

Union Calendar No. 86

81ST CONGRESS
1ST SESSION

H. R. 3190

[Report No. 267]

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 1949

Mr. LESINSKI introduced the following bill; which was referred to the Committee on Education and Labor

MARCH 16, 1949

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide for the amendment of the Fair Labor Standards Act of 1938, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Fair Labor Standards
4 Amendments of 1949”.

5 SEC. 2. The Fair Labor Standards Act of 1938, as
6 amended (29 U. S. C. 201-219), is hereby amended to
7 read as follows:

8 “SEC. 1. This Act may be cited as the ‘Fair Labor
9 Standards Act of 1949’.

1 ~~“(b) ‘Commerce’ means trade, commerce, transporta-~~
2 ~~tion, transmission, or communication among the several~~
3 ~~States or between any State and any place outside thereof.~~

4 ~~“(c) ‘State’ means any State of the United States~~
5 ~~or the District of Columbia or any Territory or possession~~
6 ~~of the United States.~~

7 ~~“(d) ‘Employer’ includes any person acting directly~~
8 ~~or indirectly in the interest of an employer in relation to~~
9 ~~an employee but shall not include the United States or any~~
10 ~~State or political subdivision of a State, or any labor organi-~~
11 ~~zation (other than when acting as an employer), or anyone~~
12 ~~acting in the capacity of officer or agent of such labor~~
13 ~~organization.~~

14 ~~“(e) ‘Employee’ includes any individual employed by~~
15 ~~an employer.~~

16 ~~“(f) ‘Agriculture’ includes farming in all its branches~~
17 ~~and among other things includes the cultivation and tillage~~
18 ~~of the soil, dairying, the production, cultivation, growing,~~
19 ~~and harvesting of any agricultural or horticultural commodi-~~
20 ~~ties (including commodities defined as agricultural com-~~
21 ~~modities in section 15 (g) of the Agricultural Marketing~~
22 ~~Act, as amended), the raising of livestock, bees, fur-bearing~~
23 ~~animals, or poultry, and any practices (including any for-~~
24 ~~estry, or lumbering operations) performed by a farmer or~~
25 ~~on a farm as an incident to or in conjunction with such~~

1 farming operations, including preparation for market, de-
2 livery to storage or to market or to carriers for transportation
3 to market.

4 “(g) ‘Employ’ includes to suffer or permit to work.

5 “(h) ‘Industry’ means a trade, business, industry, or
6 branch thereof, or group of industries, in which individuals
7 are gainfully employed.

8 “(i) ‘Goods’ means goods (including ships and marine
9 equipment), wares, products, commodities, merchandise, or
10 articles or subjects of commerce of any character, or any
11 part or ingredient thereof, but does not include goods after
12 their delivery into the actual physical possession of the
13 ultimate consumer thereof other than a producer, manufac-
14 turer, or processor thereof.

15 “(j) ‘Produced’ means produced, manufactured, mined,
16 handled, or in any other manner worked on in any State;
17 and for the purposes of this Act an employee shall be deemed
18 to have been engaged in the production of goods if such
19 employee was employed in producing, manufacturing, min-
20 ing, handling, transporting, or in any other manner working
21 on such goods, or in any process or occupation necessary
22 to the production thereof, in any State.

23 “(k) ‘Sale’ or ‘sell’ includes any sale, exchange, con-
24 tract to sell, consignment for sale, shipment for sale, or other
25 disposition.

1 “(1) ‘Oppressive child labor’ means a condition of
2 employment under which (1) any employee under the age
3 of sixteen years is employed by an employer (other than
4 a parent or a person standing in place of a parent employing
5 his own child or a child in his custody under the age of
6 sixteen years in an occupation other than manufacturing
7 or mining or an occupation found by the Secretary to be
8 particularly hazardous for the employment of children be-
9 tween the ages of sixteen and eighteen years or detrimental
10 to their health or well-being) in any occupation, or (2)
11 any employee between the ages of sixteen and eighteen years
12 is employed by an employer in any occupation which the
13 Secretary shall find and by order declare to be particularly
14 hazardous for the employment of children between such ages
15 or detrimental to their health or well-being; but oppressive
16 child labor shall not be deemed to exist by virtue of the
17 employment in any occupation of any person with respect
18 to whom the employer shall have on file an unexpired
19 certificate issued and held pursuant to regulations of the
20 Secretary certifying that such person is above the oppressive
21 child-labor age. The Secretary shall provide by regulation
22 or by order that the employment of employees between the
23 ages of fourteen and sixteen years in occupations other than
24 manufacturing and mining shall not be deemed to constitute
25 oppressive child labor if and to the extent that the Secretary

1 determines that such employment is confined to periods
2 which will not interfere with their schooling and to conditions
3 which will not interfere with their health and well-being.

4 “(m) ‘Wage’ paid to any employee includes tips re-
5 ceived by such employee for which records are kept by the
6 employer in accordance with regulations of the Secretary,
7 and includes the reasonable cost, as determined by the Secre-
8 tary, to the employer of furnishing such employee with
9 board, lodging, or other facilities, if such board, lodging, or
10 other facilities are customarily furnished by such employer
11 to his employees: *Provided*, That the cost of board, lodging,
12 or other facilities, shall not be included in the wage paid
13 to any employee if the furnishing of such facilities is an inci-
14 dent of and necessary to his employment and such facilities
15 are practicably available only from the employer: *Provided*
16 *further*, That the wage paid to any employee employed in
17 agriculture, includes the average cost or average market
18 value under regulations of the Secretary, of board, lodging,
19 and other facilities of the type customarily furnished to the
20 employee.

21 “(n) ‘Hired farm labor’ includes the labor of any per-
22 son employed on a farm, except the labor of the farmer and
23 his immediate family.

24 “(o) ‘Man-day’ means any day on which a hired farm
25 laborer performs any work.

1 laws, appoint such employees as he deems necessary to
2 carry out his functions and duties under this Act and shall
3 fix their compensation in accordance with the Classification
4 Act of 1923, as amended. The Secretary may establish and
5 utilize such regional, local, or other agencies, and utilize
6 such voluntary and uncompensated services, as may from
7 time to time be needed. Attorneys appointed by the Sec-
8 retary may appear for and represent the Secretary in any
9 litigation, but all such litigation shall be subject to the
10 direction and control of the Attorney General. In the ap-
11 pointment, selection, classification, and promotion of officers
12 and employees of the Department of Labor for the admin-
13 istration of this Act, no political test or qualification shall
14 be permitted or given consideration, but all such appoint-
15 ments and promotions shall be given and made on the
16 basis of merit and efficiency.

17 “(e) The Secretary shall have power to make, issue,
18 amend, and rescind such regulations and orders (including,
19 but without limitation, the definition of terms and the regula-
20 tion, restriction, or prohibition of industrial home work) as
21 are necessary or appropriate to carry out any of the pro-
22 visions of this Act, to prevent the circumvention or evasion
23 thereof and to safeguard the minimum wage rates, the maxi-
24 mum hours and the child labor provisions thereof. No pro-
25 vision of this Act imposing any liability or disability shall

1 apply to any act done or omitted in good faith in conformity
 2 with any such regulation or order, notwithstanding that
 3 such regulation or order may, after such act or omission, be
 4 amended or rescinded or determined by judicial authority
 5 to be invalid for any reason.

6 “(d) The Secretary or his duly authorized representa-
 7 tive may exercise any or all of his powers under this Act
 8 in any place.

9 “(e) The Secretary shall submit annually in January a
 10 report to the Congress covering his activities for the pre-
 11 eeding year and including such information, data, and
 12 recommendations for further legislation in connection with
 13 the matters covered by this Act as he may find advisable.

14 “SPECIAL INDUSTRY COMMITTEES FOR PUERTO RICO AND
 15 THE VIRGIN ISLANDS

16 “SEC. 5. (a) The Secretary shall as soon as practicable
 17 appoint a special industry committee to recommend the
 18 minimum rate or rates of wages to be paid under section 6
 19 to employees in Puerto Rico or the Virgin Islands, or in
 20 Puerto Rico and the Virgin Islands, or the Secretary may
 21 appoint separate industry committees to recommend the
 22 minimum rate or rates of wages to be paid under section 6
 23 to employees therein in particular industries. An industry
 24 committee appointed under this subsection shall be com-

1 posed of residents of such island or islands where the
2 employees with respect to whom such committee was
3 appointed are employed and residents of the United States
4 outside of Puerto Rico and the Virgin Islands. In deter-
5 mining the minimum rate or rates of wages to be paid, and
6 in determining classifications, such industry committees and
7 the Secretary shall be subject to the provisions of section 8.

8 “(b) An industry committee shall be appointed by the
9 Secretary without regard to any other provisions of law
10 regarding the appointment and compensation of employees
11 of the United States. It shall include a number of disin-
12 terested persons representing the public, one of whom the
13 Secretary shall designate as chairman, a like number of
14 persons representing employees in the industry, and a like
15 number representing employers in the industry. In the
16 appointment of the persons representing each group, the
17 Secretary shall give due regard to the geographical regions
18 in which the industry is carried on.

19 “(c) Two-thirds of the members of an industry com-
20 mittee shall constitute a quorum, and the decision of the
21 committee shall require a vote of not less than a majority
22 of all its members. Members of an industry committee shall
23 receive as compensation for their services a reasonable per
24 diem, which the Secretary shall by rules and regulations
25 prescribe, for each day actually spent in the work of the

1 committee, and shall in addition be reimbursed for their
 2 necessary traveling and other expenses. The Secretary shall
 3 furnish the committee with adequate legal, stenographic,
 4 clerical, and other assistance, and shall by rules and regula-
 5 tions prescribe the procedure to be followed by the committee.

6 “(d) The Secretary shall submit to an industry com-
 7 mittee from time to time such data as he may have available
 8 on the matters referred to it, and shall cause to be brought
 9 before it in connection with such matters any witnesses whom
 10 he deems material. An industry committee may summon
 11 other witnesses or call upon the Secretary to furnish addi-
 12 tional information to aid it in its deliberations.

13 “MINIMUM WAGES

14 “SEC. 6. (a) Every employer shall pay to each of his
 15 employees who is engaged in commerce or in the production
 16 of goods for commerce, and every employer who is engaged
 17 in commerce or in the production of goods for commerce
 18 shall pay to each of his employees employed in or about
 19 or in connection with any enterprise where he is so engaged,
 20 wages at the following rates—

21 “(1) not less than 75 cents an hour;

22 “(2) if such employee is a home worker in
 23 Puerto Rico or the Virgin Islands, not less than the
 24 minimum piece rate prescribed by regulation or order;
 25 or, if no such minimum piece rate is in effect, any piece

1 rate adopted by such employer which shall yield, to
2 the proportion or class of employees prescribed by regu-
3 lation or order, not less than the applicable minimum
4 hourly wage rates. Such minimum piece rates or em-
5 ployer piece rates shall be commensurate with, and shall
6 be paid in lieu of, the minimum hourly wage rate ap-
7 plicable under the provisions of this section. The
8 Secretary, or his authorized representative, shall have
9 power to make such regulations or orders as are neces-
10 sary or appropriate to carry out any of the provisions
11 of this paragraph, including the power without limiting
12 the generality of the foregoing, to define any operation
13 or occupation which is performed by such home work
14 employees in Puerto Rico or the Virgin Islands; to
15 establish minimum piece rates for any operation or occu-
16 pation so defined; to prescribe the method and pro-
17 cedure for ascertaining and promulgating minimum piece
18 rates; to prescribe standards for employer piece rates,
19 including the proportion or class of employees who shall
20 receive not less than the minimum hourly wage rate;
21 to define the term 'home worker'; and to prescribe the
22 conditions under which employers, agents, contractors,
23 and subcontractors shall cause goods to be produced by
24 home workers.

