

FAIR LABOR STANDARDS ACT OF 1938

JUNE 11, 1938.—Ordered to be printed

Mrs. Norton, from the Committee on Labor, submitted the following

CONFERENCE REPORT

[To accompany S. 2475]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2475) to provide for the establishment of fair labor standards in employments in and affecting interstate commerce, 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 Senate recede from its disagreement to the amendment of the House, and agree to the same with an amendment as follows:

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

That this Act may be cited as the "Fair Labor Standards Act of 1938".

FINDING AND DECLARATION OF POLICY

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

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

DEFINITIONS

SEC. 3. As used in this Act—

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

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

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

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(e) "Employee" includes any individual employed by an employer.

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

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

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

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

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

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

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Chief of the Children's Bureau in the Department of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive

child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Chief of the Children's Bureau certifying that such person is above the oppressive child-labor age. The Chief of the Children's Bureau shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Chief of the Children's Bureau determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees.

ADMINISTRATOR

SEC. 4. (a) There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this Act referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$10,000 a year.

(b) The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Administrator, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representatives may exercise any or all of his powers in any place.

(d) The Administrator shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable.

INDUSTRY COMMITTEES

SEC. 5. (a) The Administrator shall as soon as practicable appoint an industry committee for each industry engaged in commerce or in the production of goods for commerce.

(b) An industry committee shall be appointed by the Administrator without regard to any other provisions of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the

Administrator shall designate as chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Administrator shall give due regard to the geographical regions in which the industry is carried on.

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

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

MINIMUM WAGES

SEC. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, whichever is lower, and

(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 8.

(b) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.

MAXIMUM HOURS

SEC. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

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

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

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

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

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

(2) on an annual basis in pursuance of an agreement with his employer, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall not be employed more than two thousand hours during any period of fifty-two consecutive weeks, or

(3) for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature,

and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c) In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), of any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a), during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged.

(d) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.

WAGE ORDERS

SEC. 8. (a) With a view to carrying out the policy of this Act by reaching, as rapidly as is economically feasible without substantially curtailing employment, the objective of a universal minimum wage of 40 cents an hour in each industry engaged in commerce or in the production of goods for commerce, the Administrator shall from time to time convene the industry committee for each such industry, and the industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers engaged in commerce or in the production of goods for commerce in such industry or classification therein.

(b) Upon the convening of an industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed

for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, may hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry.

(c) The industry committee for any industry shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of 40 cents an hour) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classification shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee and the Administrator shall consider among other relevant factors the following:

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

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

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum-wage standards in the industry. No classification shall be made under this section on the basis of age or sex.

(d) The industry committee shall file with the Administrator a report containing its recommendations with respect to the matters referred to it. Upon the filing of such report, the Administrator, after due notice to interested persons, and giving them an opportunity to be heard, shall by order approve and carry into effect the recommendations contained in such report, if he finds that the recommendations are made in accordance with law, are supported by the evidence adduced at the hearing, and, taking into consideration the same factors as are required to be considered by the industry committee, will carry out the purposes of this section; otherwise he shall disapprove such recommendations. If the Administrator disapproves such recommendations, he shall again refer the matter to such committee, or to another industry committee for such industry (which he may appoint for such purpose), for further consideration and recommendations.

(e) No order issued under this section with respect to any industry prior to the expiration of seven years from the effective date of section 6 shall remain in effect after such expiration, and no order shall be issued under this section with respect to any industry on or after such expiration, unless the industry committee by a preponderance of the evidence before it recommends, and the Administrator by a preponderance of the evidence adduced at the hearing finds, that the continued effectiveness or the issuance of the order, as the case may be, is necessary in order to prevent substantial curtailment of employment in the industry.

(f) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Administrator finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein. No such order shall take effect until after due notice is given of the issuance thereof by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give to interested persons general notice of such issuance.

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

ATTENDANCE OF WITNESSES

SEC. 9. For the purpose of any hearing or investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C., 1934 edition, title 15, secs. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the Administrator, the Chief of the Children's Bureau, and the industry committees.

COURT REVIEW

SEC. 10. (a) Any person aggrieved by an order of the Administrator issued under section 8 may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon the Administrator, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by the Administrator when supported by substantial evidence shall be conclusive. No objection to the order of the Administrator shall be considered by the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final,

subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

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

INVESTIGATIONS, INSPECTIONS, AND RECORDS

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

(b) With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Chief of the Children's Bureau may, for the purpose of carrying out their respective functions and duties under this Act, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder.

CHILD LABOR PROVISIONS

SEC. 12. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, no producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: Provided, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

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

EXEMPTIONS

SEC. 13. (a) The provisions of sections 6 and 7 shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator); or (2) any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce; or (3) any employee employed as a seaman; or (4) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or (5) any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or byproducts thereof; or (6) any employee employed in agriculture; or (7) any employee to the extent that such employee is exempted by regulations or orders of the Administrator issued under section 14; or (8) any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than three thousand the major part of which circulation is within the county where printed and published; or (9) any employee of a street, suburban, or interurban electric railway, or local trolley or motor bus carrier, not included in other exemptions contained in this section; or (10) to any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products.

(b) The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act.

(c) The provisions of section 12 relating to child labor shall not apply with respect to any employee employed in agriculture while not legally required to attend school, or to any child employed as an actor in motion pictures or theatrical productions.

LEARNERS, APPRENTICES, AND HANDICAPPED WORKERS

SEC. 14. The Administrator, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for (1) the employment of learners, of apprentices, and of

messengers employed exclusively in delivering letters and messages, under special certificates issued pursuant to regulations of the Administrator, 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 Administrator shall prescribe, and (2) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the Administrator, at such wages lower than the minimum wage applicable under section 6 and for such period as shall be fixed in such certificates.

PROHIBITED ACTS

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

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Administrator issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation;

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

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

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

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

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

PENALTIES

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

(b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

INJUNCTION PROCEEDINGS

SEC. 17. The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 20 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U. S. C., 1934 edition, title 28, sec. 381), to restrain violations of section 15.

