

sell hypodermic syringes, hypodermic needles or any instrument adapted for the administration of controlled substances by injection, unless licensed so to do by the department.

Approved December 11, 1973.

Chap. 1191. AN ACT AUTHORIZING THE COUNTY COMMISSIONERS OF THE COUNTY OF FRANKLIN AND THE DUKES COUNTY PLANNING AND ECONOMIC DEVELOPMENT COMMISSION TO EXPEND MONEY FOR TRAVEL.

Be it enacted, etc., as follows:

SECTION 1. Chapter 425 of the acts of 1963 is hereby amended by striking out section 1, as most recently amended by chapter 30 of the acts of 1973, and inserting in place thereof the following section: —

Section 1. The county commissioners of the county of Franklin may, for the purpose of protecting the interests of said county and to provide for land use planning and the economic development thereof, expend such sums, not exceeding in the aggregate, twenty thousand dollars, as may be appropriated therefor, provided that any monies expended for travel expenses shall be allocated from the voluntary contributions, either public or private, which were deposited in said treasury for the purposes of said commission. For the purposes of this act, the county may accept gifts, donations, and contributions, and expend such sums providing they have been deposited with the county treasurer. Said commissioners may expend such sums, whether they are appropriated or otherwise received, for research, and planning such use of the land and water areas of said county, as, in their judgment, will accomplish the purposes of this act, including travel within and without the commonwealth, and may advertise, prepare, print and distribute books, maps, charts, and pamphlets and take any other action, which in their judgment, will further the purposes of this act.

SECTION 2. Section 2 of chapter 690 of the acts of 1966 is hereby amended by inserting after the word "required", in line 8, the words: — and may expend money for travel within and without the commonwealth in accordance with such policy guidelines as are issued by the commission.

SECTION 3. Section 3 of said chapter 690 is hereby amended by inserting after the word "dollars", in line 4, the words: — , provided that any monies expended for travel expenses shall be allocated from the voluntary contributions, either public or private, which were deposited in said treasury for the purposes of this commission.

Approved December 11, 1973.

Chap. 1192. AN ACT FURTHER REGULATING THE DUTIES AND SALARIES OF THE COMMISSIONERS OF THE DEPARTMENT OF LABOR AND INDUSTRIES, AND IMPLEMENTING THE MINIMUM WAGE LAW, SO CALLED.

Be it enacted, etc., as follows:

SECTION 1. Chapter 23 of the General Laws is hereby amended by striking out section 2, as most recently amended by chapter 768 of the acts of 1973, and inserting in place thereof the following section: —

Section 2. Upon the expiration of the term of office of a commissioner, an assistant commissioner or an associate commissioner, his successor shall be appointed by the governor for a term coterminous with that of the governor. The commissioner shall receive a salary of twenty thousand six hundred and seventy dollars, the associate commissioner who is appointed to serve as chairman of the board of conciliation and arbitration shall receive a salary of twenty thousand dollars while he is serving as such chairman, the assistant commissioner shall receive a salary of fifteen thousand dollars and the other associate commissioner shall receive a salary of twelve thousand three hundred and thirty-four dollars.

SECTION 2. Said chapter 23 is hereby further amended by striking out section 7, as appearing in the Tercentenary Edition, and inserting in place thereof the following section: —

Section 7. The associate commissioners shall constitute the board of conciliation and arbitration, and shall have the powers and perform the duties given them by chapter one hundred and fifty relative to conciliation and arbitration of industrial disputes. The governor shall designate, from time to time, one of the commissioners to serve as chairman, who shall be executive head of the board.

SECTION 3. Chapter 150 of the General Laws is hereby amended by striking out section 10, as so appearing, and inserting in place thereof the following section: —

Section 10. The chairman of the board of conciliation and arbitration shall make an annual report of the actions of the board.

SECTION 4. Chapter 151 of the General Laws is hereby amended by striking out section 1, as most recently amended by section 1 of chapter 752 of the acts of 1972, and inserting in place thereof the following section: —

Section 1. It is hereby declared to be against public policy for any employer to employ any person in an occupation in this commonwealth at an oppressive and unreasonable wage as defined in section two, and any contract, agreement or understanding for or in relation to such employment shall be null and void. A wage of less than one dollar and eighty-five cents per hour in any occupation, as defined in this chapter, or a rate established by the federal government, whichever is greater, shall be conclusively presumed to be oppressive and unreasonable, whenever the term "minimum wage" is used in this chapter; provided that the commissioner may expressly approve the establishment and payment of a lesser wage under the provision of sections seven and nine.