25 “(b) The provisions of paragraph (1) of subsection

1 ~~(a)~~ of this section shall be superseded in the case of any
2 employee in Puerto Rico or the Virgin Islands only for so
3 long as and insofar as such employee is covered by a wage
4 order heretofore or hereafter issued pursuant to the recom-
5 mendations of a special industry committee appointed pur-
6 suant to section 5: *Provided*, That the wage order in
7 effect prior to the effective date of this Act for any industry
8 in Puerto Rico or the Virgin Islands shall apply to every
9 employee in such industry covered by subsection ~~(a)~~ of this
10 section until superseded by a wage order hereafter issued
11 pursuant to the recommendations of a special industry com-
12 mittee appointed pursuant to section 5.

13 “MAXIMUM HOURS

14 “SEC. 7. ~~(a)~~ Except as otherwise provided in this sec-
15 tion, no employer shall employ any of his employees who is
16 engaged in commerce or in the production of goods for
17 commerce, and no employer who is engaged in commerce
18 or in the production of goods for commerce shall employ
19 any of his employees employed in or about or in connection
20 with any enterprise where he is so engaged, for a workweek
21 longer than forty hours, unless such employee receives com-
22 pensation for his employment in excess of the hours above
23 specified at a rate not less than one and one-half times the
24 regular rate at which he is employed.

25 “~~(b)~~ No employer shall be deemed to have violated sub-

1 section ~~(a)~~ by employing any employee for a workweek in
2 excess of that specified in such subsection without paying
3 the compensation for overtime employment prescribed therein
4 if such employee receives compensation for employment in
5 excess of ten hours in any workday, or for employment in
6 excess of fifty hours in any workweek, as the case may be, at
7 a rate not less than one and one-half times the regular rate at
8 which he is employed, and if such employee is so employed—

9 ~~“(1) in pursuance of an agreement made as a result~~
10 ~~of collective bargaining by representatives of employees~~
11 ~~certified as bona fide by the National Labor Relations~~
12 ~~Board, which provides that no employee shall be em-~~
13 ~~ployed more than one thousand and forty hours during~~
14 ~~any period of twenty-six consecutive weeks, or~~

15 ~~“(2) in pursuance of an agreement, made as a~~
16 ~~result of collective bargaining by representatives of em-~~
17 ~~ployees certified as bona fide by the National Labor Re-~~
18 ~~lations Board, which provides that during a specified~~
19 ~~period of fifty-two consecutive weeks the employee shall~~
20 ~~be employed not more than two thousand two hundred~~
21 ~~and forty hours and shall be guaranteed not less than~~
22 ~~one thousand eight hundred and forty hours (or not less~~
23 ~~than forty-six weeks at the normal number of hours~~
24 ~~worked per week, but not less than thirty hours per~~
25 ~~week) and not more than two thousand and eighty hours~~

1 of employment for which he shall receive compensation
2 for all hours guaranteed or worked at rates not less than
3 those applicable under the agreement to the work per-
4 formed and for all hours in excess of the guarantee which
5 are also in excess of forty hours in the workweek or two
6 thousand and eighty in such period at rates not less than
7 one and one-half times the regular rate at which he is
8 employed, or

9 “~~(3)~~ for a period or periods of not more than four-
10 teen workweeks in the aggregate in the calendar year
11 ~~(a)~~ in any industry found by the Secretary to be of a
12 seasonal nature, or ~~(b)~~ in any other industry engaged
13 in the handling or packing or storing or preparing or
14 in the first processing or canning of agricultural or horti-
15 cultural commodities in their raw or natural state or of
16 fish or other aquatic form of animal or vegetable life or
17 in the processing of cottonseed or the ginning or com-
18 pressing of cotton, or in the slaughtering and dressing of
19 poultry or in the making of dairy products, if such in-
20 dustry is found by the Secretary to be characterized by
21 marked annually recurring seasonal peaks of operation.

22 “~~(c)~~ Except as provided in subsection ~~(d)~~ of this sec-
23 tion, sums paid by an employer to an employee regardless
24 of whether the employee has worked in excess of the max-
25 imum number of hours specified in this section, or in amounts

1 not based on the number of hours actually worked by him
2 in excess of such maximum in each workweek, shall not be
3 deemed payments of premium compensation required by this
4 section for overtime employment; and notwithstanding any
5 other provision of this section, any salaried employee who is
6 employed in excess of forty hours in any workweek shall
7 be paid for each such hour in excess of forty, in addition to
8 his salary for forty hours of work, at a rate not less than
9 one and one-half times the hourly rate obtained by dividing
10 his weekly salary by not more than forty: *Provided*, That
11 as to any employee employed in pursuance of a collective-
12 bargaining agreement, made by representatives of employees
13 certified as bona fide by the National Labor Relations Board,
14 which ~~(1)~~ provides a contract regular rate of pay of not
15 less than \$1.50 an hour for such employee and compensation
16 at not less than one and one-half times such rate for all
17 hours worked in excess of forty, ~~(2)~~ provides a weekly
18 guarantee of employment or pay for more than forty hours
19 and not more than sixty hours, and ~~(3)~~ meets the require-
20 ments of regulations promulgated by the Secretary of Labor
21 prescribing such conditions as he shall determine to be
22 necessary or appropriate to carry out the purposes of this
23 Act, this subsection shall not be applicable.

24 “(d) As used in this section the ‘regular rate’ at which
25 an employee is employed shall be deemed to include all

1 remuneration for employment paid to, or on behalf of, the
2 employee, but shall not be deemed to include—

3 “~~(1)~~ sums paid as gifts; payments in the nature of
4 gifts made at Christmas time or on other special occa-
5 sions, as a reward for service, the amounts of which are
6 not measured by or dependent on hours worked, pro-
7 duction or efficiency;

8 “~~(2)~~ payments made for occasional periods when
9 no work is performed due to vacation, holiday, illness,
10 failure of the employer to provide sufficient work, or
11 other similar cause; reasonable payments for traveling
12 expenses, or other expenses, incurred by an employee
13 in the furtherance of his employer's interests and prop-
14 erly reimbursable by the employer; and other similar
15 payments to an employee which are not made as com-
16 pensation for his hours of employment;

17 “~~(3)~~ sums paid in recognition of services performed
18 during a given period if either, ~~(a)~~ both the fact that
19 payment is to be made and the amount of the payment
20 are determined at the sole discretion of the employer at
21 or near the end of the period and not pursuant to any
22 prior contract, agreement, promise, arrangement, or a
23 custom or practice causing the employee to expect such
24 payments regularly; or ~~(b)~~ the payments are made pur-

1 suant to a bona fide profit-sharing plan or trust, meeting
2 the requirements of the Secretary of Labor set forth in
3 appropriate regulations which he shall issue, having
4 due regard, among other relevant factors, to the extent
5 to which the amounts paid to the employee are deter-
6 mined without regard to hours of work, production, or
7 efficiency; or (c) talent fees (as such term is defined
8 and delimited by regulations of the Secretary) paid
9 to performers on radio and television programs;

10 “(4) contributions irrevocably made by an em-
11 ployer to a trustee or third person pursuant to a bona fide
12 plan for providing old age, retirement, life, accident,
13 or health insurance or similar benefits for employees;

14 “(5) extra compensation provided by a premium
15 rate paid for certain hours worked by the employee in
16 any day or workweek because such hours are hours
17 worked in excess of eight in a day or forty in a work-
18 week or in excess of the employee's normal working
19 hours or regular working hours, as the case may be;

20 “(6) extra compensation provided by a premium
21 rate paid for work by the employee on Saturdays, Sun-
22 days, or holidays, or on the sixth or seventh day of the
23 workweek, where such premium rate is not less than
24 one and one-half times the rate established in good faith

1 for like work performed in nonovertime hours on other
2 days;

3 “~~(7)~~ extra compensation provided by a premium
4 rate paid to the employee, in pursuance of an applicable
5 employment contract or collective bargaining agreement,
6 for work outside of the hours established in good faith
7 in accordance with regulations issued by the Secretary
8 by the contract or agreement as the basic, normal or
9 regular workday (not exceeding eight hours) or work-
10 week (not exceeding forty hours), where such premium
11 rate is not less than one and one-half times the rate
12 established in good faith by the contract or agreement
13 for like work performed during such workday or
14 workweek.

15 “~~(e)~~ No employer shall be deemed to have violated
16 subsection ~~(a)~~ by employing any employee for a work-
17 week in excess of forty hours if, pursuant to an agree-
18 ment or understanding arrived at between the employer
19 and the employee before performance of the work, the
20 amount paid to the employee for such employment in
21 excess of forty hours—

22 “~~(1)~~ in the case of an employee employed at piece
23 rates, is computed at piece rates not less than one and
24 one-half times the bona fide piece rates applicable to

1 the same work when performed during nonovertime
2 hours; or

3 ~~“(2) in the case of an employee performing two~~
4 ~~or more kinds of work for which different hourly or~~
5 ~~piece rates have been established, is computed at rates~~
6 ~~not less than one and one-half times such bona fide~~
7 ~~rates applicable to the same work when performed~~
8 ~~during nonovertime hours;~~

9 and if ~~(i) the employee’s average hourly earnings for the~~
10 ~~workweek exclusive of payments described in paragraphs~~
11 ~~(1) through (7) of subsection (d) are not less than the~~
12 ~~minimum hourly rate required by applicable law, and (ii)~~
13 ~~extra overtime compensation is properly computed and paid~~
14 ~~on other forms of additional pay required to be included in~~
15 ~~computing the regular rate.~~

16 ~~“(f) Extra compensation paid as described in para-~~
17 ~~graphs (5) and (7) of subsection (d) shall be creditable~~
18 ~~toward overtime compensation payable pursuant to this~~
19 ~~section.~~

20 ~~“(g) Extra compensation paid as described in para-~~
21 ~~graph (6) of subsection (d) shall be creditable toward over-~~
22 ~~time compensation payable pursuant to this section only~~
23 ~~when the premium rate hours are worked after the fortieth~~
24 ~~hour in the workweek.~~

1 "WAGE ORDERS IN PUERTO RICO AND THE VIRGIN ISLANDS

2 "SEC. 8. (a) The policy of this Act with respect to
3 industries in Puerto Rico and the Virgin Islands engaged in
4 commerce or in the production of goods for commerce is to
5 reach as rapidly as is economically feasible without sub-
6 stantially curtailing employment the objective of a minimum
7 wage of 75 cents an hour in each such industry. The Secere-
8 tary shall from time to time convene an industry committee
9 or committees, appointed pursuant to section 5, and any such
10 industry committee shall from time to time recommend the
11 minimum rate or rates of wages to be paid under section 6
12 by employers in Puerto Rico or the Virgin Islands, or in
13 Puerto Rico and the Virgin Islands, engaged in commerce or
14 in the production of goods for commerce in any such industry
15 or classifications therein.

