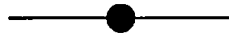


FILED

2014 MAY 29 P 4 57

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014



ENROLLED

House Bill No. 201

(By Mr. Speaker, (Mr. Miley)
and Delegate Armstead)
(By Request of the Executive)



Passed May 21, 2014

In effect from passage.

HB 201

FILED

2014 MAY 29 P 4: 57

OFFICE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

H. B. 201

(BY MR. SPEAKER, (MR. MILEY)

AND DELEGATE ARMSTEAD)

[BY REQUEST OF THE EXECUTIVE]

[Passed May 21, 2014; in effect from passage.]

AN ACT to amend and reenact §21-5C-1, §21-5C-2 and §21-5C-4 of the Code of West Virginia, 1931, as amended, as contained in chapter one hundred twenty-four, Acts of the Legislature, regular session, 2014, and to amend and reenact §21-5C-6 of said code, all relating to the application of minimum wage and maximum hour standards; modifying the definition of the term “employer”; clarifying the definition of the term “hours worked”; clarifying operative dates; requiring legislative rules; and authorizing promulgation of emergency rules.

Be it enacted by the Legislature of West Virginia:

That §21-5C-1, §21-5C-2 and §21-5C-4 of the Code of West Virginia, 1931, as amended, as contained in chapter one hundred

twenty-four, Acts of the Legislature, regular session, 2014, be amended and reenacted, and that §21-5C-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-1. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the Commissioner of Labor or
3 his or her duly authorized representatives.

4 (b) "Wage and hour director" means the wage and hour
5 director appointed by the Commissioner of Labor as chief of the
6 Wage and Hour Division.

7 (c) "Wage" means compensation due an employee by reason
8 of his or her employment.

9 (d) "Employ" means to hire or permit to work.

10 (e) "Employer" includes the State of West Virginia, its
11 agencies, departments and all its political subdivisions, any
12 individual, partnership, association, public or private
13 corporation, or any person or group of persons acting directly or
14 indirectly in the interest of any employer in relation to an
15 employee; and who employs during any calendar week six or
16 more employees as herein defined in any one separate, distinct
17 and permanent location or business establishment: *Provided,*
18 That prior to January 1, 2015, the term "employer" does not
19 include any individual, partnership, association, corporation,
20 person or group of persons or similar unit if eighty percent of the
21 persons employed by him or her are subject to any federal act
22 relating to minimum wage, maximum hours and overtime
23 compensation: *Provided, however,* That after December 31,
24 2014, for the purposes of section three of this article, the term
25 "employer" does not include any individual, partnership,
26 association, corporation, person or group of persons or similar

27 unit if eighty percent of the persons employed by him or her are
28 subject to any federal act relating to maximum hours and
29 overtime compensation.

30 (f) "Employee" includes any individual employed by an
31 employer but shall not include: (1) Any individual employed by
32 the United States; (2) any individual engaged in the activities of
33 an educational, charitable, religious, fraternal or nonprofit
34 organization where the employer-employee relationship does not
35 in fact exist, or where the services rendered to such organizations
36 are on a voluntary basis; (3) newsboys, shoeshine boys, golf
37 caddies, pinboys and pin chasers in bowling lanes; (4) traveling
38 salesmen and outside salesmen; (5) services performed by an
39 individual in the employ of his or her parent, son, daughter or
40 spouse; (6) any individual employed in a bona fide professional,
41 executive or administrative capacity; (7) any person whose
42 employment is for the purpose of on-the-job training; (8) any
43 person having a physical or mental handicap so severe as to
44 prevent his or her employment or employment training in any
45 training or employment facility other than a nonprofit sheltered
46 workshop; (9) any individual employed in a boys or girls
47 summer camp; (10) any person sixty-two years of age or over
48 who receives old-age or survivors benefits from the Social
49 Security Administration; (11) any individual employed in
50 agriculture as the word agriculture is defined in the Fair Labor
51 Standards Act of 1938, as amended; (12) any individual
52 employed as a firefighter by the state or agency thereof; (13)
53 ushers in theaters; (14) any individual employed on a part-time
54 basis who is a student in any recognized school or college; (15)
55 any individual employed by a local or interurban motorbus
56 carrier; (16) so far as the maximum hours and overtime
57 compensation provisions of this article are concerned, any
58 salesman, parts man or mechanic primarily engaged in selling or
59 servicing automobiles, trailers, trucks, farm implements, aircraft
60 if employed by a nonmanufacturing establishment primarily
61 engaged in the business of selling such vehicles to ultimate
62 purchasers; (17) any employee with respect to whom the United
63 States Department of Transportation has statutory authority to

