

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 606**

BY SENATORS MAYNARD AND PLYMALE

[Introduced March 15, 2017; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §21-5C-1 of the Code of West Virginia, 1931, as amended, relating  
 2 to adding an exception for seasonal amusement park workers from the definition of  
 3 "employee".

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

1 That §21-5C-1 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted 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 his or her duly authorized  
 3 representatives.

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

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

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

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

17 of section three of this article, the term "employer" does not include any individual, partnership,  
18 association, corporation, person or group of persons or similar unit if eighty percent of the persons  
19 employed by him or her are subject to any federal act relating to maximum hours and overtime  
20 compensation.

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

43 authority to establish qualifications and maximum hours of service; (18) any person employed on  
44 a per diem basis by the Senate, the House of Delegates, or the Joint Committee on Government  
45 and Finance of the Legislature of West Virginia, other employees of the Senate or House of  
46 Delegates designated by the presiding officer thereof, and additional employees of the Joint  
47 Committee on Government and Finance designated by such joint committee; (19) any person  
48 employed as a seasonal employee of a commercial whitewater outfitter where the seasonal  
49 employee works less than seven months in any one calendar year and, in such case, only for the  
50 limited purpose of exempting the seasonal employee from the maximum wage provisions of  
51 section three of this article; and (20) any person employed as a seasonal employee of an  
52 amusement park.

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

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

NOTE: The purpose of this bill is to exclude seasonal amusement park workers from the definition of "employee".

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