RELATION TO OTHER LAWS

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

SEPARABILITY OF PROVISIONS

SEC. 19. If any provision of this Act or the application of such provision 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.

"Individual" includes an individual, partnership, association, corporation, business trust, receiver, trustee, trustee in bankruptcy, or liquidating or reorganizing agent.

"Interstate commerce" is defined to mean trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

"State" is defined to mean any State of the United States or the District of Columbia or any Territory or possession of the United States.

"Board" is defined to mean the Labor Standards Board created by the bill.

And the House agree to the same.

MARY T. NORTON,
 ROBERT RAMSPECK,
 M. A. DUNN,
 KENT KELLER,
 JENNINGS RANDOLPH,
 RICHARD J. WELCH,
 FRED A. HARTLEY, Jr.,
Managers on the part of the House.

ELBERT D. THOMAS,
 DAVID I. WALSH,
 WILLIAM E. BORAH,
 CLAUDE PEPPER,
 ALLEN J. ELLENDER,
 JAMES E. MURRAY,
 ROBERT M. LA FOLLETTE, Jr.
Managers on the part of the Senate.

PENALTIES

Sec. 18. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than \$10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2475) to provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon and recommended in the accompanying conference report:

The House amendment strikes out all of the Senate bill after the enacting clause. The Senate recedes from its disagreement to the amendment of the House, with an amendment which is a substitute for both the Senate bill and the House amendment.

SENATE BILL

SUMMARY OF PROVISIONS

SHORT TITLE

Section 1 of the Senate bill provides that it may be cited as the Fair Labor Standards Act of 1937.

LEGISLATIVE DECLARATION

Section 1 of the Senate bill, the legislative declaration, recites the adverse effects upon interstate commerce of the employment of workers under substandard labor conditions in occupations in and affecting interstate commerce. It contains also a declaration that the correction of such conditions affecting interstate commerce requires congressional action prohibiting the shipment in interstate commerce of goods produced under such substandard conditions, and providing for the elimination of substandard labor conditions in occupations in and directly affecting interstate commerce. This section is very similar to the corresponding section of the House amendment.

DEFINITIONS

Section 2 (a) of the Senate bill contains a series of definitions used in the bill.

"Person" is defined to include an individual, partnership, association, corporation, business trust, receiver, trustee, trustee in bankruptcy, or liquidating or reorganizing agent.

"Interstate commerce" is defined to mean trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

"State" is defined to mean any State of the United States or the District of Columbia or any Territory or possession of the United States.

"Board" is defined to mean the Labor Standards Board created by the bill.

"Occupation" is defined to mean an occupation, industry, trade, or business, or branch thereof, or class of work or craft therein in which persons are gainfully employed.

Employer is defined to include any person acting directly or indirectly in the interest of an employer in relation to an employee but does not include the United States or any State or any political subdivision thereof or any labor organization except when that organization acts as an employer.

"Employee" is defined to include any individual employed or suffered or permitted to work by an employer, but does not include any person employed in a bona-fide executive, administrative, professional, or local retailing capacity. It excludes all persons employed as seamen, fishermen, any railroad employee subject to the Hours of Service Act, any employee of a common carrier by motor vehicle subject to the Motor Carrier Act. Air-transport employees subject to title II of the Railway Labor Act are also excluded from the definition of "employee" as are all persons employed in agriculture. "Agriculture" is defined to include, among other things, practices ordinarily performed by farmers or on a farm as an incident to farm operations.

"Oppressive wage" is defined to mean any wage lower than that set by order of the Board under the provisions of section 4 of the bill.

"Oppressive workweek" is defined to mean a workweek or workday longer than that set by order of the Board under the provisions of section 4 of the bill.

"Substandard labor condition" is defined to mean employment under which any employee is employed at an oppressive wage, or any employee is employed for an oppressive workweek.

"Fair labor standard" is defined to mean employment under which no person is employed at an oppressive wage, or no person is employed for an oppressive workweek.

"Unfair goods" is defined to mean any goods produced under "substandard labor conditions" as defined in the bill.

"Produced" means produced, manufactured, mined, handled, or in any other manner worked on, in any State. This definition further provides that any employee shall be deemed to have been engaged in the production of goods if he was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods or in any process or occupation necessary to the production thereof, in any State.

The term "person employed in agriculture" as used in the bill insofar as it refers to fresh fruits or vegetables, includes persons employed within the area of production engaged in preparing, packing, or storing such fresh fruits or vegetables in their raw or natural state.

"Labor standard order" is defined as an order of the Board under section 4, 6, or 8 of the bill.

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

"Fair goods" is defined as goods in the production of which no employee has been employed in any occupation under any substandard labor conditions.

"Sale" or "sell" is defined to include any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition. "To a substantial extent" is defined as meaning not casually, sporadically, or accidentally, but as a settled or recurrent characteristic of the matter or occupation described, or of a portion thereof, which need not be a large or preponderant portion.

EVIDENCE OF EMPLOYMENT UNDER SUBSTANDARD LABOR CONDITIONS

Section 2 (b) of the Senate bill provides that proof that any employee was employed under any substandard labor condition, in any place of employment where goods are produced, within 90 days prior to the removal of goods therefrom, shall be prima facie evidence that such goods were produced by such employee employed under such substandard labor condition.

LABOR STANDARDS BOARD

Section 3 of the Senate bill provides for the creation of a Labor Standards Board composed of five members appointed for staggered terms of 5 years each, except that the members first appointed are appointed for terms of 1, 2, 3, 4, and 5 years respectively. The members of the Board must be appointed with the advice and consent of the Senate. The section contains the usual provisions regarding the filling of vacancies, the salary of the Board members, the maintenance of offices and the filing of reports.

ESTABLISHMENT OF FAIR LABOR STANDARDS

Part II of the Senate bill provides for the establishment of labor standards with respect to minimum wages and maximum hours, the application of such standards to particular employments and classes of employments, and appropriate exemptions from such standards. This part deals only with the fixing of the standards and the consequences of noncompliance. The powers of the Board to require compliance are defined in parts III and IV.

