

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4283**

4 (By Delegates Barrett, Barill, Barker, Diserio, Lawrence,
5 Manypenny, Marcum, D. Poling, Reynolds, Sponaugle and Young)
6

7 (Originating in the House Committee on Finance.)

8 [February 6, 2014]
9

10 A BILL to amend and reenact §21-5C-1, §21-5C-2 and §21-5C-4 of the
11 Code of West Virginia, 1931, as amended, all relating to
12 minimum wage; providing definition for employer; establishing
13 minimum wage amounts; establishing credit amount to employers
14 for employees customarily receiving gratuities and certain
15 other benefits.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §21-5C-1, §21-5C-2 and §21-5C-4 of the Code of West
18 Virginia, 1931, as amended, be amended and reenacted all to read as
19 follows:

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

22 **§21-5C-1. Definitions.**

23 As used in this article:

24 (a) "Commissioner" means the commissioner of labor or his
25 or her duly authorized representatives.

26 (b) "Wage and hour director" means the wage and hour
27 director appointed by the commissioner of labor as chief of the

1 wage and hour division.

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

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

5 (e) "Employer" includes the State of West Virginia, its
6 agencies, departments and all its political subdivisions, any
7 individual, partnership, association, public or private
8 corporation, or any person or group of persons acting directly or
9 indirectly in the interest of any employer in relation to an
10 employee; and who employs during any calendar week six or more
11 employees as herein defined in any one separate, distinct and
12 permanent location or business establishment: ~~Provided, That the~~
13 ~~term "employer" shall not include any individual, partnership,~~
14 ~~association, corporation, person or group of persons or similar~~
15 ~~unit if eighty percent of the persons employed by him are subject~~
16 ~~to any federal act relating to minimum wage, maximum hours and~~
17 ~~overtime compensation.~~

18 (f) "Employee" includes any individual employed by an
19 employer but shall not include: (1) Any individual employed by the
20 United States; (2) any individual engaged in the activities of an
21 educational, charitable, religious, fraternal or nonprofit
22 organization where the employer-employee relationship does not in
23 fact exist, or where the services rendered to such organizations
24 are on a voluntary basis; (3) newsboys, shoeshine boys, golf
25 caddies, pinboys and pin chasers in bowling lanes; (4) traveling
26 salesmen and outside salesmen; (5) services performed by an

1 individual in the employ of his or her parent, son, daughter or
2 spouse; (6) any individual employed in a bona fide professional,
3 executive or administrative capacity; (7) any person whose
4 employment is for the purpose of on-the-job training; (8) any
5 person having a physical or mental handicap so severe as to prevent
6 his or her employment or employment training in any training or
7 employment facility other than a nonprofit sheltered workshop; (9)
8 any individual employed in a boys or girls summer camp; (10) any
9 person sixty-two years of age or over who receives old-age or
10 survivors benefits from the social security administration; (11)
11 any individual employed in agriculture as the word agriculture is
12 defined in the Fair Labor Standards Act of 1938, as amended; (12)
13 any individual employed as a fire fighter by the state or agency
14 thereof; (13) ushers in theaters; (14) any individual employed on
15 a part-time basis who is a student in any recognized school or
16 college; (15) any individual employed by a local or interurban
17 motorbus carrier; (16) so far as the maximum hours and overtime
18 compensation provisions of this article are concerned, any
19 salesman, parts man or mechanic primarily engaged in selling or
20 servicing automobiles, trailers, trucks, farm implements, aircraft
21 if employed by a nonmanufacturing establishment primarily engaged
22 in the business of selling such vehicles to ultimate purchasers;
23 (17) any employee with respect to whom the United States Department
24 of Transportation has statutory authority to establish
25 qualifications and maximum hours of service; (18) any person
26 employed on a per diem basis by the Senate, the House of Delegates,

1 or the Joint Committee on Government and Finance of the Legislature
2 of West Virginia, other employees of the Senate or House of
3 Delegates designated by the presiding officer thereof, and
4 additional employees of the Joint Committee on Government and
5 Finance designated by such joint committee; or (19) any person
6 employed as a seasonal employee of a commercial whitewater
7 outfitter where the seasonal employee works less than seven months
8 in any one calendar year and, in such case, only for the limited
9 purpose of exempting the seasonal employee from the maximum wage
10 provisions of section three of this article.

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

15 (h) "Hours worked", in determining for the purposes of
16 sections two and three of this article, the hours for which an
17 employee is employed, there shall be excluded any time spent in
18 changing clothes or washing at the beginning or end of each
19 workday, time spent in walking, riding or traveling to and from the
20 actual place of performance of the principal activity or activities
21 which such employee is employed to perform and activities which are
22 preliminary to or postliminary to said principal activity or
23 activities, subject to such exceptions as the commissioner may by
24 rules and regulations define.

25 **§21-5C-2. Minimum wages.**

26 (a) *Minimum wage:*

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

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

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

7 (4) After January 1, 2015, every employer shall pay to each of
8 his or her employees wages at a rate not less than \$8.00 per hour.

9 (5) After January 1, 2016, every employer shall pay to each of
10 his or her employees wages at a rate not less than \$8.75 per hour.

11 ~~(4) At such time as~~ (6) When the federal minimum hourly wage as
12 prescribed by 29 U.S.C. §206(a) (1) is equal to or greater than the
13 wage rate prescribed in the applicable provision of ~~subdivision (3)~~
14 ~~of~~ this subsection, every employer shall pay to each of his or her
15 employees wages at a rate of not less than the federal minimum
16 hourly wage as prescribed by 29 U.S.C. §206(a) (1). The minimum
17 wage rates required under this subparagraph shall be thereafter
18 adjusted in accordance with adjustments made in the federal minimum
19 hourly rate. The adoption of the federal minimum wage provided by
20 this subdivision includes only the federal minimum hourly rate
21 prescribed in 29 U.S.C. §206(a) (1) and does not include other wage
22 rates, or conditions, exclusions, or exceptions to the federal
23 minimum hourly wage rate. In addition, adoption of the federal
24 minimum hourly wage rate does not extend or modify the scope or
25 coverage of the minimum wage rate required under this subdivision.

26 (b) *Training wage:*

1 (1) Notwithstanding the provisions set forth in subsection (a)
2 of this section to the contrary, an employer may pay an employee
3 first hired after ~~June 30, 2006~~ January 1, 2015, a subminimum
4 training wage not less than ~~\$5.15~~ \$6.40 per hour.

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

7 (i) Who has attained or attains while an employee of the
8 employer, the age of twenty years; or

9 (ii) For a cumulative period of not more than ninety days per
10 employee: *Provided*, That if any business has not been in operation
11 for more than ninety days at the time the employer hired the
12 employee, the employer may pay the employee the subminimum training
13 wage set forth in subdivision (1) of this subsection for an
14 additional period not to exceed ninety days.

15 (3) ~~At such time as~~ When the federal subminimum training wage
16 as prescribed by 29 U.S.C. §206(g)(1) is equal to or greater than
17 the wage rate prescribed in subdivision (1) of this subsection,
18 every employer shall pay to each of his or her employees wages at
19 a rate of not less than the federal minimum hourly wage as
20 prescribed by 29 U.S.C. §206(g)(1). The minimum wage rates
21 required under this subparagraph shall be thereafter adjusted in
22 accordance with adjustments made in the federal minimum hourly
23 rate. The adoption of the federal minimum wage provided by this
24 subdivision includes only the federal minimum hourly rate
25 prescribed in 29 U.S.C. §206(g)(1) and does not include other wage
26 rates, or conditions, exclusions, or exceptions to the federal

1 minimum hourly wage rate. In addition, adoption of the federal
2 minimum hourly wage rate does not extend or modify the scope or
3 coverage of the minimum wage rate required under this subdivision.

4 (c) Notwithstanding any provision or definition to the
5 contrary, the wages established pursuant to this section ~~shall be~~
6 are applicable to all individuals employed by the State of West
7 Virginia, its agencies, and departments, regardless if ~~such~~ the
8 employee or employer are subject to any federal act relating to
9 minimum wage: *Provided*, That at no time ~~shall~~ may the minimum wage
10 established pursuant to this section fall below the federal minimum
11 hourly wage as prescribed by 29 U.S.C. §206(a) (1).

12 **§21-5C-4. Credits.**

13 In determining whether an employer is paying an employee wages
14 and overtime compensation as provided in sections two and three of
15 this article, there shall be provided in accordance with the
16 regulations which shall be promulgated by the commissioner a credit
17 to the employer of ~~twenty~~ seventy percent of the hourly rate of the
18 amount paid an employee customarily receiving gratuities, and a
19 reasonable credit for board and lodging furnished to an employee.
20 The commissioner shall promulgate regulations relating to maximum
21 allowances to employers for room and board furnished to employees:
22 *Provided*, That the employer shall be required to furnish to the
23 commissioner upon request, documentary evidence that the employee
24 is receiving at least ~~twenty~~ seventy percent of the minimum wage in
25 gratuities or is receiving room and lodging in accordance with the
26 rules and regulations promulgated by the commissioner.