposed to the recommendations contained in such report or in such proposed regulations may be heard.

7. Within ten days after such hearing the Commissioner shall confer with the director and approve or disapprove the report of the wage board. If the report is disapproved the commissioner may resubmit the matter to the same wage board or to a new wage board. If the report is approved the Commissioner shall make a directory order which shall define minimum fair wage rates in the occupation or occupations as recommended in the report of the wage board and which shall include such proposed administrative regulations as the Commissioner may deem appropriate to implement the report of the wage board and to safeguard the minimum fair wage

standards established. Such administrative regulations may include among other things, regulations defining and governing learners and apprentices, their rates, number, proportion or length of service, piece rates or their relations to time rates, overtime or part-time rates, bonuses or special pay for special or extra work, deductions for board, lodging, apparel or other items or services supplied by the employer, and other special conditions or circumstances; and in view of the diversities and complexities of different occupations and the dangers of evasion and nullification, the Commissioner may provide in such regulations without departing from the basic minimum rates recommended by the wage board such modifications or reductions of or addition to such rates in or for such special cases or classes of cases as those herein enumerated as the Commissioner may find appropriate to safeguard the basic minimum rates established.

8. For any occupation for which minimum fair wage rates have been established the Commissioner or the director may cause to be issued to a woman or minor, including a learner or apprentice, whose earning capacity is impaired by age or physical or mental deficiency or injury, a special license authorizing employment at such wages less than such minimum fair wage rates and for such period of time as shall be fixed by the Commissioner or the director and stated in the license.

9. If the Commissioner or the director or any authorized representative of the director has reason to believe that any employer is not observing the provisions of any order made by him under section seven of this act, the Commissioner or the director may, on fifteen days' notice, summon such employer to appear before the Commissioner or the director to show cause why the name of such employer should not be published as having failed to observe the provisions of such order. After such hearing and the finding by the Commissioner or the director of nonobservance, the Commissioner may cause to be published in a newspaper or newspapers circulating within the State of New Jersey or in such other manner as the Commissioner may deem appropriate, the name of any such employer or employers as having failed in the respects stated to observe the provisions of the directory order

of the Commissioner. Neither the Commissioner nor any authorized representative of the Commissioner, nor any newspaper publisher, proprietor, editor, nor employee thereof shall be liable to an action for damage for publishing the name of any employer as provided for in this act, unless guilty of some wilful misrepresentation.

10. If at any time after a directory minimum fair wage order has been in effect for nine months the Commissioner is of the opinion after conferring with the director that the persistent nonobservance of such order by one or more employers is a threat to the maintenance of fair minimum wage standards in any occupation or occupations the Commissioner or the director may give notice of the intention of the Commissioner to make such order mandatory and of a public hearing to be held not sooner than fifteen nor more than thirty days after such publication at which all persons in favor of or opposed to a mandatory order may be heard by the Commissioner or the director. After such hearing the Commissioner, if he adheres to his opinion, may make the previous directory order or any part thereof mandatory and so publish it.

11. At any time after a minimum fair wage order has been in effect for one year or more, whether during such period it has been directory or mandatory, the Commissioner may, on his own motion, after conferring with the director, and shall, on petition of twenty-five or more residents of the State, reconsider the minimum fair wage rates, set therein, and reconvene the same wage board, or appoint a new wage board to recommend whether or not the rate, or rates, contained in such order, should be modified. The report of such wage board shall be dealt with in the manner prescribed in section seven and eight of this act, *provided*, that, if the order under reconsideration has theretofore been made mandatory, in whole or in part, by the Commissioner under section eleven, then the Commissioner, in making any new order or confirming any old order, shall have power to declare to what extent such order shall be directory and to what extent mandatory.

12. The Commissioner may, at any time, and from time to time after conference with the director, propose such modifications of, or additions to

any administrative regulations, included in any directory or mandatory order of the Commissioner, without reference to a wage board, as the Commissioner may deem appropriate to effectuate the purposes of this act, provided such proposed modification or additions could legally have been included in the original order, and notice shall be given of a public hearing to be held by the Commissioner or director not less than fifteen days after such publication at which all persons in favor of or opposed to such proposed modifications or additions may be heard. After such hearing the Commissioner may make an order putting into effect such proposed modifications of or additions to the administrative regulations as he deems appropriate, and if the order of which the administrative regulations form a part has theretofore been made mandatory in whole or in part by the Commissioner under section eleven, then the Commissioner in making any new order shall have the power to declare to what extent such order shall be directory and to what extent mandatory.

13. All questions of fact arising under this act except as otherwise herein provided shall be decided by the Commissioner or the director and there shall be no appeal from the decision of the Commissioner or the director on any such question in fact, but there shall be a right of review by the industrial board and the courts as provided in article three of the labor law from any ruling or holding on a question of law included or embodied in any decision or order of the Commissioner or the director.

14. Every employer of women and minor workers shall keep a true and accurate record of the hours worked by each and the wages paid by him to each and shall furnish to the Commissioner or the director or the authorized representative of the director upon demand a sworn statement of the same. Such records shall be open to inspection by the Commissioner or the director or any authorized representative of the director at any reasonable time. Every employer subject to a minimum fair wage order whether directory or mandatory shall keep a copy of such order posted in a conspicuous place in every room in which women or minors are employed. Employers shall be furnished copies of orders on request without charge.

15. (a) Any employer and his agent, or the officer or agent of any corporation, who discharges or in any other manner discriminates against any employee because such employee has served or is about to serve on a wage board or has testified or is about to testify before any wage board or in any other investigation or proceeding under or related to this act or because such employer believes that said employee may serve on any wage board or may testify before any wage board or in any investigation or proceeding under this act shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than fifty ($50.00) nor more than two hundred dollars ($200.00).

(b) Any employer or the officer or agent of any corporation who pays or agrees to pay to any woman or minor employee less than the rates applicable to such woman or minor under a mandatory minimum fair wage order shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than fifty ($50.00) nor more than two hundred dollars ($200.00) or by imprisonment of not less than ten nor more than ninety days or by both such fine and imprisonment, and each week in any day of which such employee is paid less than the rate applicable to him under a mandatory minimum fair wage order and each employee so paid less shall constitute a separate offense.

(c) Any employer or the officer or agent of any corporation who fails to keep the records required under this act or to furnish such records to the Commissioner or the director or any authorized representative of the director upon request shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than twenty-five ($25.00) nor more than one hundred dollars ($100.00), and each day of such failure to keep the records requested under this act or to furnish same to the Commissioner or the director or any authorized representative of the director shall constitute a separate offense.

16. If any woman or minor worker is paid by his employer less than the minimum fair wage to which he is entitled under or by virtue of a mandatory minimum fair wage order he may recover in a civil action the full amount of

such minimum wage less any amount actually paid to him by the employer together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between him and his employer to work for less than such mandatory minimum fair wage shall be no defense to such action. At the request of any woman or minor worker paid less than the minimum wage to which he or she was entitled under a mandatory order, the Commissioner may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

17. If any provisions of this act, or the application thereof to any person or circumstance, is held invalid the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

18. This act shall take effect immediately.

[OFFICIAL COPY REPRINT]

SENATE AMENDMENTS TO

ASSEMBLY, No. 470

STATE OF NEW JERSEY

ADOPTED APRIL 25, 1933

On page 2, line 16, at the end of said line, strike out the period and add the following: "or employment in any hotel."