SECTION 5. Section 2 of said chapter 151 is hereby amended by striking out the definitions of "Commission" and "Wage board",

as appearing in section 1 of chapter 432 of the acts of 1947.

SECTION 6. Sections four, five and six of said chapter one hundred and fifty-one are hereby repealed.

SECTION 7. Said chapter 151 is hereby further amended by striking out section 7, as most recently amended by section 2 of chapter 752 of the acts of 1972, and inserting in place thereof the following section: —

Section 7. The commissioner may, and upon the petition of fifty or more citizens of the commonwealth shall, undertake such investigation as may be required to ascertain whether any substantial number of persons in any occupation are receiving oppressive and unreasonable wages, as defined in section one. The commissioner may, subsequent to such investigation, differentiate and classify employments in any occupation according to the nature of the service rendered and recommend appropriate minimum fair wage rates for different classes of employment. The commissioner may establish minimum fair wage rates varying with localities if in its judgement conditions make such local differentiation proper and will not cause unreasonable discrimination against any locality. The commissioner may establish 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 established for experienced persons in such occupation or occupations, provided that in a retail, merchandising or laundry establishment such scale of learners' and apprentices' rates shall apply only to the first eighty hours during which such learner or apprentice is employed.

The commissioner shall not establish minimum fair wage rates below one dollar and eighty-five cents per hour, except for learners and apprentices, and except for ushers, ticket sellers and ticket takers whose minimum fair wage rates shall not be below one dollar and twenty-five cents, and except for service people who customarily and regularly receive more than twenty dollars a month in tips and in determining whose minimum fair wage rates 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 forty per cent of the applicable minimum wage rate provided in section one, except that in the case of an employee who, by himself or through his representative, shows to the satisfaction of the commissioner that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this provision, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount, and except for janitors and caretakers of residential property, who, when furnished with living quarters, shall be paid a wage of not less than thirty-six dollars per week, and except for services as golf caddies.

The commissioner may establish overtime rates for all hours

worked in excess of forty hours in any week.

SECTION 8. Section eight of said chapter one hundred and fifty-one is hereby repealed.

SECTION 9. Said chapter 151 is hereby amended by striking out section 9, as most recently amended by chapter 272 of the acts of 1961, and inserting in place thereof the following section: —

Section 9. For any occupation within the scope of the minimum fair wage law, the commissioner may cause to be issued to an employer of any learner, or of an employee under an approved apprentice training program, or of an employee whose earning capacity is impaired by age or physical or mental deficiency or injury, or of an employee who is certified by the secretary of human services or his designee as a handicapped person, a special certificate authorizing employment at such wages, less than the established minimum fair wage rates, and for such period of time, as shall be fixed by the commissioner and stated in the certificate.

SECTION 10. Said chapter 151 is hereby amended by striking out section 10, as most recently amended by section 7 of chapter 558 of the acts of 1952, and inserting in place thereof the following section: —

Section 10. After the commissioner has established a fair wage in any occupation in accordance with sections seven and nine, it shall be unlawful for any employer in such occupation to employ persons for less than such rate of wages. The commissioner shall send by mail so far as is practicable to each employer in the occupation in question a copy of the wage rate and related regulations and each employer shall be required to post a copy of said wages and regulations in each room in which persons affected by such wages and regulations are employed.

SECTION 11. Said chapter 151 is hereby further amended by striking out section 11, as most recently amended by section 8 of said chapter 558, and inserting in place thereof the following section: —

Section 11. If the commissioner has reason to believe that any employer is not paying a fair wage or not observing other minimum wage regulations, the commissioner may, on fifteen days notice, summon such employer to show cause why the name of such employer should not be published as having committed such violation. After a hearing and a finding of nonobservance, the commissioner may cause to be published in such newspaper or newspapers within this commonwealth or in such other manner as he may deem appropriate, the name of such employer or employers. Neither the commissioner nor any authorized representative of the commissioner nor any newspaper publisher, proprietor, editor or employee thereof shall be liable to an action for damages for publishing the name of any employer as provided herein unless guilty of wilful misrepresentation.

SECTION 12. Sections twelve and thirteen of said chapter one hundred and fifty-one are hereby repealed.