64 establish qualifications and maximum hours of service; (18) any
65 person employed on a per diem basis by the Senate, the House
66 of Delegates, or the Joint Committee on Government and
67 Finance of the Legislature of West Virginia, other employees of
68 the Senate or House of Delegates designated by the presiding
69 officer thereof, and additional employees of the Joint Committee
70 on Government and Finance designated by such joint committee;
71 or (19) any person employed as a seasonal employee of a
72 commercial whitewater outfitter where the seasonal employee
73 works less than seven months in any one calendar year and, in
74 such case, only for the limited purpose of exempting the seasonal
75 employee from the maximum wage provisions of section three
76 of this article.

77 (g) "Workweek" means a regularly recurring period of one
78 hundred sixty-eight hours in the form of seven consecutive
79 twenty-four hour periods, need not coincide with the calendar
80 week, and may begin any day of the calendar week and any hour
81 of the day.

82 (h) "Hours worked" means the hours for which an employee
83 is employed: *Provided*, That in determining hours worked for the
84 purposes of sections two and three of this article, there shall be
85 excluded any time spent in changing clothes or washing at the
86 beginning or end of each workday, time spent in walking, riding
87 or traveling to and from the actual place of performance of the
88 principal activity or activities which such employee is employed
89 to perform and activities which are preliminary to or
90 postliminary to said principal activity or activities, subject to
91 such exceptions as the commissioner may by rules and
92 regulations define.

§21-5C-2. Minimum wages.

1 (a) *Minimum wage:*

2 (1) After June 30, 2006, every employer shall pay to each of
3 his or her employees wages at a rate not less than \$5.85 per hour.

4 (2) After June 30, 2007, every employer shall pay to each of
5 his or her employees wages at a rate not less than \$6.55 per hour.

6 (3) After June 30, 2008, every employer shall pay to each of
7 his or her employees wages at a rate not less than \$7.25 per hour.

8 (4) After December 31, 2014, every employer shall pay to
9 each of his or her employees wages at a rate not less than \$8.00
10 per hour.

11 (5) After December 31, 2015, every employer shall pay to
12 each of his or her employees wages at a rate not less than \$8.75
13 per hour.

14 (6) When the federal minimum hourly wage as prescribed by
15 29 U.S.C. §206 (a) (1) is equal to or greater than the wage rate
16 prescribed in the applicable provision of this subsection, every
17 employer shall pay to each of his or her employees wages at a
18 rate of not less than the federal minimum hourly wage as
19 prescribed by 29 U.S.C. §206 (a) (1). The minimum wage rates
20 required under this subsection shall be thereafter adjusted in
21 accordance with adjustments made in the federal minimum
22 hourly rate. The adoption of the federal minimum wage provided
23 by this subsection includes only the federal minimum hourly rate
24 prescribed in 29 U.S.C. §206 (a) (1) and does not include other
25 wage rates, or conditions, exclusions, or exceptions to the federal
26 minimum hourly wage rate. In addition, adoption of the federal
27 minimum hourly wage rate does not extend or modify the scope
28 or coverage of the minimum wage rate required under this
29 subsection.