16 "(b) Upon the convening of any such industry com-
17 mittee, the Secretary shall refer to it the question of the
18 minimum wage rate or rates to be fixed for such industry.
19 The industry committee shall investigate conditions in the
20 industry and the committee, or any authorized subcommittee
21 thereof, may hear such witnesses and receive such evidence
22 as may be necessary or appropriate to enable the com-
23 mittee to perform its duties and functions under this Act.
24 The committee shall recommend to the Secretary the highest

1 minimum wage rates for the industry which it determines,
2 having due regard to economic and competitive conditions,
3 will not substantially curtail employment in the industry,
4 and will not give any industry in Puerto Rico or in the
5 Virgin Islands a competitive advantage over any industry
6 in the United States outside of Puerto Rico and the Virgin
7 Islands.

8 “(e) The industry committee shall recommend such
9 reasonable classifications within any industry as it determines
10 to be necessary for the purpose of fixing for each classifica-
11 tion within such industry the highest minimum wage rate
12 ~~(not in excess of 75 cents an hour)~~ which ~~(1)~~ will not
13 substantially curtail employment in such classification and
14 ~~(2)~~ will not give a competitive advantage to any group
15 in the industry, and shall recommend for each classification
16 in the industry the highest minimum wage rate which the
17 committee determines will not substantially curtail employ-
18 ment in such classification. In determining whether such
19 classifications should be made in any industry, in making
20 such classification, and in determining the minimum wage
21 rates for such classifications, no classifications shall be made,
22 and no minimum wage rate shall be fixed, solely on a re-
23 gional basis, but the industry committee and the Secretary
24 shall consider among other relevant factors the following:

1 ~~“(1) competitive conditions as affected by trans-~~
2 ~~portation, living, and production costs;~~

3 ~~“(2) the wages established for work of like or~~
4 ~~comparable character by collective labor agreements~~
5 ~~negotiated between employers and employees by repre-~~
6 ~~sentatives of their own choosing; and~~

7 ~~“(3) the wages paid for work of like or comparable~~
8 ~~character by employers who voluntarily maintain mini-~~
9 ~~mum-wage standards in the industry.~~

10 No classification shall be made under this section on the basis
11 of age or sex.

12 ~~“(d) The industry committee shall file with the Secre-~~
13 ~~tary a report containing its recommendations with respect~~
14 ~~to the matters referred to it. Upon the filing of such report,~~
15 ~~the Secretary, after due notice to interested persons, and~~
16 ~~giving them an opportunity to be heard, shall by order~~
17 ~~approve and carry into effect the recommendations contained~~
18 ~~in such report, if he finds that the recommendations are~~
19 ~~made in accordance with law, are supported by the evidence~~
20 ~~adduced at the hearing, and, taking into consideration the~~
21 ~~same factors as are required to be considered by the industry~~
22 ~~committee, will carry out the purposes of this section; other-~~
23 ~~wise he shall disapprove such recommendations. If the~~
24 ~~Secretary disapproves such recommendations, he shall again~~

1 refer the matter to such committee, or to another industry
2 committee for such industry (which he may appoint for such
3 purpose); for further consideration and recommendations.

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

15 “(f) Due notice of any hearing provided for in this
16 section shall be given by publication in the Federal Register
17 and by such other means as the Secretary deems reasonably
18 calculated to give general notice to interested persons.

19 “ATTENDANCE OF WITNESSES

20 “SEC. 9. For the purpose of any hearing or investi-
21 gation provided for in this Act, the provisions of sections
22 9 and 10 (relating to the attendance of witnesses and the
23 production of books, papers, and documents) of the Fed-
24 eral Trade Commission Act of September 16, 1914, as

1 amended (U. S. C., 1946 edition, title 15, secs. 40 and
2 50), are hereby made applicable to the jurisdiction, powers,
3 and duties of the Secretary and the industry committees.

4 "COURT REVIEW

5 "SEC. 10. (a) Any person aggrieved by an order of
6 the Secretary issued under section 8 may obtain a review
7 of such order in the court of appeals of the United States
8 for any circuit wherein such person resides or has his
9 principal place of business, or in the United States Court of
10 Appeals for the District of Columbia, by filing in such
11 court, within sixty days after the entry of such order,
12 a written petition praying that the order of the Secre-
13 tary be modified or set aside in whole or in part. A
14 copy of such petition shall forthwith be served upon the
15 Secretary, and thereupon the Secretary shall certify and
16 file in the court a transcript of the record upon which the
17 order complained of was entered. Upon the filing of such
18 transcript such court shall have exclusive jurisdiction to
19 affirm, modify, or set aside such order in whole or in
20 part, so far as it is applicable to the petitioner. The review
21 by the court shall be limited to questions of law, and findings
22 of fact by the Secretary, when supported by substantial
23 evidence shall be conclusive. No objection to the order of

1 the Secretary shall be considered by the court unless such
2 objection shall have been urged before the Secretary or
3 unless there were reasonable grounds for failure so to do.
4 If application is made to the court for leave to adduce
5 additional evidence, and it is shown to the satisfaction of
6 the court that such additional evidence may materially affect
7 the result of the proceeding and that there were reasonable
8 grounds for failure to adduce such evidence in the proceeding
9 before the Secretary, the court may order such additional
10 evidence to be taken before the Secretary and to be adduced
11 upon the hearing in such manner and upon such terms and
12 conditions as to the court may seem proper. The Secretary
13 may modify his findings by reason of the additional evidence
14 so taken, and shall file with the court such modified or new
15 findings which if supported by substantial evidence shall
16 be conclusive, and shall also file his recommendation, if
17 any, for the modification or setting aside of the original
18 order. The judgment and decree of the court shall be final,
19 subject to review by the Supreme Court of the United
20 States upon certiorari or certification as provided in sections
21 239 and 240 of the Judicial Code, as amended (U. S. C.,
22 title 28, secs. 346 and 347).

23 “(b) The commencement of proceedings under sub-
24 section (a) shall not, unless specifically ordered by the
25 court, operate as a stay of the Secretary’s order. The court

1 shall not grant any stay of the order unless the person
2 complaining of such order shall file in court an undertaking
3 with a surety or sureties satisfactory to the court for the
4 payment to the employees affected by the order, in the event
5 such order is affirmed, of the amount by which the compen-
6 sation such employees are entitled to receive under the order
7 exceeds the compensation they actually receive while such
8 stay is in effect.

9 “INVESTIGATIONS, INSPECTIONS, AND RECORDS

10 “SEC. 11. (a) The Secretary or his designated repre-
11 sentatives may investigate and gather data regarding the
12 wages, hours, employment of minors, and other conditions
13 and practices of employment in any industry subject to this
14 Act, and may enter and inspect such places and such records
15 (and make such transcriptions thereof), question such em-
16 ployees, and investigate such facts, conditions, practices, or
17 matters as he may deem necessary or appropriate to
18 determine whether any person has violated any provision of
19 this Act, or which may aid in the enforcement of the pro-
20 visions of this Act. The Secretary shall bring all actions
21 under section 17 to restrain violations of this Act.

22 “(b) With the consent and cooperation of State agen-
23 cies charged with the administration of State labor laws,
24 the Secretary may, for the purpose of carrying out his func-
25 tions and duties under this Act, utilize the services of State

1 and local agencies and their employees and, notwithstand-
2 ing any other provision of law, may reimburse such State
3 and local agencies and their employees for services rendered
4 for such purposes.

5 “(e) Every employer subject to any provision of this
6 Act or of any order issued under this Act shall make, keep,
7 and preserve such records of the persons employed by him
8 and of the wages, hours, and other conditions and practices
9 of employment maintained by him, and shall preserve such
10 records for such periods of time, and shall make such reports
11 therefrom to the Secretary as he shall prescribe by regu-
12 lation or order as necessary or appropriate for the enforce-
13 ment of the provisions of this Act or the regulations or orders
14 thereunder.

15 “CHILD LABOR PROVISIONS

16 “SEC. 12. (a) No producer, manufacturer, or dealer
17 shall ship or deliver for shipment in commerce any goods
18 produced in an establishment situated in the United States
19 in or about which within thirty days prior to the removal
20 of such goods therefrom any oppressive child labor has
21 been employed: *Provided*, That a prosecution and convic-
22 tion of a defendant for the shipment or delivery for shipment
23 of any goods under the conditions herein prohibited shall
24 be a bar to any further prosecution against the same de-

1 fendant for shipments or deliveries for shipment of any such
2 goods before the beginning of said prosecution.

3 “(b) No employer shall employ any oppressive child
4 labor in commerce or in the production of goods for com-
5 merce and no employer who is engaged in commerce or in
6 the production of goods for commerce shall employ any
7 oppressive child labor in or about or in connection with any
8 enterprise where he is so engaged.

9 “EXEMPTIONS

10 “SEC. 13. (a) The provisions of sections 6, 7, and 12
11 shall not apply with respect to (1) any employee engaged
12 in the delivery of newspapers to the consumer; or (2)
13 any employee of a retail or service establishment whose
14 employer had a total annual volume of sales or servicing
15 of not more than \$500,000 during the preceding calendar
16 year. An establishment shall not be deemed a retail or
17 service establishment within the meaning of this subsection
18 if more than 25 per centum of its annual dollar volume
19 during the preceding calendar year was derived from activi-
20 ties other than retail selling or servicing. —As used in this
21 subsection, ‘retail selling or servicing’ means selling or
22 servicing to private individuals for personal or family con-
23 sumption, or selling or servicing (but not for resale) where
24 (1) the goods sold or serviced do not differ materially either

1 in type or quantity from goods normally sold or serviced
2 for such personal or family consumption, or where ~~(2)~~ the
3 customer is a farmer and the goods sold or serviced are of
4 types and in quantities used by the ordinary farmer in his
5 farming operations.

6 ~~(b)~~ The provisions of sections 6 and 7 shall not apply
7 with respect to ~~(1)~~ any employee employed in a bona
8 fide executive, administrative or professional capacity, or
9 in the capacity of outside salesman (as such terms are
10 defined and delimited by regulations of the Secretary);
11 or ~~(2)~~ any employee employed in the catching, taking,
12 propagating, harvesting, cultivating, or farming of any kind
13 of fish, shellfish, crustacea, sponges, seaweeds, or other
14 aquatic forms of animal and vegetable life, including the
15 going to and returning from work and including employ-
16 ment in the loading and unloading, when performed by any
17 such employee; or ~~(3)~~ any employee employed in agri-
18 culture except in a farm enterprise employing in excess
19 of five thousand man-days of hired farm labor during the
20 preceding calendar year; or ~~(4)~~ any employee to the
21 extent that such employee is exempted by regulations or
22 orders of the Secretary issued under section 14; or ~~(5)~~
23 any employee employed in connection with the publication
24 of any weekly or semiweekly newspaper with a circula-
25 tion of less than five thousand the major part of which

1 circulation is within the county where printed and pub-
2 lished; or ~~(6)~~ any switchboard operator employed in a
3 public telephone exchange which has less than five hundred
4 stations; or ~~(7)~~ any employee of an employer engaged in
5 the business of operating taxicabs.

