

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 428

BY SENATORS GEFFERT, LINDSAY, STOLLINGS, BEACH,

AND ROMANO

[Introduced January 19, 2022; referred
to the Committee on the Workforce; and then to the
Committee on Finance]

1 A BILL to amend and reenact §21-5C-1 and §21-5C-2 of the Code of West Virginia, 1931, as
2 amended; all relating generally to minimum wage; deleting the proviso excluding
3 employers who have 80 percent of their employees subject to a federal act relating to
4 maximum hours and overtime compensation; increasing the state minimum wage to
5 \$10.50 after December 31, 2022; and requiring the minimum wage to be annually
6 increased with the rate of inflation as determined by the consumer price index and on the
7 thirtieth day of September beginning in 2024, to be effective after the following thirty-first
8 day of December.

Be it enacted by the Legislature of West Virginia:

**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
13 establishment: *Provided*, That prior to January 1, 2015, the term "employer" does not include any

14 individual, partnership, association, corporation, person or group of persons, or similar unit if 80
15 percent of the persons employed by him or her are subject to any federal act relating to minimum
16 wage, maximum hours, and overtime compensation. ~~Provided, however, That after December 31,~~
17 ~~2014, for the purposes of §21-5C-3 of this code, the term “employer” does not include any~~
18 ~~individual, partnership, association, corporation, person or group of persons, or similar unit if 80~~
19 ~~percent of the persons employed by him or her are subject to any federal act relating to maximum~~
20 ~~hours and overtime 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
26 in 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 62 years of age or over who receives old-age or
33 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, or 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 hours provisions of §21-
51 5C-3 of this code; or (20) any person employed as a seasonal employee of an amusement park
52 where the seasonal employee works less than seven months in any one calendar year and, in
53 such case, only for the limited purpose of exempting the seasonal employee from the maximum
54 hours provisions of §21-5C-3 of this code.

55 (g) "Work week" means a regularly recurring period of 168 hours in the form of seven
56 consecutive 24-hour periods, need not coincide with the calendar week, and may begin any day
57 of the calendar week and any hour of the day.

58 (h) "Hours worked" means the hours for which an employee is employed: *Provided*, That
59 in determining hours worked for the purposes of §21-5C-2 and §21-5C-3 of this code, there shall
60 be excluded any time spent in changing clothes or washing at the beginning or end of each
61 workday, time spent in walking, riding, or traveling to and from the actual place of performance of
62 the principal activity or activities which the employee is employed to perform and activities which
63 are preliminary to or postliminary to the principal activity or activities, subject to such exceptions
64 as the commissioner may by rules define.

65 (i) "Amusement park" means any person or organization which holds a permit for the

66 operation of an amusement ride or amusement attraction under §21-10-1 *et seq.* of this code.

§21-5C-2. Minimum wages.

1 (a) Minimum wage:

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

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

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

8 (4) After December 31, 2014, every employer shall pay to each of his or her employees
9 wages at a rate not less than \$8.00 per hour.

10 (5) After December 31, 2015, every employer shall pay to each of his or her employees
11 wages at a rate not less than \$8.75 per hour.

12 (6) After December 31, 2022, every employer shall pay to each of his or her employees
13 wages at a rate not less than \$10.50 per hour.

14 (7) On the thirtieth day of each September, beginning in 2024, the minimum wage rate
15 shall be increased effective after December 31, 2024, by the rate of inflation for the twelve month
16 period prior to that September according to the consumer price index or its successor index for
17 all employees.

18 ~~(6)~~(8) When the federal minimum hourly wage as prescribed by 29 U.S.C. § 206(a)(1) is
19 equal to or greater than the wage rate prescribed in the applicable provision of this subsection,
20 every employer shall pay to each of his or her employees wages at a rate of not less than the
21 federal minimum hourly wage as prescribed by 29 U.S.C. § 206(a)(1). The minimum wage rates
22 required under this subsection shall be thereafter adjusted in accordance with adjustments made
23 in the federal minimum hourly rate. The adoption of the federal minimum wage provided by this
24 subsection includes only the federal minimum hourly rate prescribed in 29 U.S.C. § 206(a)(1) and

25 does not include other wage rates, or conditions, exclusions, or exceptions to the federal minimum
26 hourly wage rate. In addition, adoption of the federal minimum hourly wage rate does not extend
27 or modify the scope or coverage of the minimum wage rate required under this subsection.

28 (b) Training wage:

29 (1) Notwithstanding the provisions set forth in subsection (a) of this section to the contrary,
30 an employer may pay an employee first hired after June 30, 2006, a subminimum training wage
31 not less than \$5.15 per hour: *Provided*, That an employer may pay an employee first hired after
32 December 31, 2014, a subminimum training wage not less than \$6.40 per hour.

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

35 (A) Who has attained or attains while an employee of the employer, the age of twenty
36 years; or

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

41 (3) When the federal subminimum training wage as prescribed by 29 U.S.C. § 206(g)(1) is
42 equal to or greater than the wage rate prescribed in subdivision (1) of this subsection, every
43 employer shall pay to each of his or her employees wages at a rate of not less than the federal
44 subminimum training wage as prescribed by 29 U.S.C. § 206(g)(1). The subminimum training
45 wage rates required under this subsection shall be thereafter adjusted in accordance with
46 adjustments made in the federal subminimum training wage rate. The adoption of the federal
47 subminimum training wage provided by this subsection includes only the federal subminimum
48 training wage rate prescribed in 29 U.S.C. § 206(g)(1) and does not include other wage rates, or
49 conditions, exclusions, or exceptions to the federal subminimum training wage rate. In addition,
50 adoption of the federal subminimum training wage rate does not extend or modify the scope or

51 coverage of the subminimum training wage rate required under this subsection.

52 (c) Notwithstanding any provision or definition to the contrary, the wages established
53 pursuant to this section are applicable to all individuals employed by the State of West Virginia,
54 its agencies and departments, regardless if the employee or employer are subject to any federal
55 act relating to minimum wage: *Provided*, That at no time may the minimum wage established
56 pursuant to this section fall below the federal minimum hourly wage as prescribed by 29 U.S.C.
57 § 206(a)(1), and at no time may the subminimum training wage established pursuant to this
58 section fall below the federal subminimum training wage rate as prescribed by 29 U.S.C. §
59 206(g)(1).

NOTE: The purpose of this bill is to remove the proviso excluding employers who has eighty percent of his or her employees subject to a federal act relating to maximum hours and overtime compensation, increase the minimum wage to \$10.50 after December 31, 2022, and by requiring the minimum wage to be annually increased with the rate of inflation as determined by the consumer price index and on the thirtieth day of September beginning in 2024 to be effective after the following thirty-first day of December.

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