SECTION 13. Said chapter 151 is hereby further amended by striking out section 14, as most recently amended by chapter 123 of the acts of 1959, and inserting in place thereof the following section: —

Section 14. Any person aggrieved by any decision of the commissioner may bring a petition in the superior court praying that such decision of the commissioner may be reviewed by the court, and after such notice to the commissioner as the court deems necessary, it shall review such decision, hear the evidence and make such order approving, in whole or in part, or setting aside, in whole or in part, the decision appealed from as justice may require, and may refer any matter or issue arising in the proceedings to the commissioner for further consideration. The filing of the petition shall not stay proceedings upon the decision appealed from, but the court may, on application, after notice to the commissioner and for cause shown, grant a restraining order. Upon any such petition the court may take evidence without being bound by any technical rules of evidence or procedure, to the end that any evidence may be received which the court considers probative.

If any part of any minimum fair wage regulation is severable therefrom and if such part is held to be invalid or unconstitutional the remaining parts of said regulation shall not be affected thereby; but shall continue in effect as if the part determined to be invalid or unconstitutional had not been included therein.

SECTION 14. Section 16 of said chapter 151 is hereby amended by striking out the third sentence, as appearing in section 1 of chapter 432 of the act of 1947, and most recently amended by section 15 of chapter 760 of the acts of 1970, and inserting in place thereof the following sentence: — The commissioner may require each employer in any occupation subject to this chapter to post rules which apply to such employer's employees, in such reasonable way or ways and for such length of time as he may direct.

SECTION 15. Section eighteen of said chapter one hundred and fifty-one is hereby repealed.

SECTION 16. Said chapter 151 is hereby further amended by striking out section 19, as most recently amended by section 17 of chapter 760 of the acts of 1970, and inserting in place thereof the following section: —

Section 19. (1) Any employer and his agent, or the officer or agent of any corporation who discharges or in any other manner discriminates against any employee, including any employee in the domestic service of any family or person at his home for not less than sixteen hours per week, because such employee has complained of a violation of the provisions of this chapter, or has testified or is about to testify in any investigation or proceeding under or related to this chapter, or because such employer believes that said employee or individual may complain of a violation of the provisions of this chapter, shall be punished by a fine of not less than fifty and not more than two hundred dollars, and shall be liable for damages which shall not be less than one month's wages nor more than two

month's wages of such individual, and the costs of the suit, including a reasonable attorney's fee.

(2) Any employer or the officer or agent of any corporation who knowingly pays or agrees to pay to any employee less than the rates applicable to such employee under a regulation minimum fair wage established by the commissioner, or who pays or agrees to pay to any employee less than one dollar and eighty-five cents per hour in any occupation not covered by a minimum wage regulation shall be punished by a fine of not less than fifty nor more than two hundred dollars or by imprisonment for 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 minimum fair wage regulation and each employee so paid less, shall constitute a separate offense.

(2A) Any employer or the officer or agent of any corporation who knowingly pays or agrees to pay to any employee in agriculture and farming less than one dollar and sixty cents per hour shall be punished by a fine of not less than fifty nor more than two hundred dollars or by imprisonment for not less than ten nor more than ninety days, or by both such fine and imprisonment, and each week in any day in which such employee is paid less shall constitute a separate offense.

(3) Any employer or the officer or agent of any corporation who fails to keep the records required under this chapter or to furnish such records to the commissioner, or any authorized representative of the commissioner upon request, or who falsifies such records, or who fails to comply with any requirement of the commissioner under the last sentence of section sixteen, or who hinders or delays the commissioner or any authorized representative of the commissioner in the performance of his duties, or who refuses to admit, or locks out, such commissioner, or such authorized representative from any place of employment, other than places of employment of persons engaged in domestic service in the home of the employer, which he is authorized to inspect, shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, and each day of such failure to keep such records or to furnish to the commissioner or any authorized representative of the commissioner such records or other information as may be required for the proper enforcement of this chapter shall constitute a separate offense.

(4) No person shall, for the purpose of evading this chapter, establish any arrangement or organization in his business, by contract, lease or agreement, whether written or oral, whereby a person who would otherwise be his employee does not have the status of such an employee. If the commissioner is of the opinion that any person has established an arrangement or organization in violation of this paragraph, after a public hearing, due notice whereof shall have been given, and at which a reasonable opportunity to be heard has been afforded to such person, he may order such person to cease and desist from such violation; and such an order shall be subject

to review under section fourteen in the same manner and to the same extent as any decision of the commissioner under this chapter. Any person so ordered to cease and desist who fails to comply therewith for thirty days after such order has been served upon him shall be punished by a fine of not less than one hundred dollars or by imprisonment for not less than ten nor more than ninety days, or by both such fine and imprisonment.

