

Senate Bill No. 411

(By Senators Yost, Miller, Cookman, Kessler (Mr. President),
Beach and Cann)

[Introduced January 22, 2014; referred to the Committee on Labor;
and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §21-5C-1 and §21-5C-2 of the Code of
West Virginia, 1931, as amended, all relating to raising the
minimum wage and indexing it to inflation; and removing
language exempting certain employers covered by federal
minimum wage from definition of "employer" for state minimum
wage purposes.

Be it enacted by the Legislature of West Virginia:

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

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

§21-5C-1. Definitions.

As used in this article:

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

3 (b) "Wage and Hour Director" means the Wage and Hour Director
4 appointed by the Commissioner of Labor as Chief of the Wage and
5 Hour Division.

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

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

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

22 (f) "Employee" includes any individual employed by an employer
23 but ~~shall~~ does not include: (1) Any individual employed by the
24 United States; (2) any individual engaged in the activities of an

1 educational, charitable, religious, fraternal or nonprofit
2 organization where the employer-employee relationship does not in
3 fact exist, or where the services rendered to ~~such~~ the
4 organizations are on a voluntary basis; (3) newsboys, shoeshine
5 boys, golf caddies, pinboys and pin chasers in bowling lanes; (4)
6 traveling salesmen and outside salesmen; (5) services performed by
7 an individual in the employ of his or her parent, son, daughter or
8 spouse; (6) any individual employed in a bona fide professional,
9 executive or administrative capacity; (7) any person whose
10 employment is for the purpose of on-the-job training; (8) any
11 person having a physical or mental handicap so severe as to prevent
12 his or her employment or employment training in any training or
13 employment facility other than a nonprofit sheltered workshop; (9)
14 any individual employed in a boys or girls summer camp; (10) any
15 person sixty-two years of age or over who receives old-age or
16 survivors benefits from the social security administration; (11)
17 any individual employed in agriculture as the word agriculture is
18 defined in the Fair Labor Standards Act of 1938, as amended; (12)
19 any individual employed as a fire fighter by the state or agency
20 thereof; (13) ushers in theaters; (14) any individual employed on
21 a part-time basis who is a student in any recognized school or
22 college; (15) any individual employed by a local or interurban
23 motorbus carrier; (16) so far as the maximum hours and overtime
24 compensation provisions of this article are concerned, any

1 salesman, parts man or mechanic primarily engaged in selling or
2 servicing automobiles, trailers, trucks, farm implements, aircraft
3 if employed by a nonmanufacturing establishment primarily engaged
4 in the business of selling ~~such~~ those vehicles to ultimate
5 purchasers; (17) any employee with respect to whom the United
6 States Department of Transportation has statutory authority to
7 establish qualifications and maximum hours of service; (18) any
8 person employed on a per diem basis by the Senate, the House of
9 Delegates, or the Joint Committee on Government and Finance of the
10 Legislature of West Virginia, other employees of the Senate or
11 House of Delegates designated by the presiding officer thereof, and
12 additional employees of the Joint Committee on Government and
13 Finance designated by ~~such~~ the joint committee; or (19) any person
14 employed as a seasonal employee of a commercial whitewater
15 outfitter where the seasonal employee works less than seven months
16 in any one calendar year and, in ~~such~~ that case, only for the
17 limited purpose of exempting the seasonal employee from the maximum
18 wage provisions of section three of this article.

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

23 (h) "Hours worked", in determining for the purposes of
24 sections two and three of this article, the hours for which an

1 employee is employed, there shall be excluded any time spent in
 2 changing clothes or washing at the beginning or end of each
 3 workday, time spent in walking, riding or traveling to and from the
 4 actual place of performance of the principal activity or activities
 5 which ~~such~~ the employee is employed to perform and activities which
 6 are preliminary to or postliminary to ~~said~~ the principal activity
 7 or activities, subject to ~~such~~ exceptions ~~as~~ the commissioner may
 8 by rules ~~and regulations~~ define.

9 **§21-5C-2. Minimum wages.**

10 (a) *Minimum wage:*

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

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

15 ~~(3)~~ (1) After June 30, 2008, every employer shall pay to each
 16 of his or her employees wages at a rate not less than \$7.25 per
 17 hour.

18 (2) After June 30, 2014, every employer shall pay to each of
 19 his or her employees wages at a rate not less than \$7.85 per hour.

20 (3) After June 30, 2015, every employer shall pay to each of
 21 his or her employees wages at a rate not less than \$8.25 per hour.

22 (4) Beginning on July 1, 2016 and no later than July 1 of each
 23 year after that, the minimum wage provided under this section shall
 24 be adjusted based upon the twelve-month percentage increase, if

1 any, in the Consumer Price Index for all urban consumers as
2 published by the Bureau of Labor Statistics of the United States
3 Department of Labor, based upon the most recent twelve-month period
4 for which data is available, and rounded up to the nearest five
5 cents. The adjusted minimum wage rate shall be published by October
6 1 of each year, and become effective as the new minimum wage rate
7 on July 1 of each year.

8 ~~(4) At such time as~~ (5) When the federal minimum hourly wage
9 as prescribed by 29 U.S.C. §206(a) (1) is equal to or greater than
10 the wage rate prescribed in subdivision ~~(3)~~ (2) of this subsection,
11 every employer shall pay to each of his or her employees wages at
12 a rate of not less than the federal minimum hourly wage as
13 prescribed by 29 U.S.C. §206(a) (1). The minimum wage rates
14 required under this subparagraph shall be thereafter adjusted in
15 accordance with adjustments made in the federal minimum hourly
16 rate. The adoption of the federal minimum wage provided by this
17 subdivision includes only the federal minimum hourly rate
18 prescribed in 29 U.S.C. §206(a) (1) and does not include other wage
19 rates, or conditions, exclusions, or exceptions to the federal
20 minimum hourly wage rate. In addition, adoption of the federal
21 minimum hourly wage rate does not extend or modify the scope or
22 coverage of the minimum wage rate required under this subdivision.

23 (b) *Training wage:*

24 (1) Notwithstanding the provisions set forth in subsection (a)

1 of this section to the contrary, an employer may pay an employee
2 first hired after June 30, 2006, a subminimum training wage not
3 less than \$5.15 per hour.

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

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

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

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

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

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

NOTE: The purpose of this bill is to raise the West Virginia minimum wage in two steps and to index it to inflation effective July 1, 2016. The bill also removes language exempting certain employers covered by federal minimum wage from the definition of employer for state minimum wage purposes.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.