Section 4 (a) of the Senate bill declares, for reasons specified in such section, that it is the policy of the act to maintain, so far as and as rapidly as is economically feasible, minimum-wage and maximum-hour standards consistent with health, efficiency, and general well-being of workers and the maximum productivity and profitable operation of American business.

ESTABLISHMENT OF MINIMUM-WAGE STANDARDS

Section 4 (b) of the Senate bill directs the Board by order to declare from time to time for such occupations as are brought within the operation of the bill, minimum wages which shall be as nearly adequate as is economically feasible without curtailing opportunity for employment, to maintain a minimum standard of living necessary for health, efficiency, and general well-being. The Board's jurisdiction, however, does not include the power to declare minimum wages in excess of 40 cents per hour, but it is the objective of the bill to attain a minimum wage of 40 cents per hour as rapidly as practicable without curtailing opportunities for employment and without disturbance and dislocation

of business and industry, and the attainment of higher minimum wages by collective bargaining and otherwise is to be encouraged. In declaring such minimum wages the Board is directed to consider among other relevant circumstances the cost of living, such considerations as would be relevant in a court in a suit for the value of services rendered, wages established for work of like or comparable character by collective labor agreements, and wages paid for like work by employers voluntarily maintaining minimum-wage standards.

ESTABLISHMENT OF MAXIMUM HOUR STANDARDS

Section 4 (c) of the Senate bill authorizes the Board by order from time to time to declare for such occupations as are brought within the provisions of the bill, a maximum workweek (and the maximum workday therein) which shall be as nearly adequate as is economically feasible without curtailing earning power, to maintain health, efficiency, and general well-being. There are exempted from the provisions of this subsection persons employed in connection with the ginning and baling of cotton, canning or other packaging of fish, sea foods, or sponges, or picking, canning, or processing of fruits or vegetables, or the processing of beets, cane, and maple into sugar and sirup, when the services of such persons are of a seasonal nature. There are also exempted from the provisions of this subsection employees employed in a plant located in dairy production areas, in which milk, cream, or butterfat are received, processed, shipped, or manufactured, if operated by a cooperative association as defined in the Farm Credit Act of 1933.

The Board's jurisdiction, however, does not include the power to declare a maximum workweek of less than 40 hours; but it is the objective of the bill to attain a maximum workweek of not more than 40 hours as rapidly as practicable without curtailing earning power or reducing production, and the attainment of a shorter workweek by collective bargaining or otherwise is to be encouraged. In declaring maximum hours the Board is directed to consider among other relevant circumstances (1) the relation of the work to the physical and economic health, efficiency, and well-being of the employees; (2) the number of persons available for employment in the occupation; (3) the hours of employment established for work of like or comparable character by collective bargaining agreements; (4) the hours of employment for work of like or comparable character maintained by employers who voluntarily maintain a maximum workweek; (5) the provisions of this subsection shall not apply to employees engaged in processing or packing perishable agricultural products during the harvesting season; and (6) the average minimum wage ordered by the Board to be paid by private employers in any State shall be the minimum wage paid by the Works Progress Administration to its employees in that State.

COLLECTIVE BARGAINING AGREEMENTS PROTECTED

Section 5 of the Senate bill provides that nothing in the act or in any regulation or order of the Board shall be construed to interfere with the right of employees to bargain collectively or otherwise engage in concerted activities to obtain a wage in excess of the applicable minimum under the bill or to obtain a shorter workweek than the

maximum workweek under the bill or other benefits or advantages. Minimum wages and maximum workweeks so sought or obtained are not to be construed or deemed to be illegal because they are in excess of the applicable minimum wage or maximum workweek, as the case may be, under the bill.

EXEMPTIONS FROM WAGE-AND-HOUR STANDARDS

Section 6 of the Senate bill provides certain exemptions from the wage-and-hour standards established under the bill. Subsection (a) introduces flexibility in the regulation of hours by authorizing employment for more hours per week than the applicable maximum upon condition that payment for such overtime is made at one and one-half times the regular rate. The board is authorized to remove or qualify this exemption if it finds that the maintenance of the appropriate workweek is necessary or appropriate in order to prevent the circumvention of the act. Subsection (b) authorizes the Board to make appropriate exceptions from the wage-and-hour standards for special cases such as learners and apprentices, and disabled persons, to whom special licenses are to be issued, deductions for board and lodging necessitated by the nature of the work, overtime employment in seasonal or emergency work, and other similar situations.

PROHIBITIONS RELATING TO INTERSTATE COMMERCE; TARIFF PROVISIONS

Part III of the Senate bill contains the provisions (1) barring from interstate commerce goods which were produced under substandard labor conditions set forth in the bill, (2) prohibiting the employment under substandard labor conditions of any employee engaged in interstate commerce or in the production of goods intended for transportation in violation of the provisions of the bill, and (3) protecting interstate commerce from the effect of substandard labor conditions. This part also contains provisions relating to imports.

PROHIBITED SHIPMENTS AND EMPLOYMENT CONDITIONS IN INTERSTATE COMMERCE AND PRODUCTION FOR INTERSTATE COMMERCE

Section 7 of the Senate bill makes it unlawful among other things to sell or ship in interstate commerce any unfair goods, i. e., goods on which any employee has been employed under any substandard labor condition. It also makes it unlawful to employ, under any substandard labor condition, a person engaged in interstate commerce or in the production of unfair goods intended to be sold or shipped in interstate commerce.

PROTECTION OF INTERSTATE COMMERCE FROM EFFECT OF SUBSTANDARD LABOR CONDITIONS

Section 8 (a) of the Senate bill authorizes the Board to make orders requiring elimination of substandard labor conditions existing in the production of goods which are not sold in interstate commerce but which compete to a substantial extent with fair goods brought in from another State.

Section 8 (b) of the Senate bill makes it unlawful to violate an order issued under section 8 (a).