(5) Whoever directly or indirectly solicits, demands, requests or accepts from any employee any return of a portion of his wages, which would result in such employee retaining less than the rate of wages required by this chapter, or whoever threatens, coerces or intimidates any employee who has wages due under this chapter, for the purpose of causing such person to accept as payment in full a lesser sum than the full amount of the wages so due, shall be punished by a fine of not less than fifty nor more than one thousand dollars, or imprisonment for not less than ten nor more than ninety days, or by both such fine and imprisonment, and each employee so solicited or threatened shall constitute a separate offense.

SECTION 17. Said chapter 151 is hereby further amended by striking out section 20, as most recently amended by sections 1 and 2 of chapter 399 of the acts of 1962, and inserting in place thereof the following section: —

Section 20. If any person is paid by an employer less than the minimum fair wage to which such person is entitled under or by virtue of a minimum fair wage regulation, or less than one dollar and eighty-five cents per hour in any manufacturing occupation or in any other occupation not covered by a minimum fair wage regulation; such person may recover in a civil action the full amount of such minimum wage less any amount actually paid to him or her by the employer, together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between such person and the employer to work for less than such wage shall be no defence in such action. At the request of any employee paid less than the minimum wage to which he or she is entitled 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. The commissioner shall not be required to pay a filing fee in connection with any such action.

SECTION 18. The provisions of chapter one hundred and fifty-one of the General Laws, as amended by this act, shall take effect with respect to employees engaged in the manufacturing occupations in the commonwealth, whether engaged in the production of goods for interstate or intrastate commerce, when the minimum wage rates under the Federal Fair Labor Standards Act of 1938, as amended, for employees engaged in commerce or in the production of goods for commerce under said Act are equal to or higher than those provided under said chapter one hundred and fifty-one, as so amended.

Approved December 11, 1973.

THE COMMONWEALTH OF MASSACHUSETTS
 EXECUTIVE DEPARTMENT, STATE HOUSE
 BOSTON, December 18, 1973

The Honorable JOHN F. X. DAVOREN, *Secretary of the Commonwealth, State House, Boston, Massachusetts.*

DEAR MR. SECRETARY: I, Francis W. Sargent, pursuant to the provisions of Article XLVIII of the Amendments to the Constitution, the Referendum II, Emergency Measures, hereby declare in my opinion the immediate preservation of the public convenience requires that the law being Chapter 1192 of the Acts of 1973, entitled "AN ACT FURTHER REGULATING THE DUTIES AND SALARIES OF THE COMMISSIONERS OF THE DEPARTMENT OF LABOR AND INDUSTRIES, AND IMPLEMENTING THE MINIMUM WAGE LAW, SO CALLED." and the enactment of which received my approval on December 11, 1973, should take effect forthwith.

I further declare that in my opinion said law is an emergency law and the facts constituting the emergency are as follows:

It is essential that the provisions of this Act be made effective immediately in order to promptly strengthen the Board of Conciliation and Arbitration and to provide more effective enforcement of the statutes governing minimum wage rates.

Sincerely,
 FRANCIS W. SARGENT,
Governor of the Commonwealth.

OFFICE OF THE SECRETARY, BOSTON, December 18, 1973.

I, John F. X. Davoren, Secretary of the Commonwealth, hereby certify that the accompanying statement was filed in this office by His Excellency the Governor of the Commonwealth of Massachusetts at two o'clock and forty minutes, P.M., on the above date, and in accordance with Article Forty-eight of the Amendments to the Constitution said chapter takes effect forthwith, being chapter one thousand one hundred and ninety-two of the acts of nineteen hundred and seventy-three.

JOHN F. X. DAVOREN,
Secretary of the Commonwealth.

Chap. 1193. AN ACT INCREASING THE SALARIES OF MEMBERS OF THE INDUSTRIAL ACCIDENT BOARD, AND THE APPELLATE TAX BOARD.

Be it enacted, etc., as follows:

SECTION 1. The second sentence of the first paragraph of section 15 of chapter 23 is hereby amended by striking out the words "twenty-thousand seven hundred and eighty-five", inserted by section 33 of chapter 426, and inserting in place thereof the words: — twenty-five thousand, — and by striking out the words "nineteen thousand five hundred and twenty-nine", as so inserted, and inserting in place thereof the words — twenty-three thousand.