30 (b) *Training wage:*

31 (1) Notwithstanding the provisions set forth in subsection (a)
32 of this section to the contrary, an employer may pay an
33 employee first hired after June 30, 2006, a subminimum training
34 wage not less than \$5.15 per hour: *Provided*, That an employer

35 may pay an employee first hired after December 31, 2014, a
36 subminimum training wage not less than \$6.40 per hour.

37 (2) An employer may not pay the subminimum training
38 wage set forth in subdivision (1) of this subsection to any
39 individual:

40 (A) Who has attained or attains while an employee of the
41 employer, the age of twenty years; or

42 (B) For a cumulative period of not more than ninety days per
43 employee: *Provided*, That if any business has not been in
44 operation for more than ninety days at the time the employer
45 hired the employee, the employer may pay the employee the
46 subminimum training wage set forth in subdivision (1) of this
47 subsection for an additional period not to exceed ninety days.

48 (3) When the federal subminimum training wage as
49 prescribed by 29 U.S.C. §206 (g) (1) is equal to or greater than
50 the wage rate prescribed in subdivision (1) of this subsection,
51 every employer shall pay to each of his or her employees wages
52 at a rate of not less than the federal subminimum training wage
53 as prescribed by 29 U.S.C. §206 (g) (1). The subminimum
54 training wage rates required under this subsection shall be
55 thereafter adjusted in accordance with adjustments made in the
56 federal subminimum training wage rate. The adoption of the
57 federal subminimum training wage provided by this subsection
58 includes only the federal subminimum training wage rate
59 prescribed in 29 U.S.C. §206 (g) (1) and does not include other
60 wage rates, or conditions, exclusions, or exceptions to the federal
61 subminimum training wage rate. In addition, adoption of the
62 federal subminimum training wage rate does not extend or
63 modify the scope or coverage of the subminimum training wage
64 rate required under this subsection.

65 (c) Notwithstanding any provision or definition to the
66 contrary, the wages established pursuant to this section are
67 applicable to all individuals employed by the State of West

68 Virginia, its agencies and departments, regardless if the
69 employee or employer are subject to any federal act relating to
70 minimum wage: *Provided*, That at no time may the minimum
71 wage established pursuant to this section fall below the federal
72 minimum hourly wage as prescribed by 29 U.S.C. §206(a)(1),
73 and at no time may the subminimum training wage established
74 pursuant to this section fall below the federal subminimum
75 training wage rate as prescribed by 29 U.S.C. §206 (g) (1).

§21-5C-4. Credits.

1 Prior to January 1, 2015, in determining whether an
2 employer is paying an employee wages and overtime
3 compensation as provided in sections two and three of this
4 article, there shall be provided in accordance with the regulations
5 which shall be promulgated by the commissioner a credit to the
6 employer of twenty percent of the hourly rate of the amount paid
7 an employee customarily receiving gratuities, and a reasonable
8 credit for board and lodging furnished to an employee: *Provided*,
9 That after December 31, 2014, in determining whether an
10 employer is paying an employee wages and overtime
11 compensation as provided in sections two and three of this
12 article, there shall be provided in accordance with the legislative
13 rules proposed for promulgation by the commissioner a credit to
14 the employer of seventy percent of the hourly rate of the amount
15 paid an employee customarily receiving gratuities, and a
16 reasonable credit for board and lodging furnished to an
17 employee. The commissioner shall propose legislative rules for
18 promulgation relating to maximum allowances to employers for
19 room and board furnished to employees: *Provided, however*,
20 That the employer shall be required to furnish to the
21 commissioner upon request, documentary evidence that the
22 employee is receiving at least seventy percent of the minimum
23 wage in gratuities or is receiving room and lodging in
24 accordance with the rules and regulations promulgated by the
25 commissioner.

§21-5C-6. Duties and powers of commissioner of labor.