6 “~~(c)~~ The provisions of section 7 shall not apply with
7 respect to ~~(1)~~ any employee employed during the greater
8 part of any workweek as a driver or helper riding a motor
9 vehicle in the performance of over-the-road transport opera-
10 tions (as defined by the Secretary of Labor); or ~~(2)~~ any
11 employee of an employer which is an express company,
12 sleeping car company, or carrier by railroad, subject to part
13 I of the Interstate Commerce Act; or ~~(3)~~ any employee
14 employed as flight personnel on an aircraft by a carrier by
15 air subject to title II of the Railway Labor Act; or ~~(4)~~ any
16 employee employed as a seaman; or ~~(5)~~ any employee
17 employed in agriculture not included in subsection ~~(b)~~ ~~(3)~~
18 of this section.

19 “~~(d)~~ The provisions of section 12 relating to child labor
20 shall not apply with respect to any employee employed in
21 agriculture (except in a farm enterprise employing in excess
22 of five thousand man-days of hired farm labor during the
23 preceding calendar year) outside of school hours for the
24 school district where such employee is living while he is so
25 employed, or to any child employed as an actor or performer

1 in motion pictures or theatrical productions or in radio or
2 television productions.

3 ~~“LEARNERS, APPRENTICES, AND HANDICAPPED WORKERS~~

4 ~~“SEC. 14. The Secretary, to the extent necessary in~~
5 ~~order to prevent curtailment of opportunities for employ-~~
6 ~~ment, shall by regulations or by orders provide for (1) the~~
7 ~~employment of learners, of apprentices, and of messengers~~
8 ~~employed exclusively in delivering letters and messages,~~
9 ~~under special certificates issued pursuant to regulations of the~~
10 ~~Secretary, at such wages lower than the minimum wage~~
11 ~~applicable under section 6 and subject to such limitations as~~
12 ~~to time, number, proportion, and length of service as the~~
13 ~~Secretary shall prescribe, and (2) the employment of indi-~~
14 ~~viduals whose earning capacity is impaired by age or~~
15 ~~physical or mental deficiency or injury, under special cer-~~
16 ~~tificates issued by the Secretary, at such wages lower than~~
17 ~~the minimum wage applicable under section 6 and for such~~
18 ~~period as shall be fixed in such certificates.~~

19

~~“PROHIBITED ACTS~~

20

~~“SEC. 15. (a) It shall be unlawful for any person—~~

21

~~“(1) to transport, offer for transportation, ship, de-~~
22 ~~liver, or sell in commerce, or to ship, deliver, or sell~~
23 ~~with knowledge that shipment or delivery or sale thereof~~
24 ~~in commerce is intended, any goods in the production~~
25 ~~of which any employee was employed in violation of~~

1 section 6 or section 7, or in violation of any regulation
2 or order of the Secretary issued under section 14; except
3 that any such transportation, offer, shipment, delivery,
4 or sale of such goods by a purchaser who acquired them
5 after such violation occurred shall not be deemed unlaw-
6 ful if such purchaser proves that he was without knowl-
7 edge of such violation, and acted in good faith in reliance
8 on written assurance from the producer that the goods
9 were produced in compliance with the requirements of
10 the Act, and no provision of this Act shall impose any
11 liability upon any common carrier for the transportation
12 in commerce in the regular course of his business of any
13 goods not produced by such common carrier, and no pro-
14 vision of this Act shall excuse any common carrier from
15 its obligation to accept any goods for transportation;

16 “~~(2)~~ to violate any of the provisions of section 6
17 or section 7, or any of the provisions of any regulation
18 or order of the Secretary issued under section 4 (c) or
19 section 14;

20 “~~(3)~~ to discharge or in any other manner dis-
21 criminate against any employee because such employee
22 has filed any complaint or instituted or caused to be
23 instituted any proceeding under or related to this Act,
24 or has testified or is about to testify in any such proceed-

1 ing, or has served or is about to serve on an industry
2 committee;

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

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

10 “(b) For the purposes of subsection (a) (1) proof
11 that any employee was employed in any place of employ-
12 ment where goods shipped or sold in commerce were pro-
13 duced, within ninety days prior to the removal of the goods
14 from such place of employment, shall be prima facie evidence
15 that such employee was engaged in the production of such
16 goods.

17 “PENALTIES

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

25 “(b) Any employer who violates the provisions of

1 section 6 or section 7 of this Act shall be liable to the em-
2 ployee or employees affected in the amount of their unpaid
3 minimum wages, or their unpaid overtime compensation,
4 as the case may be, and in an additional equal amount as
5 liquidated damages. Action to recover such liability may
6 be maintained in any court of competent jurisdiction by
7 any one or more employees for and in behalf of himself
8 or themselves and other employees similarly situated. No
9 employee shall be a party plaintiff to any such action unless
10 he gives his consent in writing to become such a party and
11 such consent is filed in the court in which such action is
12 brought. The court in such action shall, in addition to any
13 judgment awarded to the plaintiff or plaintiffs, allow a
14 reasonable attorney's fee to be paid by the defendant, and
15 costs of the action.

16 “(e) The Secretary is authorized to supervise the pay-
17 ment of the unpaid minimum wages or the unpaid overtime
18 compensation owing to any employee or employees under
19 section 6 or section 7 of this Act, and the agreement of any
20 employee to accept such payment shall upon payment in
21 full constitute a waiver by such employee of any right he
22 may have under subsection (b) of this section to such
23 unpaid minimum wages or unpaid overtime compensation
24 and an additional equal amount as liquidated damages. At
25 the request or with the consent of any employee claiming

1 unpaid minimum wages or unpaid overtime compensation
2 under section 6 or section 7 of this Act, the Secretary may
3 bring an action in any court of competent jurisdiction to
4 recover the amount of any such claim. The Secretary may
5 join in one cause of action the claims of any employees
6 similarly situated who consent thereto. The consent of
7 any employee to the bringing of any such action by the
8 Secretary, unless such action is dismissed without prejudice
9 on motion of the Secretary, shall constitute a waiver by
10 such employee of any right he may have under subsection
11 ~~(b)~~ of this section to such unpaid minimum wages or unpaid
12 overtime compensation and an additional equal amount as
13 liquidated damages. Any sums thus recovered by the Secre-
14 tary on behalf of an employee pursuant to this subsection
15 shall be held in a special deposit account and shall be paid,
16 on order of the Secretary, directly to the employee or em-
17 ployees affected. Any such sums not paid to an employee
18 because of inability to do so within a period of three years
19 shall be covered into the Treasury of the United States as
20 miscellaneous receipts: *Provided*, That nothing in this sub-
21 section shall affect or limit in any way the full equitable
22 jurisdiction of the courts under section 17 of this Act.

23 “INJUNCTION PROCEEDINGS

24 SEC. 17. The district courts of the United States and
25 the United States courts of the Territories and possessions

1 shall have jurisdiction, for cause shown, and subject to the
2 provisions of section 17 (relating to notice to opposite
3 party) of the Act entitled "An Act to supplement existing
4 laws against unlawful restraints and monopolies, and for
5 other purposes", approved October 15, 1914, as amended
6 (U. S. C., 1946 edition, title 28, sec. 381), to restrain
7 violations of section 15.

8 "RELATION TO OTHER LAWS

9 "SEC. 18. No provision of this Act or of any order
10 thereunder shall excuse noncompliance with any Federal
11 or State law or municipal ordinance establishing a minimum
12 wage higher than the minimum wage established under this
13 Act or a maximum workweek lower than the maximum
14 workweek established under this Act, and no provision of
15 this Act relating to the employment of child labor shall
16 justify noncompliance with any Federal or State law or
17 municipal ordinance establishing a higher standard than the
18 standard established under this Act. No provision of this
19 Act shall justify any employer in reducing a wage paid by
20 him which is in excess of the applicable minimum wage
21 under this Act, or justify any employer in increasing hours
22 of employment maintained by him which are shorter than
23 the maximum hours applicable under this Act.

1 “SEPARABILITY OF PROVISIONS

2 “SEC. 19. If any provision of this Act or the application
3 of such provision to any person or circumstance is held
4 invalid, the remainder of the Act and the application of such
5 provision to other persons or circumstances shall not be
6 affected thereby.”

7 AMENDMENT OF THE PORTAL TO PORTAL ACT OF 1947

8 SEC. 3. (a) Section 6 (a) and section 6 (b) of the
9 Portal to Portal Act of 1947 (Public Law Numbered 49,
10 Eightieth Congress, first session) are hereby amended by
11 substituting the word “four” for the word “two” wherever
12 appearing therein.

13 (b) The functions and duties of the Administrator of
14 the Wage and Hour Division of the Department of Labor
15 under section 10 of the Portal to Portal Act of 1947 (Public
16 Law Numbered 49, Eightieth Congress, first session) are
17 hereby transferred to the Secretary of Labor and shall be
18 administered under his direction and control.

19 EFFECTIVE DATE OF CERTAIN CHANGES

20 SEC. 4. (a) This Act shall take effect upon the expira-
21 tion of one hundred and twenty days from the date of
22 its enactment, except that the functions of the Secretary of
23 Labor provided for in the Fair Labor Standards Act of
24 1949 may be exercised forthwith, and the provisions of
25 section 7 of said Act (relating to overtime compensation)

1 shall be in full force and effect from and after the date of
2 enactment of this Act.

3 ~~(b)~~ Any order, regulation, or interpretation of the
4 Administrator of the Wage and Hour Division or of the
5 Secretary of Labor, and any agreement entered into by
6 the Administrator or the Secretary of Labor, in effect under
7 the provisions of the Fair Labor Standards Act of 1938
8 on the date of enactment of this Act, shall remain in effect
9 as an order, regulation, interpretation, or agreement of the
10 Secretary of Labor pursuant to this Act, except to the
11 extent that any such order, regulation, interpretation, or
12 agreement may be inconsistent with the provisions of this
13 Act, or may from time to time be amended, modified, or
14 rescinded by the Secretary of Labor in accordance with the
15 provisions of this Act.

16 ~~(c)~~ No amendment made by this Act shall affect any
17 penalty or liability with respect to any act or omission
18 occurring prior to the effective date of this Act; but, after
19 the expiration of four years from such effective date, no
20 action shall be instituted under section 16 ~~(b)~~ of the Fair
21 Labor Standards Act of 1938 with respect to any liability
22 accruing thereunder.