TARIFF PROVISIONS

Section 8 (c) of the Senate bill provides that the Tariff Commission, upon request of the President, or upon resolution of either or both Houses of Congress, or upon request of the Board, or upon its own motion, or when in the judgment of the Commission there is good and sufficient reason therefor, upon application of any interested party, shall investigate the differences resulting from the operation of the bill in the costs of production of any domestic article and any like or similar foreign article, with a view to determining whether or not any increase should be made in the duty upon such foreign article for the purpose of equalizing such difference. All provisions of law applicable with respect to investigations under section 336 of the Tariff Act of 1930 are to be applicable with respect to investigations under this subsection.

GENERAL ADMINISTRATIVE PROVISIONS

Part IV, the last part of the Senate bill, contains the general administrative, procedural, and enforcement provisions.

LABOR STANDARD ORDER

Section 9 of the Senate bill contains provisions applicable to orders of the Board made under sections 4, 6, and 8. It provides among other things that such orders may be made only after a hearing, shall define the occupations to which they relate, may classify employers, employees, and employment according to localities, population, and other circumstances and make appropriate provisions for different classes. The section provides that it shall be the policy of the Board to avoid any classification which effects an unreasonable discrimination against any person or locality. The Board is directed to avoid unnecessary and excessive classifications. Provision is made for the inclusion in orders relating to wages of such terms and conditions as the Board may consider appropriate to prevent the minimum wage from becoming the maximum wage. And the policy is declared that orders relating to wages shall affect only those employees who need legislative protection and shall not interfere with the voluntary establishment of appropriate differentials and higher standards for other employees in the occupation.

HEARINGS

Section 10 of the Senate bill contains provisions regarding the hearings which are to be held by the Board before orders are made, modified, extended, or rescinded. This section states the conditions under which the Board shall order a hearing.

ADVISORY COMMITTEES ON WAGE AND HOUR STANDARD

Section 11 of the Senate bill requires the Board to appoint advisory committees composed of representatives of employers, employees, and the public before making an order under section 4 establishing a mini-

minimum wage or a maximum workweek, and contains provisions regarding the composition and procedure of such committees.

INVESTIGATIONS AND TESTIMONY

Section 12 of the Senate bill authorizes the Board to conduct investigations, subpoena witnesses, and compel testimony.

INJUNCTIONS TO ENFORCE COMPLIANCE WITH ACT

Section 13 of the Senate bill provides for the enforcement of the act and the orders thereunder by authorizing the Board to institute suit in the United States district courts to enjoin violations.

RECORDS AND LABELS

Section 14 of the Senate bill requires employers to keep such records as the Board may prescribe as necessary or appropriate for the enforcement of the bill. It further provides for the posting of orders in each place where employees in any occupation subject thereto are employed.

PROSECUTIONS OF PERSONS OTHER THAN PRODUCERS

Section 14 (c) of the Senate bill provides that no person other than the producer shall be prosecuted for the transportation, shipment, delivery or sale of unfair goods who has secured a representation in writing from the person by whom the goods transported, shipped, or delivered were produced, resident in the United States, to the effect that such goods were not produced in violation of any provisions of this act.

POWERS OF THE SECRETARY OF LABOR

Section 15 of the Senate bill provides that the Board shall, so far as practicable, make its investigations and inspections through the Secretary of Labor and his representatives, and authorizes the Secretary of Labor to make such investigations and inspections. This section further provides that the Secretary of Labor may utilize the services of State and local agencies officers and employees, and reimburse them for such services.

REGULATIONS AND ORDERS

Section 16 of the Senate bill confers upon the Board power to make, issue, amend, and rescind such regulations and orders as it deems necessary or appropriate to carry out the provisions of the act.

VALIDITY OF CONTRACTS

Section 17 (a) of the Senate bill declares void any contract made in violation of any provision of the act.

Section 17 (b) makes void any contract binding on any person to waive compliance with any provision of the act.

REPARATION

Section 18 of the Senate bill provides for the payment of reparation to employees who have been paid a lower wage or employed for longer hours than the applicable standards allow. In the case of wages this reparation amounts to the difference between the wages received, and that which should have been paid. In the case of hours, additional compensation is required for the overtime (where the act requires overtime) at the rate of one and one-half times the regular wage. The right to this reparation is granted when the condition of employment in question is required to be maintained under the act as well as when goods are shipped in violation of the act, but in the latter case the employer is entitled to prove that he had no reasonable ground to believe that the goods would be transported in violation of the act. And the Board may exempt goods from the prohibition against interstate shipment if it is established to the satisfaction of the Board that every person having a substantial proprietary interest in the goods had no reason to believe that any substandard condition existed in the production of the goods, or that the exemption is necessary to prevent undue hardship or waste and is not detrimental to the public interest; but in order to secure such exemption, provision must be made for the payment of reparation by every employer having a proprietary interest in the goods who failed to maintain the required wage or hour standard.

RELATION TO OTHER LAWS

Section 19 of the Senate bill provides that the bill shall not justify noncompliance with any other Federal, State, or municipal regulation imposing higher standards.

COMMON CARRIERS NOT LIABLE

Section 20 of the Senate bill provides that common carriers shall not be liable under the bill for the shipment of goods in the regular course of their business, and shall not be excused by the bill from their obligations to accept goods for transportation.

COURT REVIEW OF ORDERS

Section 21 of the Senate bill provides for review in the circuit court of appeals of orders of the Board.

JURISDICTION OF OFFENSES AND SUITS

Section 22 of the Senate bill confers appropriate jurisdiction on the district courts over civil and criminal proceedings under the act.

PENALTIES

Section 23 of the Senate bill provides appropriate penalties for violation of provisions of the bill.

SEPARABILITY OF PROVISIONS

Section 25 of the Senate bill provides that all of its provisions shall be separable.

EFFECTIVE DATE OF ACT

Section 26 of the Senate bill provides that the bill shall take effect immediately but that no provision requiring the maintenance of any fair labor standard or giving effect to any substandard labor condition shall take effect until the one hundred and twentieth day after the enactment of the act and that no labor standard order shall be effective prior to that day.

