

1 ENROLLED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 4283**

5 (By Delegates Barrett, Barill, Barker, Diserio, Lawrence,  
6 Manypenny, Marcum, D. Poling, Reynolds, Sponaugle and Young)  
7

8 [Passed March 8, 2014; in effect ninety days from passage.]  
9

10 AN ACT 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.

13 (f) "Employee" includes any individual employed by an  
14 employer but shall not include: (1) Any individual employed by the  
15 United States; (2) any individual engaged in the activities of an  
16 educational, charitable, religious, fraternal or nonprofit  
17 organization where the employer-employee relationship does not in  
18 fact exist, or where the services rendered to such organizations  
19 are on a voluntary basis; (3) newsboys, shoeshine boys, golf  
20 caddies, pinboys and pin chasers in bowling lanes; (4) traveling  
21 salesmen and outside salesmen; (5) services performed by an  
22 individual in the employ of his or her parent, son, daughter or  
23 spouse; (6) any individual employed in a bona fide professional,  
24 executive or administrative capacity; (7) any person whose  
25 employment is for the purpose of on-the-job training; (8) any  
26 person having a physical or mental handicap so severe as to prevent

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

1 employed as a seasonal employee of a commercial whitewater  
2 outfitter where the seasonal employee works less than seven months  
3 in any one calendar year and, in such case, only for the limited  
4 purpose of exempting the seasonal employee from the maximum wage  
5 provisions of section three of this article.

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

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

20 **§21-5C-2. Minimum wages.**

21 (a) *Minimum wage:*

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

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

26 (3) After June 30, 2008, every employer shall pay to each of

1 his or her employees wages at a rate not less than \$7.25 per hour.

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

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

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

21 (b) *Training wage:*

22 (1) Notwithstanding the provisions set forth in subsection (a)  
23 of this section to the contrary, an employer may pay an employee  
24 first hired after January 1, 2015, a subminimum training wage not  
25 less than \$6.40 per hour.

26 (2) An employer may not pay the subminimum training wage set

1     forth in subdivision (1) of this subsection to any individual:

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

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

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

25            (c) Notwithstanding any provision or definition to the  
26     contrary, the wages established pursuant to this section are

1 applicable to all individuals employed by the State of West  
2 Virginia, its agencies, and departments, regardless if the employee  
3 or employer are subject to any federal act relating to minimum  
4 wage: *Provided*, That at no time may the minimum wage established  
5 pursuant to this section fall below the federal minimum hourly wage  
6 as prescribed by 29 U.S.C. §206(a) (1).

7 **§21-5C-4. Credits.**

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