23 *That this Act may be cited as the "Fair Labor Standards*
24 *Amendments of 1949".*

25 *SEC. 2. The Fair Labor Standards Act of 1938, as*

1 *amended (29 U. S. C. 201-219), is hereby amended to*
2 *read as follows:*

3 “*SEC. 1. This Act may be cited as the ‘Fair Labor*
4 *Standards Act of 1949’.*”

5 “*SEC. 2. (a) The Congress hereby finds that the exist-*
6 *ence, in industries engaged in commerce or in the production*
7 *of goods for commerce, of labor conditions detrimental to*
8 *the maintenance of the minimum standard of living necessary*
9 *for health, efficiency, and general well-being of workers (1)*
10 *causes commerce and the channels and instrumentalities of*
11 *commerce to be used to spread and perpetuate such labor*
12 *conditions among the workers of the several States; (2)*
13 *burdens commerce and the free flow of goods in commerce;*
14 *(3) constitutes an unfair method of competition in com-*
15 *merce; (4) leads to labor disputes burdening and obstructing*
16 *commerce and the free flow of goods in commerce; and (5)*
17 *interferes with the orderly and fair marketing of goods in*
18 *commerce.*”

19 “*(b) It is hereby declared to be the policy of this Act,*
20 *through the exercise by Congress of its power to regulate*
21 *commerce among the several States and with foreign nations,*
22 *to correct and as rapidly as practicable to eliminate the con-*
23 *ditions above referred to in such industries without sub-*
24 *stantially curtailing employment or earning power.*”

“DEFINITIONS

1

2 *“SEC. 3. As used in this Act—*3 *“(a) ‘Person’ means an individual, partnership, asso-*
4 *ciation, corporation, business trust, legal representative, or*
5 *any organized group of persons.*6 *“(b) ‘Commerce’ means trade, commerce, transporta-*
7 *tion, transmission, or communication among the several*
8 *States or between any State and any place outside*
9 *thereof.*10 *“(c) ‘State’ means any State of the United States*
11 *or the District of Columbia or any Territory or possession*
12 *of the United States.*13 *“(d) ‘Employer’ includes any person acting directly*
14 *or indirectly in the interest of an employer in relation to*
15 *an employee but shall not include the United States or any*
16 *State or political subdivision of a State, or any labor organi-*
17 *zation (other than when acting as an employer), or anyone*
18 *acting in the capacity of officer or agent of such labor*
19 *organization.*20 *“(e) ‘Employee’ includes any individual employed by*
21 *an employer.*22 *“(f) ‘Agriculture’ includes farming in all its branches*
23 *and among other things includes the cultivation and tillage*
24 *of the soil, dairying, the production, cultivation, growing,*

1 and harvesting of any agricultural or horticultural commodi-
2 ties (including commodities defined as agricultural com-
3 modities in section 15 (g) of the Agricultural Marketing
4 Act, as amended), the raising of livestock, bees, fur-bearing
5 animals, or poultry, and any practices (including any for-
6 estry, or lumbering operations) performed by a farmer or
7 on a farm as an incident to or in conjunction with such
8 farming operations, including preparation for market, de-
9 livery to storage or to market or to carriers for transportation
10 to market.

11 “(g) ‘Employ’ includes to suffer or permit to work.

12 “(h) ‘Industry’ means a trade, business, industry, or
13 branch thereof, or group of industries, in which individuals
14 are gainfully employed.

15 “(i) ‘Goods’ means goods (including ships and marine
16 equipment), wares, products, commodities, merchandise, or
17 articles or subjects of commerce of any character, or any
18 part or ingredient thereof, but does not include goods after
19 their delivery into the actual physical possession of the
20 ultimate consumer thereof other than a producer, manufac-
21 turer, or processor thereof.

22 “(j) ‘Produced’ means produced, manufactured, mined,
23 handled, or in any other manner worked on in any State;
24 and for the purposes of this Act an employee shall be deemed
25 to have been engaged in the production of goods if such

1 *employee was employed in producing, manufacturing, min-*
2 *ing, handling, transporting, or in any other manner working*
3 *on such goods, or in any process or occupation necessary*
4 *to the production thereof, in any State.*

5 “(k) ‘Sale’ or ‘sell’ includes any sale, exchange, con-
6 tract to sell, consignment for sale, shipment for sale, or other
7 disposition.

8 “(l) ‘Oppressive child labor’ means a condition of
9 employment under which (1) any employee under the age
10 of sixteen years is employed by an employer (other than
11 a parent or a person standing in place of a parent employing
12 his own child or a child in his custody under the age of
13 sixteen years in an occupation other than manufacturing
14 or mining or an occupation found by the Secretary to be
15 particularly hazardous for the employment of children be-
16 tween the ages of sixteen and eighteen years or detrimental
17 to their health or well-being) in any occupation, or (2)
18 any employee between the ages of sixteen and eighteen years
19 is employed by an employer in any occupation which the
20 Secretary shall find and by order declare to be particularly
21 hazardous for the employment of children between such ages
22 or detrimental to their health or well-being; but oppressive
23 child labor shall not be deemed to exist by virtue of the
24 employment in any occupation of any person with respect
25 to whom the employer shall have on file an unexpired

1 certificate issued and held pursuant to regulations of the
2 Secretary certifying that such person is above the oppressive
3 child-labor age. The Secretary shall provide by regulation
4 or by order that the employment of employees between the
5 ages of fourteen and sixteen years in occupations other than
6 manufacturing and mining shall not be deemed to constitute
7 oppressive child labor if and to the extent that the Secretary
8 determines that such employment is confined to periods
9 which will not interfere with their schooling and to conditions
10 which will not interfere with their health and well-being.

11 “(m) ‘Wage’ paid to any employee includes tips re-
12 ceived by such employee for which records are kept by the
13 employer in accordance with regulations of the Secretary,
14 and includes the reasonable cost, as determined by the Secre-
15 tary, to the employer of furnishing such employee with
16 board, lodging, or other facilities, if such board, lodging, or
17 other facilities are customarily furnished by such employer
18 to his employees: Provided, That the cost of board, lodging,
19 or other facilities shall not be included in the wage paid
20 to any employee if the furnishing of such facilities is an inci-
21 dent of and necessary to his employment and such facilities
22 are practicably available only from the employer.

23 “ADMINISTRATION

24 “SEC. 4. (a) The provisions of this Act shall be admin-
25 istered by the Secretary of Labor (in this Act referred to

1 as the 'Secretary') and, subject to his direction and control
2 by such officers and agencies of the Department of Labor as
3 the Secretary may designate. The Wage and Hour Division
4 created by the Fair Labor Standards Act of 1938 is hereby
5 continued in the Department of Labor as the Bureau of
6 Wages and Hours. The Bureau shall be administered under
7 the direction and control of the Secretary by an Admin-
8 istrator, to be known as the Administrator of Wages and
9 Hours, who shall be appointed by the President by and
10 with the advice and consent of the Senate. The Admin-
11 istrator of the Wage and Hour Division under the Fair Labor
12 Standards Act of 1938 shall be the Administrator of Wages
13 and Hours under this Act unless and until a successor is
14 appointed pursuant to this section. The Administrator of
15 Wages and Hours shall receive compensation at the rate of
16 \$15,000 a year.

17 “(b) The Secretary may, subject to the civil-service
18 laws, appoint such employees as he deems necessary to
19 carry out his functions and duties under this Act and shall
20 fix their compensation in accordance with the Classification
21 Act of 1923, as amended. The Secretary may establish and
22 utilize such regional, local or other agencies, and utilize
23 such voluntary and uncompensated services, as may from
24 time to time be needed. Attorneys appointed by the Sec-
25 retary may appear for and represent the Secretary in any

1 litigation, but all such litigation shall be subject to the
2 direction and control of the Attorney General. In the ap-
3 pointment, selection, classification, and promotion of officers
4 and employees of the Department of Labor for the admin-
5 istration of this Act, no political test or qualification shall
6 be permitted or given consideration, but all such appoint-
7 ments and promotions shall be given and made on the basis
8 of merit and efficiency.

9 “(c) The Secretary shall have power to make, issue,
10 amend, and rescind such regulations and orders as are neces-
11 sary or appropriate to carry out any of the provisions of this
12 Act, to prevent the circumvention or evasion thereof and to
13 safeguard the minimum wage rates, the maximum hours and
14 the child labor provisions thereof. No provision of this Act
15 imposing any liability or disability shall apply to any act
16 done or omitted in good faith in conformity with any such
17 regulation or order, notwithstanding that such regulation or
18 order may, after such act or omission, be amended or re-
19 scinded or determined by judicial authority to be invalid for
20 any reason.

21 “(d) The Secretary or his duly authorized representa-
22 tive may exercise any or all of his powers under this Act
23 in any place.

24 “(e) The Secretary shall submit annually in January a
25 report to the Congress covering his activities for the pre-

1 ceding year and including such information, data, and
2 recommendations for further legislation in connection with
3 the matters covered by this Act as he may find advisable.

4 "SPECIAL INDUSTRY COMMITTEES FOR PUERTO RICO AND
5 THE VIRGIN ISLANDS

6 "SEC. 5. (a) The Secretary shall as soon as practicable
7 appoint a special industry committee to recommend the
8 minimum rate or rates of wages to be paid under section 6
9 to employees in Puerto Rico or the Virgin Islands, or in
10 Puerto Rico and the Virgin Islands, or the Secretary may
11 appoint separate industry committees to recommend the
12 minimum rate or rates of wages to be paid under section 6
13 to employees therein in particular industries. An industry
14 committee appointed under this subsection shall be com-
15 posed of residents of such island or islands where the em-
16 ployees with respect to whom such committee was appointed
17 are employed and residents of the United States outside of
18 Puerto Rico and the Virgin Islands. In determining the
19 minimum rate or rates of wages to be paid, and in deter-
20 mining classifications, such industry committees and the Sec-
21 retary shall be subject to the provisions of section 8.

22 "(b) An industry committee shall be appointed by the
23 Secretary without regard to any other provisions of law
24 regarding the appointment and compensation of employees
25 of the United States. It shall include a number of disin-

1 *interested persons representing the public, one of whom the*
2 *Secretary shall designate as chairman, a like number of*
3 *persons representing employees in the industry, and a like*
4 *number representing employers in the industry. In the*
5 *appointment of the persons representing each group, the*
6 *Secretary shall give due regard to the geographical regions*
7 *in which the industry is carried on.*

8 “(c) *Two-thirds of the members of an industry com-*
9 *mittee shall constitute a quorum, and the decision of the*
10 *committee shall require a vote of not less than a majority*
11 *of all its members. Members of an industry committee shall*
12 *receive as compensation for their services a reasonable per*
13 *diem, which the Secretary shall by rules and regulations*
14 *prescribe, for each day actually spent in the work of the*
15 *committee, and shall in addition be reimbursed for their*
16 *necessary traveling and other expenses. The Secretary shall*
17 *furnish the committee with adequate legal, stenographic,*
18 *clerical, and other assistance, and shall by rules and regula-*
19 *tions prescribe the procedure to be followed by the committee.*

20 “(d) *The Secretary shall submit to an industry com-*
21 *mittee from time to time such data as he may have available*
22 *on the matters referred to it, and shall cause to be brought*
23 *before it in connection with such matters any witnesses whom*
24 *he deems material. An industry committee may summon*

1 *other witnesses or call upon the Secretary to furnish addi-*
2 *tional information to aid it in its deliberations.*

3 **“MINIMUM WAGES**

4 *“SEC. 6. (a) Every employer shall pay to each of his*
5 *employees who is engaged in commerce or in the production*
6 *of goods for commerce, and every employer who is engaged*
7 *in commerce or in the production of goods for commerce*
8 *shall pay to each of his employees employed in or about*
9 *or in connection with any enterprise where he is so engaged,*
10 *wages at the following rates—*

11 *“(1) not less than 75 cents an hour;*

12 *“(2) if such employee is a home worker in*
13 *Puerto Rico or the Virgin Islands, not less than the*
14 *minimum piece rate prescribed by regulation or order;*
15 *or, if no such minimum piece rate is in effect, any piece*
16 *rate adopted by such employer which shall yield, to*
17 *the proportion or class of employees prescribed by regu-*
18 *lation or order, not less than the applicable minimum*
19 *hourly wage rate. Such minimum piece rates or em-*
20 *ployer piece rates shall be commensurate with, and shall*
21 *be paid in lieu of, the minimum hourly wage rate ap-*
22 *plicable under the provisions of this section. The*
23 *Secretary, or his authorized representative, shall have*
24 *power to make such regulations or orders as are neces-*

1 sary or appropriate to carry out any of the provisions
2 of this paragraph, including the power without limiting
3 the generality of the foregoing, to define any operation
4 or occupation which is performed by such home work
5 employees in Puerto Rico or the Virgin Islands; to
6 establish minimum piece rates for any operation or occu-
7 pation so defined; to prescribe the method and pro-
8 cedure for ascertaining and promulgating minimum piece
9 rates; to prescribe standards for employer piece rates,
10 including the proportion or class of employees who shall
11 receive not less than the minimum hourly wage rate;
12 to define the term 'home worker'; and to prescribe the
13 conditions under which employers, agents, contractors,
14 and subcontractors shall cause goods to be produced by
15 home workers.