1 (a) It shall be the duty of the commissioner to enforce and
2 administer the provisions of this article and rules promulgated
3 thereunder, and to promulgate such rules and regulations, in
4 accordance with chapter twenty-nine-a of the Code of West
5 Virginia, 1931, as amended, as shall be needful to give effect to
6 the provisions of this article. The commissioner is authorized to
7 promulgate emergency rules prior to January 1, 2015, to
8 implement and administer the amendments made to this article
9 in 2014. If the commissioner makes a finding that a conflict
10 exists between state and federal standards defining employee
11 exemptions, the commissioner is further authorized to
12 promulgate emergency rules prior to January 1, 2015, for the
13 purpose of revising the state standards to conform with federal
14 law.

15 (b) The commissioner is authorized at reasonable times to
16 enter the place of business of an employer subject to the
17 provisions of this article, for purposes of: (1) Inspecting and
18 examining, and copying, photographing or otherwise
19 reproducing all payroll records of the employer directly relating
20 to wages and hours of employment of persons employed by him
21 or her; (2) questioning or otherwise examining persons
22 employed by the employer on the subject of wages and hours of
23 their employment, and gratuities received or earned in such
24 employment.

25 (c) The commissioner is authorized and empowered to make
26 investigations to determine whether there is reasonable cause to
27 believe that any person is an employer as defined in section one
28 of this article, or whether there is reasonable cause to believe
29 that any provision of this article is being or has been violated.

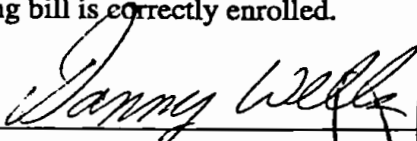
30 (d) The commissioner is authorized and empowered to file
31 criminal complaints against persons whom the commissioner has

32 reasonable cause to believe have committed any offense created
33 or defined by the provisions of this article.

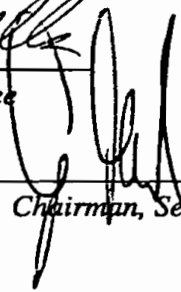
34 (e) The commissioner is authorized and empowered to
35 institute civil actions seeking appropriate injunctive relief to
36 compel an employer subject to this article to comply with the
37 provisions of this article.

38 (f) The commissioner shall enforce and administer the
39 provisions of this article in accordance with chapter twenty-nine-
40 a of this code. The commissioner or his or her authorized
41 representatives are empowered to enter and inspect such places,
42 question such employees and investigate such facts, conditions,
43 or matters as they may deem appropriate, to determine whether
44 any person, firm or corporation has violated any provision of this
45 article, or any rule or regulation issued hereunder or which may
46 aid in the enforcement of the provisions of this article.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



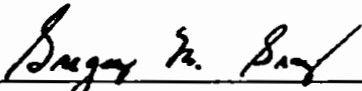
Chairman, House Committee



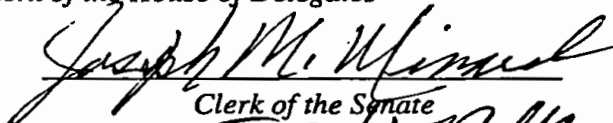
Chairman, Senate Committee

Originating in the House.

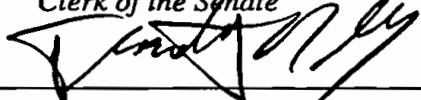
In effect from passage.



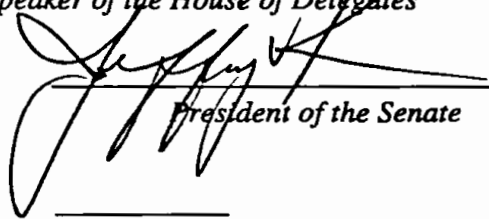
Clerk of the House of Delegates



Clerk of the Senate



Speaker of the House of Delegates



President of the Senate

The within is approved this the 29th
day of May, 2014.



Governor

PRESENTED TO THE GOVERNOR

MAY 23 2014

Time 7:40 pm