HOUSE AMENDMENT

SHORT TITLE

The first section of the House amendment provides that the act may be cited as the Fair Labor Standards Act of 1938.

FINDING AND DECLARATION OF POLICY

Section 2 of the House amendment states that the employment of workers under substandard labor conditions (1) causes commerce to be used to spread among workers of the several States conditions detrimental to their well-being, (2) burdens commerce and a free flow of goods in commerce, (3) constitutes an unfair method of competition in commerce, (4) leads to labor disputes which burden and obstruct commerce, and (5) interferes with orderly and fair marketing of goods.

The House amendment states that the above-described situation requires that Congress exercise its power under the Constitution to regulate commerce among the several States in order to prevent the instrumentalities of interstate commerce to be used to spread and perpetuate such substandard labor conditions, by prohibiting the shipment in interstate commerce of goods produced under substandard labor conditions and providing for the elimination of substandard labor conditions among employers engaged in industries affecting interstate commerce.

DEFINITIONS

Section 3 of the House amendment contains definitions of terms used*

“Person” is defined as an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

“Commerce” is defined to mean trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

“State” is defined as any State of the United States, or the District of Columbia, or any Territory.

“Employer” is defined to include any person acting directly or indirectly in the interest of an employer in relation to an employee, but does not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such a labor organization.

“Employee” is defined to include any individual employed or suffered or permitted to work by an employer.

“Agriculture” is defined to include farming in all its branches, and among other things to include the cultivation and tillage of the soil, dairying, the cultivation, growing, and harvesting of any agricultural

or horticultural commodities, the raising of livestock, bees, foxes, or poultry, and any practices performed by a farmer or on a farm as an incident to such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

"Employees engaged in agriculture" is defined to include individuals employed within the area of production, engaged in the handling, packing, storing, ginning, compressing, pasteurizing, drying, or canning of farm products and in making cheese and butter.

"Employ" is defined as including to suffer or permit to work.

"Industry" is defined to mean a trade, business, industry, or branch thereof, or group of industries in which individuals are gainfully employed.

"Industry affecting commerce" is defined to mean an industry with respect to which an order issued under section 6 is in effect.

"Employer engaged in commerce" is defined to mean an employer in commerce, or an employer engaged, in the ordinary course of business, in purchasing or selling goods in commerce.

"Secretary" is defined to mean the Secretary of Labor.

"Oppressive child labor" is defined as a condition of employment under which (1) any employee under the age of 16 years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of 16 years in an occupation other than manufacturing or mining) in any occupation, or (2) any such employee between the ages of 16 and 18 years is employed by an employer in any occupation which the Chief of the Children's Bureau shall from time to time find and by order declare to be particularly hazardous for the employment of such children or detrimental to their health or well-being.

Oppressive child labor is not deemed to exist by virtue of the employment in any occupation of a person with respect to whom the employer shall have on file a certificate issued and held pursuant to the regulations of the Chief of the Children's Bureau certifying that such person is above the oppressive child-labor age. The Chief of the Children's Bureau is to provide by regulation or by order that the employment of employees of or above the age of 14 but under the age of 16 in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Chief of the Children's Bureau determines that such employment is confined to periods which will not interfere with schooling and to conditions which will not interfere with health and well-being.

MINIMUM WAGES

Section 4 of the House amendment provides that every employer engaged in commerce in an industry affecting commerce must pay during the first year (computed from the effective date of the original order issued under section 6 with respect to the industry) each employee employed by him a wage at a rate not less than 25 cents an hour, and during each succeeding year increase such wage 5 cents an hour until the wage reaches 40 cents an hour. Hence the 40-cent rate in a particular industry will be reached at the end of 3 years from the effective date of the order under section 6 with respect to the industry.

MAXIMUM HOURS

Section 5 of the House amendment provides that no employer engaged in commerce in an industry affecting commerce shall employ any of his employees for a workday longer than 8 hours, or during the first year (computed from the effective date of the order issued under sec. 6 with respect to the industry) shall employ any of his employees for a workweek longer than 44 hours. In each succeeding year the employer is required to reduce the weekly hours by 2 hours until a 40-hour workweek is reached. No employee is to be deemed to be employed in violation of this section if he receives additional compensation for his overtime employment at the rate of one and one-half times the regular hourly rate at which he is employed, or times the rate applicable under or pursuant to the act, whichever is higher.

In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, the provisions of this section are not to apply to his employees in any place of employment where he is so engaged, and in the case of an employer engaged in the first processing of, or in canning, fresh fish or fresh sea food, or perishable fresh fruits or perishable fresh vegetables, or in handling, slaughtering, or dressing poultry or livestock, the provisions of this section are not to apply for 12 workweeks in any calendar year to his employees in any place of employment where he is so engaged.

INDUSTRIES AFFECTING COMMERCE

Section 6 of the amendment directs the Secretary, as soon as practicable after the enactment of the act, to determine the relation of the various industries to commerce. The Secretary is to give due notice to interested persons and an opportunity to be heard. If in the case of any industry the Secretary finds that the activities of the industry are Nation-wide in their scope, or that the industry is dependent for its existence upon substantial purchases or sales of goods in commerce and upon transportation in commerce, or that the relation of the industry to commerce is in other respects close and substantial, the Secretary is required to issue an order declaring the industry to be an industry affecting commerce, but no such order is to be applicable to any retail industry the greater part of whose sales is in intrastate commerce. The order is to take effect at such time not more than 120 days after it is issued as the Secretary designates in the order.

ATTENDANCE OF WITNESSES

Section 7 of the House amendment provides that for the purpose of the hearing to determine the facts upon which an order under section 6 is based, the provisions of the Federal Trade Commission Act relating to the attendance of witnesses and the production of books, papers, and documents, are to be applicable to the jurisdiction, powers, and duties of the Secretary.