16 “(b) The provisions of paragraph (1) of subsection
17 (a) of this section shall be superseded in the case of any
18 employee in Puerto Rico or the Virgin Islands only for so
19 long as and insofar as such employee is covered by a wage
20 order heretofore or hereafter issued pursuant to the recom-
21 mendations of a special industry committee appointed pur-
22 suant to section 5: Provided, That the wage order in
23 effect prior to the effective date of this Act for any industry.
24 in Puerto Rico or the Virgin Islands shall apply to every
25 employee in such industry covered by subsection (a) of this

1 section, until superseded by a wage order hereafter issued
2 pursuant to the recommendations of a special industry com-
3 mittee appointed pursuant to section 5.

4 "MAXIMUM HOURS

5 "SEC. 7. (a) Except as otherwise provided in this sec-
6 tion, no employer shall employ any of his employees who is
7 engaged in commerce or in the production of goods for
8 commerce, and no employer who is engaged in commerce
9 or in the production of goods for commerce shall employ
10 any of his employees employed in or about or in connection
11 with any enterprise where he is so engaged, for a workweek
12 longer than forty hours, unless such employee receives com-
13 pensation for his employment in excess of the hours above
14 specified at a rate not less than one and one-half times the
15 regular rate at which he is employed.

16 "(b) No employer shall be deemed to have violated sub-
17 section (a) by employing any employee for a workweek in
18 excess of that specified in such subsection without paying
19 the compensation for overtime employment prescribed therein
20 if such employee receives compensation for employment in
21 excess of ten hours in any workday, or for employment in
22 excess of fifty hours in any workweek, as the case may be, at
23 a rate not less than one and one-half times the regular rate at
24 which he is employed, and if such employee is so employed—

25 "(1) in pursuance of an agreement made as a result

1 of collective bargaining by representatives of employees
2 certified as bona fide by the National Labor Relations
3 Board, which provides that no employee shall be em-
4 ployed more than one thousand and forty hours during
5 any period of twenty-six consecutive weeks, or

6 “(2) in pursuance of an agreement, made as a
7 result of collective bargaining by representatives of em-
8 ployees certified as bona fide by the National Labor Re-
9 lations Board, which provides that during a specified
10 period of fifty-two consecutive weeks the employee shall
11 be employed not more than two thousand two hundred
12 and forty hours and shall be guaranteed not less than
13 one thousand eight hundred and forty hours (or not less
14 than forty-six weeks at the normal number of hours
15 worked per week, but not less than thirty hours per
16 week) and not more than two thousand and eighty hours
17 of employment for which he shall receive compensation
18 for all hours guaranteed or worked at rates not less than
19 those applicable under the agreement to the work per-
20 formed and for all hours in excess of the guarantee which
21 are also in excess of forty hours in the workweek or
22 two thousand and eighty in such period at rates not
23 less than one and one-half times the regular rate at
24 which he is employed, or

25 “(3) for a period or periods of not more than

1 *fourteen workweeks in the aggregate in the calendar year*
2 *(a) in any industry found by the Secretary to be of*
3 *a seasonal nature, or (b) in any other industry en-*
4 *gaged in the handling or packing or storing or pre-*
5 *paring or in the first processing or canning of agri-*
6 *cultural or horticultural commodities in their raw or*
7 *natural state or of fish or other aquatic form of animal*
8 *or vegetable life or in the processing of cottonseed or*
9 *the ginning or compressing of cotton, or in the slaughter-*
10 *ing and dressing of poultry or in the making of dairy*
11 *products, if such industry is found by the Secretary*
12 *to be characterized by marked annually recurring sea-*
13 *sonal peaks of operation: Provided, That when the Sec-*
14 *retary finds that in an industry engaged in the handling*
15 *or packing or storing or preparing, or in the first*
16 *processing or canning of fresh fruits and vegetables an*
17 *additional number of weeks of exemption are required*
18 *to prevent the spoilage of such perishable fresh fruits*
19 *and vegetables, he is authorized to extend the exemption*
20 *for additional weeks not to exceed a total of six.*

21 “(c) *Except as provided in subsection (d) of this sec-*
22 *tion, sums paid by an employer to an employee regardless*
23 *of whether the employee has worked in excess of the max-*
24 *imum number of hours specified in this section, or in amounts*
25 *not based on the number of hours actually worked by him*

1 *in excess of such maximum in each workweek, shall not be*
2 *deemed payments of premium compensation required by this*
3 *section for overtime employment; and notwithstanding any*
4 *other provision of this section, any salaried employee who is*
5 *employed in excess of forty hours in any workweek shall*
6 *be paid for each such hour in excess of forty, in addition to*
7 *his salary for forty hours of work, at a rate not less than*
8 *one and one-half times the hourly rate obtained by dividing*
9 *his weekly salary by not more than forty: Provided, That*
10 *as to any employee employed in pursuance of a collective-*
11 *bargaining agreement, made by representatives of employees*
12 *certified as bona fide by the National Labor Relations Board,*
13 *which (1) provides a contract regular rate of pay of not*
14 *less than \$1.50 an hour for such employee and compensation*
15 *at not less than one and one-half times such rate for all*
16 *hours worked in excess of forty, (2) provides a weekly*
17 *guaranty of employment or pay for more than forty hours*
18 *and not more than sixty hours, and (3) meets the require-*
19 *ments of regulations promulgated by the Secretary of Labor*
20 *prescribing such conditions as he shall determine to be*
21 *necessary or appropriate to carry out the purposes of this*
22 *Act, this subsection shall not be applicable.*

23 “(d) As used in this section the ‘regular rate’ at which
24 an employee is employed shall be deemed to include all

1 remuneration for employment paid to, or on behalf of, the
2 employee, but shall not be deemed to include—

3 “(1) sums paid as gifts; payments in the nature of
4 gifts made at Christmas time or on other special occa-
5 sions, as a reward for service, the amounts of which are
6 not measured by or dependent on hours worked, pro-
7 duction, or efficiency;

8 “(2) payments made for occasional periods when
9 no work is performed due to vacation, holiday, illness,
10 failure of the employer to provide sufficient work, or
11 other similar cause; reasonable payments for traveling
12 expenses, or other expenses, incurred by an employee
13 in the furtherance of his employer’s interests and prop-
14 erly reimbursable by the employer; and other similar
15 payments to an employee which are not made as com-
16 pensation for his hours of employment;

17 “(3) sums paid in recognition of services performed
18 during a given period if either, (a) both the fact that
19 payment is to be made and the amount of the payment
20 are determined at the sole discretion of the employer at
21 or near the end of the period and not pursuant to any
22 prior contract, agreement, promise, arrangement, or a
23 custom or practice causing the employee to expect such
24 payments regularly; or (b) the payments are made pur-

1 *suant to a bona fide profit-sharing plan or trust, meeting*
2 *the requirements of the Secretary of Labor set forth in*
3 *appropriate regulations which he shall issue, having*
4 *due regard, among other relevant factors, to the extent*
5 *to which the amounts paid to the employee are deter-*
6 *mined without regard to hours of work, production, or*
7 *efficiency; or (c) talent fees (as such term is defined*
8 *and delimited by regulations of the Secretary) paid*
9 *to performers, including announcers, on radio and tele-*
10 *vision programs;*

11 *“(4) contributions irrevocably made by an em-*
12 *ployer to a trustee or third person pursuant to a bona fide*
13 *plan for providing old-age, retirement, life, accident,*
14 *or health insurance or similar benefits for employees;*

15 *“(5) extra compensation provided by a premium*
16 *rate paid for certain hours worked by the employee in*
17 *any day or workweek because such hours are hours*
18 *worked in excess of eight in a day or forty in a work-*
19 *week or in excess of the employee’s normal working*
20 *hours or regular working hours, as the case may be;*

21 *“(6) extra compensation provided by a premium*
22 *rate paid for work by the employee on Saturdays, Sun-*
23 *days, holidays, or regular days of rest, or on the sixth*
24 *or seventh day of the workweek, where such premium*
25 *rate is not less than one and one-half times the rate*

1 *established in good faith for like work performed in non-*
2 *overtime hours on other days;*

3 “(7) *extra compensation provided by a premium*
4 *rate paid to the employee, in pursuance of an applicable*
5 *employment contract or collective-bargaining agreement,*
6 *for work outside of the hours established in good faith*
7 *by the contract or agreement as the basic, normal or*
8 *regular workday (not exceeding eight hours) or work-*
9 *week (not exceeding forty hours), where such premium*
10 *rate is not less than one and one-half times the rate*
11 *established in good faith by the contract or agreement*
12 *for like work performed during such workday or*
13 *workweek.*

14 “(e) *No employer shall be deemed to have violated*
15 *subsection (a) by employing any employee for a work-*
16 *week in excess of forty hours if, pursuant to an agreement*
17 *or understanding arrived at between the employer and the*
18 *employee before performance of the work, the amount paid*
19 *to the employee for such employment in excess of forty*
20 *hours—*

21 “(1) *in the case of an employee employed at piece*
22 *rates, is computed at piece rates not less than one and*
23 *one-half times the bona fide piece rates applicable to*
24 *the same work when performed during nonovertime*
25 *hours; or*

1 “(2) in the case of an employee performing two
2 or more kinds of work for which different hourly or
3 piece rates have been established, is computed at rates
4 not less than one and one-half times such bona fide
5 rates applicable to the same work when performed
6 during nonovertime hours;

7 and if (i) the employee’s average hourly earnings for the
8 workweek exclusive of payments described in paragraphs
9 (1) through (7) of subsection (d) are not less than the
10 minimum hourly rate required by applicable law, and (ii)
11 extra overtime compensation is properly computed and paid
12 on other forms of additional pay required to be included in
13 computing the regular rate.

14 “(f) Extra compensation paid as described in para-
15 graphs (5), (6), and (7) of subsection (d) shall be credit-
16 able toward overtime compensation payable pursuant to this
17 section.

