

H. B. 4283

(By Delegates Barrett, Barill, Barker, Diserio,
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[Introduced January 24, 2014; referred to the
Committee on Industry and Labor then 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 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:

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

(b) "Wage and Hour Director" means the Wage and Hour Director

1 appointed by the Commissioner of Labor as Chief of the Wage and
2 Hour Division.

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

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

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

19 (f) "Employee" includes any individual employed by an employer
20 but ~~shall~~ does not include: (1) Any individual employed by the
21 United States; (2) any individual engaged in the activities of an
22 educational, charitable, religious, fraternal or nonprofit
23 organization where the employer-employee relationship does not in
24 fact exist, or where the services rendered to ~~such~~ the

1 organizations are on a voluntary basis; (3) newsboys, shoeshine
2 boys, golf caddies, pinboys and pin chasers in bowling lanes; (4)
3 traveling salesmen and outside salesmen; (5) services performed by
4 an individual in the employ of his or her parent, son, daughter or
5 spouse; (6) any individual employed in a bona fide professional,
6 executive or administrative capacity; (7) any person whose
7 employment is for the purpose of on-the-job training; (8) any
8 person having a physical or mental handicap so severe as to prevent
9 his or her employment or employment training in any training or
10 employment facility other than a nonprofit sheltered workshop; (9)
11 any individual employed in a boys or girls summer camp; (10) any
12 person sixty-two years of age or over who receives old-age or
13 survivors benefits from the social security administration; (11)
14 any individual employed in agriculture as the word agriculture is
15 defined in the Fair Labor Standards Act of 1938, as amended; (12)
16 any individual employed as a fire fighter by the state or agency
17 thereof; (13) ushers in theaters; (14) any individual employed on
18 a part-time basis who is a student in any recognized school or
19 college; (15) any individual employed by a local or interurban
20 motorbus carrier; (16) so far as the maximum hours and overtime
21 compensation provisions of this article are concerned, any
22 salesman, parts man or mechanic primarily engaged in selling or
23 servicing automobiles, trailers, trucks, farm implements, aircraft
24 if employed by a nonmanufacturing establishment primarily engaged

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

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

20 (h) "Hours worked", in determining for the purposes of
21 sections two and three of this article, the hours for which an
22 employee is employed, there shall be excluded any time spent in
23 changing clothes or washing at the beginning or end of each
24 workday, time spent in walking, riding or traveling to and from the

1 actual place of performance of the principal activity or activities
2 which ~~such~~ the employee is employed to perform and activities which
3 are preliminary to or postliminary to ~~said~~ the principal activity
4 or activities, subject to ~~such~~ exceptions ~~as~~ the commissioner may
5 by rules ~~and regulations~~ define.

6 **§21-5C-2. Minimum wages.**

7 (a) *Minimum wage:*

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

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

12 ~~(3)~~ (1) After June 30, 2008, every employer shall pay to each
13 of his or her employees wages at a rate not less than \$7.25 per
14 hour.

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

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

19 ~~(4) At such time as~~ (4) When the federal minimum hourly wage
20 as prescribed by 29 U.S.C. §206(a)(1) is equal to or greater than
21 the wage rate prescribed in subdivision ~~(3)~~ (2) of this subsection,
22 every employer shall pay to each of his or her employees wages at
23 a rate of not less than the federal minimum hourly wage as
24 prescribed by 29 U.S.C. §206(a)(1). The minimum wage rates

1 required under this subparagraph shall be thereafter adjusted in
2 accordance with adjustments made in the federal minimum hourly
3 rate. The adoption of the federal minimum wage provided by this
4 subdivision includes only the federal minimum hourly rate
5 prescribed in 29 U.S.C. §206(a)(1) and does not include other wage
6 rates, or conditions, exclusions, or exceptions to the federal
7 minimum hourly wage rate. In addition, adoption of the federal
8 minimum hourly wage rate does not extend or modify the scope or
9 coverage of the minimum wage rate required under this subdivision.

10 (b) *Training wage:*

11 (1) Notwithstanding the provisions set forth in subsection (a)
12 of this section to the contrary, an employer may pay an employee
13 first hired after June 30, 2006, a subminimum training wage not
14 less than \$5.15 per hour.

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

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

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

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

16 (c) Notwithstanding any provision or definition to the
17 contrary, the wages established pursuant to this section ~~shall be~~
18 are applicable to all individuals employed by the State of West
19 Virginia, its agencies, and departments, regardless if ~~such~~ the
20 employee or employer are subject to any federal act relating to
21 minimum wage: *Provided*, That at no time ~~shall~~ may the minimum wage
22 established pursuant to this section fall below the federal minimum
23 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. 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.