COURT REVIEW OF ORDERS

Section 8 of the House amendment provides for the review of an order issued under section 6 by any person aggrieved thereby, in the

circuit court of appeals for the circuit in which is situated his principal place of business, or in the Court of Appeals of the United States for the District of Columbia. The court is given exclusive jurisdiction to affirm, or if it is not in accordance with law to modify or set aside, the order in whole or in part.

INVESTIGATIONS, INSPECTIONS, AND RECORDS

Section 9 of the House amendment provides that the Secretary may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to the act, and may enter and inspect such places and records, question such employees, and investigate such facts, conditions, practices, or matters as the Secretary may deem necessary or appropriate to determine whether any person has violated any provision of the act, or which may aid in the enforcement of the provisions of the act. Except in connection with investigations and inspections relating to the employment of oppressive child labor, the Secretary is to utilize the Bureau of Labor Statistics for all investigations and inspections.

The Secretary, for the purpose of making the investigations and inspections above referred to, is authorized, with their consent, to utilize the services of State and local agencies and their employees, and to reimburse such State and local agencies and their employees for services rendered for such purposes.

Every employer subject to the amendment or to any order thereunder is required to make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and to preserve such records for such periods of time, and to make such reports therefrom to the Secretary as the Secretary shall prescribe by regulation or order.

CHILD-LABOR PROVISIONS

Section 10 of the House amendment provides that no producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within 30 days prior to the removal of such goods therefrom any oppressive child labor has been employed. A prosecution and conviction of a defendant for a shipment or delivery for shipment of any goods under the conditions prohibited in this section is to be a bar to any further prosecution against the same defendant for shipment or delivery for shipment of any such goods before the beginning of such prosecution.

Every employer engaged in commerce in an industry affecting commerce is prohibited from employing any employee under any oppressive child-labor condition.

The Chief of the Children's Bureau is to make all the investigations and inspections referred to above with respect to the employment of minors and to bring all actions under section 15 (relating to injunctions to restrain violations of the act) to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and is to administer all other provisions of the act relating to oppressive child labor.

EXEMPTIONS

Section 11 of the House amendment contains the exemptions from its provisions. Exemptions were made in the Senate bill by the device of excluding the individuals to be exempted from the definition of "employee." The wage-and-hour provisions are not to apply to—

(1) Any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Secretary);

(2) Any employee employed as a seaman;

(3) Any air-transport employee subject to the provisions of title II of the Railway Labor Act;

(4) Any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work, and including employment in the loading, unloading, or packing of such products for shipment, or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or byproducts thereof.

(5) Any employee employed in agriculture; or

(6) Any employee to the extent that such employee is exempted by regulations or orders of the Secretary issued under section 12 (relating to partial exemptions for learners, apprentices, and handicapped workers) or to weekly or semiweekly newspapers with a circulation of less than 3,000, the major part of which circulation is within the county where printed and published.

The hour provisions of the act are not to apply to any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935, or to any employee of an employer subject to part I of the Interstate Commerce Act.

The child-labor provisions are not to apply to any employee employed in agriculture, or to any child employed as an actor in motion pictures or theatrical productions.

LEARNERS, APPRENTICES, AND HANDICAPPED WORKERS

Section 12 of the House amendment requires the Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, by regulation or by order to provide for (1) the employment of learners, and of apprentices under special certificates as issued pursuant to regulations of the Secretary, at such wages lower than the applicable minimum and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe, and (2) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates to be issued by the Secretary, at such wages lower than the applicable minimum and for such period as shall be fixed in such certificates.

PROHIBITED ACTS

Section 13 of the House amendment makes it unlawful for any person—

(1) To violate any of the wage or hour provisions, or any of the provisions of any regulation or order of the Secretary issued under section 12 (relating to learners, apprentices, and handicapped workers);

(2) To transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of the wage or hour provisions, or in violation of any regulation or order of the Secretary issued under section 12. No provision of the amendment is to impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision is to excuse any common carrier from its obligation to accept such goods for transportation;

(3) To willfully discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to the act, or has testified or is about to testify in any such proceeding;

(4) To violate any of the child labor provisions; or

(5) To violate any of the provisions relating to the requirements of keeping records and making reports therefrom, or to make any statement, report, or record filed or kept pursuant to such provisions, knowing such statement, report, or record to be false in a material respect.

For the purpose of the prohibition relating to transportation in commerce of goods produced in violation of the amendment, proof that any employee was employed in violation of the wages-or-hours provision, or in violation of any regulation or order of the Secretary under section 12 (relating to learners, apprentices, and handicapped workers) in any place of employment where goods were produced, within 90 days prior to the removal of the goods therefrom, is to be prima facie evidence that the goods were produced by such employee.

PENALTIES

Section 14 of the House amendment provides that any person who violates any of the provisions of section 13 shall, upon conviction, be subject to a fine of not more than \$500, or to imprisonment for not more than 6 months, or both.

INJUNCTION PROCEEDINGS

Section 15 of the House amendment vests the district courts of the United States and the United States courts of the Territories with jurisdiction to restrain violations of section 13.

RELATION TO OTHER LAWS

Section 16 of the House amendment provides that no provision of the act is to justify noncompliance with any other Federal or State law or municipal ordinance establishing a higher minimum wage or a shorter maximum workday or workweek than that established under the act, and that no provision of the act relating to the employment of child labor is to justify noncompliance with any Federal, State, or municipal ordinance establishing a higher standard than the standard established under the act.

SEPARABILITY OF PROVISIONS

Section 17 of the House amendment contains the usual separability clause.

EFFECTIVE DATE

Section 18 of the House amendment provides that no order under section 6 shall take effect prior to 120 days after the enactment of the act.

CONFERENCE AGREEMENT

SHORT TITLE

Section 1 of the conference agreement follows the provisions of the House amendment in providing that the act may be cited as the Fair Labor Standards Act of 1938.

FINDINGS AND DECLARATION OF POLICY

Section 2 of the conference agreement follows generally the provisions of both the Senate bill and the House amendment, except that it states that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being, causes the effects on commerce described in the Senate bill and the House amendment. It is declared to be the policy of the act to correct, and as rapidly as practicable to eliminate, these conditions in such industries without substantially curtailing employment or earning power.