18 “WAGE ORDERS IN PUERTO RICO AND THE VIRGIN
19 ISLANDS

20 “SEC. 8. (a) The policy of this Act with respect to
21 industries in Puerto Rico and the Virgin Islands engaged
22 commerce or in the production of goods for commerce is to
23 reach as rapidly as is economically feasible without sub-
24 stantially curtailing employment the objective of a minimum
25 wage of 75 cents an hour in each such industry. The Secre-

1 tary shall from time to time convene an industry committee
2 or committees, appointed pursuant to section 5, and any such
3 industry committee shall from time to time recommend the
4 minimum rate or rates of wages to be paid under section 6
5 by employers in Puerto Rico or the Virgin Islands, or in
6 Puerto Rico and the Virgin Islands, engaged in commerce or
7 in the production of goods for commerce in any such industry
8 or classifications therein.

9 “(b) Upon the convening of any such industry com-
10 mittee, the Secretary shall refer to it the question of the
11 minimum wage rate or rates to be fixed for such industry.
12 The industry committee shall investigate conditions in the
13 industry and the committee, or any authorized subcommittee
14 thereof, may hear such witnesses and receive such evidence
15 as may be necessary or appropriate to enable the com-
16 mittee to perform its duties and functions under this Act.
17 The committee shall recommend to the Secretary the highest
18 minimum wage rates for the industry which it determines,
19 will not substantially curtail employment in the industry,
20 and will not give any industry in Puerto Rico or in the
21 Virgin Islands a competitive advantage over any industry
22 in the United States outside of Puerto Rico and the Virgin
23 Islands.

24 “(c) The industry committee shall recommend such
25 reasonable classifications within any industry as it determines

1 to be necessary for the purpose of fixing for each classifica-
2 tion within such industry the highest minimum wage rate
3 (not in excess of 75 cents an hour) which (1) will not
4 substantially curtail employment in such classification and
5 (2) will not give a competitive advantage to any group
6 in the industry, and shall recommend for each classification
7 in the industry the highest minimum wage rate which the
8 committee determines will not substantially curtail employ-
9 ment in such classification. In determining whether such
10 classifications should be made in any industry, in making
11 such classification, and in determining the minimum wage
12 rates for such classifications, no classifications shall be made,
13 and no minimum wage rate shall be fixed, solely on a re-
14 gional basis, but the industry committee and the Secretary
15 shall consider among other relevant factors the following:

16 “(1) competitive conditions as affected by trans-
17 portation, living, and production costs;

18 “(2) the wages established for work of like or
19 comparable character by collective labor agreements
20 negotiated between employers and employees by repre-
21 sentatives of their own choosing; and

22 “(3) the wages paid for work of like or comparable
23 character by employers who voluntarily maintain mini-
24 mum-wage standards in the industry.

1 *No classification shall be made under this section on the basis*
2 *of age or sex.*

3 “(d) *The industry committee shall file with the Secre-*
4 *tary a report containing its recommendations with respect*
5 *to the matters referred to it. Upon the filing of such report,*
6 *the Secretary, after due notice to interested persons, and*
7 *giving them an opportunity to be heard, shall by order*
8 *approve and carry into effect the recommendations contained*
9 *in such report, if he finds that the recommendations are*
10 *made in accordance with law, are supported by the evidence*
11 *adduced at the hearing, and, taking into consideration the*
12 *same factors as are required to be considered by the industry*
13 *committee, will carry out the purposes of this section; other-*
14 *wise he shall disapprove such recommendations. If the*
15 *Secretary disapproves such recommendations, he shall again*
16 *refer the matter to such committee, or to another industry*
17 *committee for such industry (which he may appoint for such*
18 *purpose), for further consideration and recommendations.*

19 “(e) *Orders issued under this section shall define the*
20 *industries and classifications therein to which they are to*
21 *apply, and shall contain such terms and conditions as the*
22 *Secretary finds necessary to carry out the purposes of such*
23 *orders, to prevent the circumvention or evasion thereof, and*
24 *to safeguard the minimum wage rates established therein.*
25 *No such order shall take effect until after due notice is given*

1 of the issuance thereof by publication in the Federal Reg-
2 ister and by such other means as the Secretary deems
3 reasonably calculated to give to interested persons general
4 notice of such issuance.

5 “(f) Due notice of any hearing provided for in this
6 section shall be given by publication in the Federal Reg-
7 ister and by such other means as the Secretary deems
8 reasonably calculated to give general notice to interested
9 persons.

10 “ATTENDANCE OF WITNESSES

11 “SEC. 9. For the purpose of any hearing or investi-
12 gation provided for in this Act, the provisions of sections
13 9 and 10 (relating to the attendance of witnesses and the
14 production of books, papers, and documents) of the Fed-
15 eral Trade Commission Act of September 16, 1914, as
16 amended (U. S. C., 1946 edition, title 15, secs. 49 and
17 50), are hereby made applicable to the jurisdiction, powers,
18 and duties of the Secretary and the industry committees.

19 “COURT REVIEW

20 “SEC. 10. (a) Any person aggrieved by an order of
21 the Secretary issued under section 8 may obtain a review
22 of such order in the United States Court of Appeals
23 for any circuit wherein such person resides or has his
24 principal places of business, or in the United States Court of
25 Appeals for the District of Columbia circuit, by filing in

1 such court, within sixty days after the entry of such order,
2 a written petition praying that the order of the Secre-
3 tary be modified or set aside in whole or in part. A
4 copy of such petition shall forthwith be served upon the
5 Secretary, and thereupon the Secretary shall certify and
6 file in the court a transcript of the record upon which the
7 order complained of was entered. Upon the filing of such
8 transcript such court shall have exclusive jurisdiction to
9 affirm, modify, or set aside such order in whole or in
10 part, so far as it is applicable to the petitioner. The review
11 by the court shall be limited to questions of law, and findings
12 of fact by the Secretary when supported by substantial
13 evidence shall be conclusive. No objection to the order of
14 the Secretary shall be considered by the court unless such
15 objection shall have been urged before the Secretary or
16 unless there were reasonable grounds for failure so to do.
17 If application is made to the court for leave to adduce
18 additional evidence, and it is shown to the satisfaction of
19 the court that such additional evidence may materially affect
20 the result of the proceeding and that there were reasonable
21 grounds for failure to adduce such evidence in the proceeding
22 before the Secretary, the court may order such additional
23 evidence to be taken before the Secretary and to be adduced
24 upon the hearing in such manner and upon such terms and
25 conditions as to the court may seem proper. The Secretary

1 *may modify his findings by reason of the additional evidence*
2 *so taken, and shall file with the court such modified or new*
3 *findings which if supported by substantial evidence shall*
4 *be conclusive, and shall also file his recommendation, if*
5 *any, for the modification or setting aside of the original*
6 *order. The judgment and decree of the court shall be final,*
7 *subject to review by the Supreme Court of the United*
8 *States upon certiorari or certification as provided in title*
9 *28, United States Code, section 1254.*

10 “(b) *The commencement of proceedings under sub-*
11 *section (a) shall not, unless specifically ordered by the*
12 *court, operate as a stay of the Secretary’s order. The court*
13 *shall not grant any stay of the order unless the person*
14 *complaining of such order shall file in court an undertaking*
15 *with a surety or sureties satisfactory to the court for the*
16 *payment to the employees affected by the order, in the event*
17 *such order is affirmed, of the amount by which the compen-*
18 *sation such employees are entitled to receive under the order*
19 *exceeds the compensation they actually receive while such*
20 *stay is in effect.*

21 “*INVESTIGATIONS, INSPECTIONS, AND RECORDS*

22 “*SEC. 11. (a) The Secretary or his designated repre-*
23 *sentatives may investigate and gather data regarding the*
24 *wages, hours, employment of minors, and other conditions*

1 *and practices of employment in any industry subject to this*
2 *Act, and may enter and inspect such places and such records*
3 *(and make such transcriptions thereof), question such em-*
4 *ployees, and investigate such facts, conditions, practices, or*
5 *matters as he may deem necessary or appropriate to*
6 *determine whether any person has violated any provision of*
7 *this Act, or which may aid in the enforcement of the pro-*
8 *visions of this Act. The Secretary shall bring all actions*
9 *under section 17 to restrain violations of this Act.*

10 “(b) *With the consent and cooperation of State agen-*
11 *cies charged with the administration of State labor laws,*
12 *the Secretary may, for the purpose of carrying out his func-*
13 *tions and duties under this Act, utilize the services of State*
14 *and local agencies and their employees and, notwithstand-*
15 *ing any other provision of law, may reimburse such State*
16 *and local agencies and their employees for services rendered*
17 *for such purposes.*

18 “(c) *Every employer subject to any provision of this*
19 *Act or of any order issued under this Act shall make, keep,*
20 *and preserve such records of the persons employed by him*
21 *and of the wages, hours, and other conditions and practices*
22 *of employment maintained by him, and shall preserve such*
23 *records for such periods of time, and shall make such reports*
24 *therefrom to the Secretary as he shall prescribe by regu-*

1 *lation or order as necessary or appropriate for the enforce-*
 2 *ment of the provisions of this Act or the regulations or orders*
 3 *thereunder.*

4 “CHILD LABOR PROVISIONS

5 “SEC. 12. (a) *No producer, manufacturer, or dealer*
 6 *shall ship or deliver for shipment in commerce any goods*
 7 *produced in an establishment situated in the United States*
 8 *in or about which within thirty days prior to the removal*
 9 *of such goods therefrom any oppressive child labor has*
 10 *been employed: Provided, That a prosecution and convic-*
 11 *tion of a defendant for the shipment or delivery for shipment*
 12 *of any goods under the conditions herein prohibited shall*
 13 *be a bar to any further prosecution against the same de-*
 14 *fendant for shipments or deliveries for shipment of any such*
 15 *goods before the beginning of said prosecution.*

16 “(b) *No employer shall employ any oppressive child*
 17 *labor in commerce or in the production of goods for com-*
 18 *merce and no employer who is engaged in commerce or in*
 19 *the production of goods for commerce shall employ any*
 20 *oppressive child labor in or about or in connection with*
 21 *any enterprise where he is so engaged.*

22 “EXEMPTIONS

23 “SEC. 13. (a) *The provisions of sections 6, 7, and 12*
 24 *shall not apply with respect to (1) any employee engaged*
 25 *in the delivery of newspapers to the consumer; or (2)*

1 any employee of a retail or service establishment whose
2 employer had a total annual volume of sales or servicing
3 of not more than \$500,000 during the preceding calendar
4 year. An establishment shall not be deemed a retail or
5 service establishment within the meaning of this subsection
6 if more than 25 per centum of its annual dollar volume
7 during the preceding calendar year was derived from activi-
8 ties other than retail selling or servicing. As used in this
9 subsection, 'retail selling or servicing' means selling or
10 servicing to private individuals for personal or family con-
11 sumption, or selling or servicing (but not for resale) where
12 (1) the goods sold or serviced do not differ materially either
13 in type or quantity from goods normally sold or serviced
14 for such personal or family consumption, or where (2) the
15 customer is a farmer and the goods sold or serviced are of
16 types and in quantities used by the ordinary farmer in his
17 farming operations.