This is the policy which has guided the Congress in the prescription of the definite wage, hour, and child labor provisions; this is the policy which the Congress has set to guide the Administrator and the industry committees in working toward progressive improvement of labor standards. It by no means follows that the highest minimum wages or the lowest maximum hours authorized by the act are adequate to maintain what should be regarded as the minimum fair standard of living. But certainly conditions which fail to conform with the requirements of the conference agreement cannot be deemed adequate to maintain even a rudimentary minimum standard of living.

DEFINITIONS

Section 3 of the conference agreement contains definitions of the terms used in the conference agreement.

"Person" is defined in the same way as in the House amendment.

"Commerce" is defined in the same way as in the House amendment.

"State" is defined as in the Senate bill to include any State or the District of Columbia or any territory or possession. But as is the case with all other provisions of the act, each term therein is to be treated as separable.

"Employer" is defined in the same way as in both the Senate bill and the House amendment.

"Employee" is defined as any individual employed by an employer. Taken in conjunction with the definition of "employ," which is defined as including suffering or permitting to work, the substance of the definition of employee in the conference agreement is contained in both the Senate bill and the House amendment.

"Agriculture" is defined in the same way as in the House amendment with the following exceptions: (1) The production of commodities defined as agricultural commodities in section 15 (g) of the Agricultural Marketing Act is included within the definition of agriculture, (2) the raising of all fur-bearing animals is included within the definition of agriculture, and (3) forestry or lumbering operations when performed by a farmer or on a farm as an incident to or in conjunction with farming operations is also included within such definition.

"Industry" is defined in the same way as in the House amendment.

"Goods," "produced," "sale," and "sell," which are defined in the Senate bill but not in the House amendment, are defined in the same way as in the Senate bill.

"Oppressive child labor" is defined in the same way as in the House amendment with minor clerical changes.

"Wage," which was defined in neither the Senate bill nor the House amendment, is defined as including the reasonable cost, as determined by the Administrator, to the employer of furnishing his employee with board, lodging, or other facilities, where it is customary for the employer to furnish such facilities.

ADMINISTRATION

As the conference agreement provides for a limited degree of flexibility in the application of minimum wage rates, it was impossible to avoid the creation of some administrative machinery to administer the act. Section 4 of the conference agreement provides for the creation of a Wage and Hour Division in the Department of Labor, under the direction of an Administrator to be appointed by the President by and with the advice and consent of the Senate.

INDUSTRY COMMITTEES

Under section 5 of the conference agreement the Administrator is empowered to set up an industry committee for each industry engaged in commerce or in the production of goods for commerce. An industry committee is made up of an equal number of persons representing the public, employers, and employees; and its members are to be selected with due regard to geographical considerations.

MINIMUM WAGES

Section 6 of the conference agreement provides for the establishment of minimum wages for employees engaged in commerce or in the production of goods for commerce. The House amendment provided for the establishment of minimum wages if the employer was engaged in commerce in any industry affecting commerce. The conference agreement contains the definite minima of 25 cents and 30 cents per hour prescribed by the House for the first and second year respectively, but allows 7 instead of 3 years for the minimum of 40 cents per hour to be reached, except in the case of an industry in regard to which it is definitely established, by the preponderance of the evidence, that a rate of 40 cents an hour would substantially curtail employment in such industry. After the second year the absolute floor is 30 cents per hour.

Superimposed upon, and constitutionally separable from, these relatively inflexible requirements of the conference agreement is a provision that enables separate, and, when substantial curtailment of employment will not result, requires higher, minimum rates (not exceeding 40 cents an hour) to be fixed industry by industry.

MAXIMUM HOURS

Section 7 of the conference agreement provides for the establishment of maximum hours of employment for employees engaged in commerce or the production of goods for commerce. The House amendment provided for the establishment of maximum hours of employment if the employer was engaged in commerce in an industry affecting commerce. The conference agreement contains in section 7 (a) the definite maximum hours of employment, 44 hours a week for the first year, 42 hours a week for the second year, and 40 hours a week thereafter, with overtime work permissible upon the payment of one and one-half times the regular wage rate. Provision is made for certain exceptions in the provisions of subsections (b) and (c). The validity or invalidity of these exceptions would not, of course, affect the validity of the balance of the act.

The general exceptions in section 7 (b) are drawn so as to encourage under appropriate safeguards continuity or regularity of employment. Thus an exemption is accorded for employees under bona fide collective bargaining agreements which provide that no employee shall be employed more than 1,000 hours during any period of 26 consecutive weeks. A further exemption is accorded for employees employed on an annual basis under bona fide collective bargaining agreements which provide that no employee shall be employed more than 2,000 hours during any period of 52 consecutive weeks. And a further exemption is provided for periods of not more than 14 weeks in the aggregate in any calendar year, for industries found by the administrator to be of a seasonal nature. These exemptions are further restricted by the requirement that employees coming under these exemptions must receive compensation at one and one-half times the regular rate for employment in excess of 12 hours in any workday or in excess of 56 hours in any workweek.

The specific exemptions (beginning with the exemption of the first processing of milk, raw or pasteurized, into dairy products) from the hours provisions which were contained in the hours section of the House amendment have been retained with the following changes other than clerical changes: (1) It is made clear that the processing of sugar beets, sugar beet molasses, sugarcane, or maple sap into sugar (but not refined sugar) or into sirup is included within the absolute exemption, (2) the period of weeks for the partial exemption has been increased to 14, and (3) there is included within this partial exemption the first processing within the area of production (as defined by the administrator) of any agricultural or horticultural commodity during seasonal operations.

WAGE ORDERS

Section 8 of the conference agreement provides the procedure to be followed in the establishment of separate minimum wages, industry by industry. Since the rigid minima establish an absolute floor, so long

as they are legally effective, the flexible minima in order to serve any useful purpose would have to be higher. With a view to effectuating the declared policy of the act, section 8 requires the administrator to convene the industry committee for each industry from time to time to recommend minimum wages for such industry.

Section 8 (c) of the conference agreement requires an industry committee to make such reasonable classifications within an industry as it determines to be necessary to fix the highest minimum wage rates consistent with the declared policy without substantially curtailing employment in any such classification and without giving a competitive advantage to any group in the industry. In determining whether such classifications should be made in any industry, and in making and determining the minimum rates for such classifications, no classification is to be made and no minimum rate is to be fixed, solely on a regional basis and no classification is to be made on the basis of age or sex, but the industry committee and the administrator are to consider among other relevant factors, competitive conditions as affected by production, living, and transportation costs, wages established by collective bargaining agreements, and wages paid by employers who voluntarily maintain fair minimum wage standards.

Section 8 (d) provides that an industry committee, after investigating conditions in the industry, is to make a report to the administrator containing its recommendations regarding the minimum wage rates to be established for the industry. Upon the filing of the report, the administrator holds a hearing after giving due notice to interested persons. If upon consideration of the evidence submitted by the industry committee and others, he is satisfied that the recommendations are made in accordance with law, are supported by the evidence, and, taking into consideration the same factors as the industry committee is required to consider, carry out the purposes of the Act, then the administrator enters an order putting the recommendations into effect. If the administrator disapproves the recommendations, he must reconvene the same committee or appoint a new industry committee, for further consideration and recommendations.

This carefully devised procedure has a double advantage. It ensures on the one hand that no minimum wage rate will be put into effect by administrative action that has not been carefully worked out by a committee drawn principally from the industry itself and on the other hand that no minimum wage rate will be put into effect by administrative action which has not been found by an administrative official of the Government, exercising an independent judgment on the evidence, and responsible to Congress for his acts, to be in accordance with law.

Section 8 (e) provides that no order is to be made or continued into effect after the expiration of 7 years from the effective date of section 6 unless the industry committee by a preponderance of the evidence before it determines, and the administrator by a preponderance of the evidence adduced at the hearing finds, that such order is necessary to prevent substantial curtailment of employment in the industry. If no order is effective in an industry after the expiration of seven years, the 40 cent rate automatically applies.

Section 8 (f) provides that orders issued under section 8 shall define the industries and classifications to which they are to apply and shall contain terms and conditions necessary to carry out their

purposes, to prevent their circumvention or evasion and to safeguard the minimum rates established therein.

Section 8 (f) and (g) provides the method of giving due notice of the putting into effect of orders and of the holding of hearings.

ATTENDANCE OF WITNESSES

Section 9 of the conference agreement confers the necessary powers for the summoning of witnesses and the production of documents for the purpose of any hearing or investigation under the act. It is substantially the same as in the House amendment.

COURT REVIEW

Section 10 provides for the judicial review of orders. It follows substantially the corresponding section of the Senate bill.

INVESTIGATIONS AND INSPECTIONS

Section 11 of the conference agreement provides for investigations, inspections, and records. Its provisions do not substantially depart from the corresponding provisions of the House amendment except that "Administrator" is substituted for the "Secretary of Labor." The Administrator is directed to utilize the divisions and bureaus of the Department of Labor, of which the Wage and Hour Division itself is a part, for investigations, the gathering of data, and inspections necessary under the Act. The Administrator, except in connection with the child labor provisions, is given power to bring all actions to enjoin violations of section 15.

CHILD LABOR PROVISIONS

Section 12 of the conference agreement adopts the child labor provisions of the House amendment, with one exception. In view of the omission from the conference agreement of the principle of section 6 of the House amendment, subsection (b) of section 10 of the House amendment has been omitted.

EXEMPTIONS

Section 13 of the conference agreement contains the same exemptions as were contained in the House amendment with the following changes and additions: (1) It includes an exemption from both the wage and hour provisions of employees of retail or service establishments the greater part of whose business is in intrastate commerce, (2) it includes an exemption from both the wage and hour provisions of employees of any street, suburban, or interurban electric railway, or local trolley or motor bus carrier not included in other exemptions contained in this section, (3) the provisions of the so-called Biermann amendment have been transferred to this section as an exemption from both the wage and hour provisions; in this amendment the administrator is to define the area of production, and the making of dairy products is included within its terms, and (4) a minor change has been made in the exemption of employees employed in agriculture from the child labor provisions; the child will be affected by the

exemption only while he is not legally required to attend school. As in the case of other exemptions and exceptions, the validity or invalidity of any of the above exemptions will not affect the validity of the Act.

LEARNERS, APPRENTICES, AND HANDICAPPED WORKERS

Section 14 of the conference agreement makes special provision for learners, apprentices, and handicapped workers. It follows in the main the provisions of the House amendment, but includes within its terms messengers employed exclusively in delivering letters or messages.

PROHIBITED ACTS

Section 15 of the conference agreement makes it unlawful to ship or sell in commerce or to ship or sell with knowledge that shipment or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7 or section 14, or to violate the provisions of such sections, or to do certain other acts which violate provisions of the Act or obstruct its administration. Except insofar as modification was necessary to conform with other provisions of the conference agreement, the section follows closely the corresponding section of the House amendment.

PENALTIES

Section 16 of the conference agreement provides a fine of not more than \$10,000, or imprisonment for not more than 6 months, or both, for violations of the act. No person is to be imprisoned upon conviction for a first offense. This section also provides for civil reparations for violations of the wages and hours provisions. If an employee is employed for less than the legal minimum wage, or if he is employed in excess of the specified hours without receiving the prescribed payment for overtime, he may recover from his employer twice the amount by which the compensation he should have received exceeds that which he actually received.

INJUNCTION PROCEEDINGS

Section 17 relating to the jurisdiction of the courts to restrain violations of the act follows substantially the corresponding provision of the House amendment.

RELATION TO OTHER LAWS

Section 18 which deals with the relation of the act to other laws follows the corresponding provision of the House amendment with the addition of a provision to the effect that nothing in the act is to be deemed as any justification for a reduction in wages or a lengthening of hours.