18 “(b) The provisions of sections 6 and 7 shall not apply
19 with respect to (1) any employee employed in a bona
20 fide executive, administrative or professional capacity, or in
21 the capacity of outside salesman (as such terms are defined
22 and delimited by regulations of the Secretary); or (2) any
23 employee employed in the catching, taking, propagating,
24 harvesting, cultivating, or farming of any kind of fish, shell-
25 fish, crustacea, sponges, seaweeds, or other aquatic forms

1 of animal and vegetable life, including the going to and
2 returning from work and including employment in the load-
3 ing and unloading, when performed by any such employee,
4 and in the icing, cleaning, salting, or other preparation of
5 such products in their raw state for shipment from the place
6 of unloading to market or to processors; or (3) any employee
7 employed in agriculture; or (4) any employee to the extent
8 that such employee is exempted by regulations or orders of
9 the Secretary issued under section 14; or (5) any employee
10 employed in connection with the publication of any weekly
11 or semiweekly newspaper with a circulation of less than five
12 thousand the major part of which circulation is within the
13 county where printed and published; or (6) any switchboard
14 operator employed in a public telephone exchange which has
15 less than five hundred stations; or (7) any employee of an
16 employer engaged in the business of operating taxicabs; or
17 (8) any employee or proprietor in a retail or service estab-
18 lishment as defined in subsection (a) of this section, with
19 respect to whom the provisions of sections 6 and 7 would not
20 otherwise apply, engaged in handling telegraphic messages
21 for the public under an agency or contract arrangement with
22 a telegraph company where the telegraph message revenue of
23 such agency does not exceed \$500 a month.

24 “(c) The provisions of section 7 shall not apply with
25 respect to (1) any employee employed during the greater

1 part of any workweek as a driver or helper riding a motor
2 vehicle in the performance of over-the-road transport opera-
3 tions (as defined by the Secretary of Labor); or (2) any
4 employee of an employer which is an express company,
5 sleeping car company, or carrier by railroad, subject to part
6 I of the Interstate Commerce Act; or (3) any employee
7 employed as flight personnel on an aircraft by a carrier by
8 air subject to title II of the Railway Labor Act; or (4) any
9 employee employed as a seaman.

10 “(d) The provisions of section 12 relating to child labor
11 shall not apply with respect to any employee employed in
12 agriculture outside of school hours for the school district
13 where such employee is living while he is so employed, or to
14 any child employed as an actor or performer in motion
15 pictures or theatrical productions or in radio or television
16 productions.

17 “LEARNERS, APPRENTICES, AND HANDICAPPED WORKERS

18 “SEC. 14. The Secretary, to the extent necessary in
19 order to prevent curtailment of opportunities for employ-
20 ment, shall by regulations or by orders provide for (1) the
21 employment of learners, of apprentices, and of messengers
22 employed exclusively in delivering letters and messages,
23 under special certificates issued pursuant to regulations of the
24 Secretary, at such wages lower than the minimum wage
25 applicable under section 6 and subject to such limitations as

1 to time, number, proportion, and length of service as the
2 Secretary shall prescribe, and (2) the employment of indi-
3 viduals whose earning capacity is impaired by age or
4 physical or mental deficiency or injury, under special cer-
5 tificates issued by the Secretary, at such wages lower than
6 the minimum wage applicable under section 6 and for such
7 period as shall be fixed in such certificates.

8

“PROHIBITED ACTS

9

“SEC. 15. (a) It shall be unlawful for any person—

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*“(1) to transport, offer for transportation, ship, de-
liver, 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 Secretary issued under section 14; except
that any such transportation, offer, shipment, delivery,
or sale of such goods by a purchaser who acquired them
after such violation occurred shall not be deemed unlaw-
ful if such purchaser proves that he was without knowl-
edge of such violation, and acted in good faith in reliance
on written assurance from the producer that the goods
were produced in compliance with the requirements of
the Act, and no provision of this Act shall impose any
liability upon any common carrier for the transportation*

1 *in commerce in the regular course of its business of any*
2 *goods not produced by such common carrier, and no pro-*
3 *vision of this Act shall excuse any common carrier from*
4 *its obligation to accept any goods for transportation;*

5 *“(2) to violate any of the provisions of section 6*
6 *or section 7, or any of the provisions of any regulation*
7 *or order of the Secretary issued under section 4 (c) or*
8 *section 14;*

9 *“(3) to discharge or in any other manner dis-*
10 *criminate against any employee because such employee*
11 *has filed any complaint or instituted or caused to be*
12 *instituted any proceeding under or related to this Act,*
13 *or has testified or is about to testify in any such proceed-*
14 *ing, or has served or is about to serve on an industry*
15 *committee;*

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

17 *“(5) to violate any of the provisions of section*
18 *11 (c), or to make any statement, report, or record*
19 *filed or kept pursuant to the provisions of such section*
20 *or of any regulation or order thereunder, knowing such*
21 *statement, report, or record to be false in a material*
22 *respect.*

23 *“(b) For the purposes of subsection (a) (1) proof*
24 *that any employee was employed in any place of employ-*
25 *ment where goods shipped or sold in commerce were pro-*

1 *duced, within ninety days prior to the removal of the goods*
2 *from such place of employment, shall be prima facie evidence*
3 *that such employee was engaged in the production of such*
4 *goods.*

5 "PENALTIES

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

13 "(b) *Any employer who violates the provisions of*
14 *section 6 or section 7 of this Act shall be liable to the em-*
15 *ployee or employees affected in the amount of their unpaid*
16 *minimum wages, or their unpaid overtime compensation,*
17 *as the case may be, and in an additional equal amount as*
18 *liquidated damages. Action to recover such liability may*
19 *be maintained in any court of competent jurisdiction by*
20 *any one or more employees for and in behalf of himself*
21 *or themselves and other employees similarly situated. No*
22 *employee shall be a party plaintiff to any such action unless*
23 *he gives his consent in writing to become such a party and*
24 *such consent is filed in the court in which such action is*
25 *brought. The court in such action shall, in addition to any*

1 judgment awarded to the plaintiff or plaintiffs, allow a
2 reasonable attorney's fee to be paid by the defendant, and
3 costs of the action.

4 “(c) The Secretary is authorized to supervise the pay-
5 ment of the unpaid minimum wages or the unpaid overtime
6 compensation owing to any employee or employees under
7 section 6 or section 7 of this Act, and the agreement of any
8 employee to accept such payment shall upon payment in
9 full constitute a waiver by such employee of any right he
10 may have under subsection (b) of this section to such
11 unpaid minimum wages or unpaid overtime compensation
12 and an additional equal amount as liquidated damages. At
13 the request or with the consent of any employee claiming
14 unpaid minimum wages or unpaid overtime compensation
15 under section 6 or section 7 of this Act, the Secretary may
16 bring an action in any court of competent jurisdiction to
17 recover the amount of any such claim. The Secretary may
18 join in one cause of action the claims of any employees
19 similarly situated who consent thereto. The consent of
20 any employee to the bringing of any such action by the
21 Secretary, unless such action is dismissed without prejudice
22 on motion of the Secretary, shall constitute a waiver by
23 such employee of any right he may have under subsection
24 (b) of this section to such unpaid minimum wages or unpaid
25 overtime compensation and an additional equal amount as

1 liquidated damages. Any sums thus recovered by the Secre-
2 tary on behalf of an employee pursuant to this subsection
3 shall be held in a special deposit account and shall be paid,
4 on order of the Secretary, directly to the employee or em-
5 ployees affected. Any such sums not paid to an employee
6 because of inability to do so within a period of three years
7 shall be covered into the Treasury of the United States as
8 miscellaneous receipts: Provided, That nothing in this sub-
9 section shall affect or limit in any way the full equitable
10 jurisdiction of the courts under section 17 of this Act.

11 "INJUNCTION PROCEEDINGS

12 "SEC. 17. The district courts of the United States and
13 the United States courts of the Territories and possessions
14 shall have jurisdiction, for cause shown, to restrain violations
15 of section 15.

16 "RELATION TO OTHER LAWS

17 "SEC. 18. No provision of this Act or of any order
18 thereunder shall excuse noncompliance with any Federal
19 or State law or municipal ordinance establishing a minimum
20 wage higher than the minimum wage established under this
21 Act or a maximum workweek lower than the maximum
22 workweek established under this Act, and no provision of
23 this Act relating to the employment of child labor shall
24 justify noncompliance with any Federal or State law or
25 municipal ordinance establishing a higher standard than the

1 *standard established under this Act. No provision of this*
2 *Act shall justify any employer in reducing a wage paid by*
3 *him which is in excess of the applicable minimum wage*
4 *under this Act, or justify any employer in increasing hours*
5 *of employment maintained by him which are shorter than*
6 *the maximum hours applicable under this Act.*

7 “SEPARABILITY OF PROVISIONS

8 “SEC. 19. *If any provision of this Act or the application*
9 *of such provision to any person or circumstance is held*
10 *invalid, the remainder of the Act and the application of such*
11 *provision to other persons or circumstances shall not be*
12 *affected thereby.*”

13 AMENDMENT OF THE PORTAL TO PORTAL ACT OF 1947

14 SEC. 3. (a) *Section 6 (a) and section 6 (b) of the*
15 *Portal to Portal Act of 1947 (Public, Numbered 49, Eighti-*
16 *eth Congress, first session) are hereby amended by sub-*
17 *stituting the word “four” for the word “two” wherever*
18 *appearing therein.*

19 (b) *The functions and duties of the Administrator of*
20 *the Wage and Hour Division of the Department of Labor*
21 *under section 10 of the Portal to Portal Act of 1947 (Public,*
22 *Numbered 49, Eightieth Congress, first session) are hereby*
23 *transferred to the Secretary of Labor and shall be adminis-*
24 *tered under his direction and control.*

1 *EFFECTIVE DATE OF CERTAIN CHANGES*

2 *SEC. 4. (a) This Act shall take effect upon the expira-*
3 *tion of one hundred and twenty days from the date of*
4 *its enactment, except that the functions of the Secretary of*
5 *Labor provided for in the Fair Labor Standards Act of*
6 *1949 may be exercised forthwith, and the provisions of*
7 *section 7 of said Act (relating to overtime compensation)*
8 *shall be in full force and effect from and after the date of*
9 *enactment of this Act.*

10 *(b) Any order, regulation, or interpretation of the*
11 *Administrator of the Wage and Hour Division or of the*
12 *Secretary of Labor, and any agreement entered into by*
13 *the Administrator or the Secretary of Labor, in effect under*
14 *the provisions of the Fair Labor Standards Act of 1938*
15 *on the date of enactment of this Act, shall remain in effect*
16 *as an order, regulation, interpretation, or agreement of the*
17 *Secretary of Labor pursuant to this Act, except to the*
18 *extent that any such order, regulation, interpretation, or*
19 *agreement may be inconsistent with the provisions of this*
20 *Act, or may from time to time be amended, modified, or*
21 *rescinded by the Secretary of Labor in accordance with the*
22 *provisions of this Act.*

23 *(c) No amendment made by this Act shall affect any*
24 *penalty or liability with respect to any act or omission*
25 *occurring prior to the effective date of this Act; but, after*

- 1 *the expiration of four years from such effective date, no*
- 2 *action shall be instituted under section 16 (b) of the Fair*
- 3 *Labor Standards Act of 1938 with respect to any liability*
- 4 *accruing thereunder.*

Union Calendar No. 86

81st CONGRESS
1st Session

H. R. 3190

[Report No. 267]

A BILL

To provide for the amendment of the Fair Labor Standards Act of 1938, and for other purposes.

By Mr. LESINSKI

MARCH 3, 1949

Referred to the Committee on Education and Labor

MARCH 16, 1949

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed