

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1966

ENROLLED

Committee Substitute, House
HOUSE BILL No. *217*

(By Mr. *Speaker (interim)* & Mr. *Cann*)

PASSED *February 8,* 1966

In Effect *Ninety Days from* Passage



FILED IN THE OFFICE

ROBERT D. BAILEY

SECRETARY OF STATE

FILED *2-15-66*

#217

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 217
(Originating in the House Committee on the Judiciary)

[Passed February 8, 1966; in effect ninety days from passage.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-c, relating to minimum wage and maximum hour standards for certain employees, providing certain powers and duties of the commissioner of labor, the establishing of a wage and hour division of the department of labor, providing employee's remedies and a limitation of action thereon; injunction and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended

by adding thereto a new article, designated article five-c, to read as follows:

**Article 5-c. Minimum Wage and Maximum Hours Standards
for Employees.**

Section 1. Definitions.—As used in this article:

2 (a) “Commissioner” means the commissioner of la-
3 bor or his duly authorized representatives.

4 (b) “Wage and Hour Director” means the wage and
5 hour director appointed by the commissioner of labor
6 as chief of the wage and hour division.

7 (c) “Wage” means compensation due an employee
8 by reason of his employment.

9 (d) “Employ” means to hire or permit to work.

10 (e) “Employer” includes the state of West Virginia,
11 its agencies, departments, and all its political subdivi-
12 sions, any individual, partnership, association, public or
13 private corporation, or any person or group of persons
14 acting directly or indirectly in the interest of any
15 employer in relation to an employee, and who employs
16 during any calendar week six or more employees as herein
17 defined in any one separate, distinct and permanent loca-

18 tion or business establishment: *Provided*, That the term
 19 “employer” shall not include any individual, partner-
 20 ship, association, corporation, person or group of persons
 21 or similar unit if eighty per cent of the persons employed
 22 by him are subject to any federal act relating to mini-
 23 mum wage, maximum hours and overtime compensation.

24 (f) “Employee” includes any individual employed by
 25 an employer but shall not include (1) any individual
 26 employed in agriculture as the word agriculture is de-
 27 fined in the Fair Labor Standards Act of 1938, as amended;
 28 (2) any individual employed by the United States and
 29 any individual employed as a fire fighter by the state or
 30 any agency thereof; (3) any individual subject to any
 31 federal act relating to minimum wage, maximum hours
 32 and overtime compensation; (4) any individual engaged
 33 in the activities of an educational, charitable, reli-
 34 gious, fraternal, or nonprofit organization where the
 35 employer-employee relationship does not in fact exist,
 36 or where the services rendered to such organizations are
 37 on a voluntary basis; (5) newsboys, shoeshine boys, golf
 38 caddies, pin boys and pin chasers in bowling lanes, ushers

39 in theatres; (6) traveling salesmen or outside salesmen;
40 (7) services performed by an individual in the employ
41 of his parent, son, daughter or spouse; (8) any individual
42 employed in a bona fide professional, executive or admin-
43 istrative capacity; (9) any individual employed on a
44 part-time basis and who is a student at any recognized
45 school or college; (10) any individual engaged in edu-
46 cational programs in any hospital licensed by the state
47 of West Virginia; (11) any individual employed in a non-
48 profit nursing home, or a nursing home licensed by the
49 state of West Virginia and primarily engaged in the care
50 of the aged or infirmed; (12) any person whose employ-
51 ment is for the purpose of on-the-job training; (13) any
52 person having a physical or mental handicap so severe
53 as to prevent his employment or employment training
54 in any training or employment facility other than a non-
55 profit sheltered workshop; (14) any individual employed
56 by a local or interurban motorbus carrier; (15) any indi-
57 vidual employed in a boys or girls summer camp; (16)
58 any person sixty-two years of age or over who receives
59 old age or survivors benefits from the social security
60 administration.

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

66 (h) "Hours Worked," in determining for the purposes
67 of sections two and three, the hours for which an em-
68 ployee is employed, there shall be excluded any time
69 spent in changing clothes or washing at the beginning
70 or end of each workday, time spent in walking, riding
71 or traveling to and from the actual place of performance
72 of the principal activity or activities which such employee
73 is employed to perform and activities which are prelimi-
74 nary to or postliminary to said principal activity or activi-
75 ties, subject to such exceptions as the commissioner may
76 by rules and regulations define.

Sec. 2. Payment of Minimum Wages.—On January one,
2 one thousand nine hundred sixty-seven, and thereafter,
3 every employer shall pay to each of his employees wages
4 at a rate not less than one dollar an hour.

Sec. 3. Maximum Hours.—(a) On and after January

2 one, one thousand nine hundred sixty-seven, no employer
3 shall employ any of his employees for a workweek longer
4 than forty-eight hours, unless such employee receives
5 compensation for his employment in excess of the hours
6 above specified at a rate not less than one and one-half
7 times the regular rate at which he is employed.

8 (b) As used in this section the "regular rate" at
9 which an employee is employed shall be deemed to
10 include all remuneration for employment paid to, or on
11 behalf of, the employee, but shall not be deemed to in-
12 clude:

13 (1) Sums paid as gifts; payments in the nature of gifts
14 made at Christmas time or on other special occasions, as
15 a reward for service, the amounts of which are not meas-
16 ured by or dependent on hours worked, production, or
17 efficiency;

18 (2) Payments made for occasional periods when no
19 work is performed due to vacation, holiday, illness, fail-
20 ure of the employer to provide sufficient work, or other
21 similar cause; reasonable payments for traveling ex-
22 penses, or other expenses, incurred by an employee in

23 the furtherance of his employer's interests and properly
24 reimbursable by the employer; and other similar pay-
25 ments to an employee which are not made as compen-
26 sation for his hours of employment;

27 (3) Sums paid in recognition of services performed
28 during a given period if either, (a) both the fact that
29 payment is to be made and the amount of the payment
30 are determined at the sole discretion of the employer at
31 or near the end of the period and not pursuant to any
32 prior contract, agreement, or promise causing the em-
33 ployee to expect such payments regularly; or (b) the
34 payments are made pursuant to a bona fide profit-shar-
35 ing plan or trust or bona fide thrift or savings plan, meet-
36 ing the requirements of the commissioner set forth in
37 appropriate regulation which he shall issue, having due
38 regard among other relevant factors, to the extent to
39 which the amounts paid to the employee are determined
40 without regard to hours of work, production, or effi-
41 ciency; or (c) the payments are talent fees (as such talent
42 fees are defined and delimited by regulations of the com-
43 missioner) paid to performers, including announcers, on
44 radio and television programs;

45 (4) Contributions irrevocably made by an employer
46 to a trustee or third person pursuant to a bona fide plan
47 for providing old-age, retirement, life, accident, or health
48 insurance or similar benefits for employees;

49 (5) Extra compensation provided by a premium rate
50 paid for certain hours worked by the employee in any
51 day or workweek because such hours are hours worked
52 in excess of eight in a day or in excess of the maximum
53 workweek applicable to such employee under subsec-
54 tion (a) or in excess of the employee's normal working
55 hours or regular working hours, as the case may be;

56 (6) Extra compensation provided by a premium rate
57 paid for work by the employee on Saturdays, Sundays,
58 holidays, or regular days of rest, or on the sixth or sev-
59 enth day of the workweek, where such premium rate
60 is not less than one and one-half times the rate estab-
61 lished in good faith for like work performed in non-
62 overtime hours on other days; or

63 (7) Extra compensation provided by a premium rate
64 paid to the employee, in pursuance of an applicable
65 employment contract or collective-bargaining agreement,

66 for work outside of the hours established in good faith
 67 by the contract or agreement as the basic, normal, or
 68 regular workweek where such premium rate is not less
 69 than one and one-half times the rate established in good
 70 faith by the contract or agreement for like work per-
 71 formed during such workweek.

72 (c) No employer shall be deemed to have violated sub-
 73 section (a) by employing any employee for a workweek
 74 in excess of the maximum workweek applicable to such
 75 employee under subsection (a) if such employee is em-
 76 ployed pursuant to a bona fide individual contract, or
 77 pursuant to an agreement made as a result of collective
 78 bargaining by representatives of employees, if the duties
 79 of such employee necessitate irregular hours of work,
 80 and the contract or agreement (1) specifies a regular
 81 rate of pay of not less than the minimum hourly rate
 82 provided in section two and compensation ~~at~~^{of} not less 640
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 83 than one and one-half times such rate for all hours worked
 84 in excess of such maximum workweek, and (2) provides
 85 a weekly guaranty of pay for not more than sixty hours
 86 based on the rates so specified.

87 (d) No employer shall be deemed to have violated
88 subsection (a) by employing any employee for a work-
89 week in excess of the maximum workweek applicable
90 to such employee under such subsection if, pursuant to
91 an agreement or understanding arrived at between the
92 employer and the employee before performance of the
93 work, the amount paid to the employee for the number
94 of hours worked by him in such workweek in excess of
95 the maximum workweek applicable to such employee
96 under such subsection.

97 (1) In the case of an employee employed at piece
98 rates, is computed at piece rates not less than one and
99 one-half times the bona fide piece rates applicable to the
100 same work when performed during non-overtime hours;
101 or

102 (2) In the case of an employee performing two or
103 more kinds of work for which different hourly or piece
104 rates have been established, is computed at rates not
105 less than one and one-half times such bona fide rates
106 applicable to the same work when performed during
107 non-overtime hours; or

108 (3) Is computed at a rate not less than one and one-
109 half times the rate established by such agreement or
110 understanding as the basic rate to be used in computing
111 overtime compensation thereunder: *Provided*, That the
112 rate so established shall be authorized by regulation by
113 the commissioner as being substantially equivalent to
114 the average hourly earnings of the employee, exclusive
115 of overtime premiums, in the particular work over a
116 representative period of time; and if (i) the employee's
117 average hourly earnings for the workweek exclusive of
118 payments described in paragraphs (1) through (7) of
119 subsection (b) are not less than the minimum hourly
120 rate required by applicable law, and (ii) extra over-
121 time compensation is properly computed and paid on
122 other forms of additional pay required to be included
123 in computing the regular rate.

124 (e) Extra compensation paid as described in para-
125 graphs (5), (6), and (7) of subsection (b) shall be credit-
126 able toward overtime compensation payable pursuant
127 to this section.

Sec. 4. Credits.—In determining whether an employer

2 is paying an employee a wage rate of not less than one
3 dollar an hour or at a rate of one and one-half times his
4 regular rate for work in excess of forty-eight hours in
5 one workweek, there shall be provided in accordance
6 with regulations which shall be promulgated by the com-
7 missioner a credit of forty cents an hour for an employee
8 customarily receiving gratuities, and a reasonable credit
9 for board and lodging furnished to the employee. The
10 commissioner shall promulgate regulations relating to
11 maximum allowances to employees for room and board
12 furnished to employees.

Sec. 5. Keeping of Records.—Every employer subject
2 to the provisions of this article shall make or cause to
3 be made, and shall keep and preserve at his place of
4 business for a period of two years, a written record or
5 records of the name and address of each of his employees
6 as herein defined, his rate of pay, hours of employment,
7 payroll deductions, and amount paid him for each pay
8 period.

Sec. 6. Duties and Powers of Commissioner of Labor.
2 —(a) It shall be the duty of the commissioner to enforce

3 and administer the provisions of this article, and to pro-
4 mulgate such rules and regulations, in accordance with
5 chapter twenty-nine-a of the code of West Virginia, one
6 thousand nine hundred thirty-one, as amended, as shall
7 be needful to give effect to the provisions of this article.

8 (b) The commissioner is authorized at reasonable
9 times to enter the place of business of an employer sub-
10 ject to the provisions of this article, for purposes of:

11 (1) Inspecting and examining, and copying, photograph-
12 ing or otherwise reproducing all payroll records of the em-
13 ployer directly relating to wages and hours of employment
14 of persons employed by him; (2) questioning or otherwise
15 examining persons employed by the employer on the
16 subject of wages and hours of their employment, and
17 gratuities received or earned in such employment.

18 (c) The commissioner is authorized and empowered
19 to make investigations to determine whether there is
20 reasonable cause to believe that any person is an employer
21 as defined in section one of this article, or whether there
22 is reasonable cause to believe that any provision of this
23 article is being or has been violated.

24 (d) The commissioner is authorized and empowered
25 to file criminal complaints against persons whom the com-
26 missioner has reasonable cause to believe have com-
27 mitted any offense created or defined by the provisions
28 of this article.

29 (e) The commissioner is authorized and empowered
30 to institute civil actions seeking appropriate injunctive
31 relief to compel an employer subject to this article to
32 comply with the provisions of this article, but nothing
33 herein shall authorize or require the commissioner to
34 seek or obtain recovery of unpaid wages for the benefit
35 of any employee or employees.

Sec. 7. Offenses and Penalties.—(a) Any employer
2 who wilfully discharges or in any manner wilfully dis-
3 criminate against any employee because such employee
4 has made complaint to his employer, or to the commis-
5 sioner, that he has not been paid wages in accordance
6 with the wage and hour provisions of this article, or
7 because such employee has instituted or is about to insti-
8 tute any civil action, or file any petition or criminal com-
9 plaint against the employer by reason of the provisions

10 of this article, or because such employee has testified
 11 or is about to testify in any administrative proceeding,
 12 civil action, or criminal action under this article, shall
 13 be guilty of a misdemeanor, and, upon conviction thereof,
 14 shall be fined not less than one hundred dollars nor more
 15 than five hundred dollars.

16 (b) Any employer who wilfully violates any other
 17 provision of this article shall be guilty of a misdemeanor,
 18 and, upon conviction thereof, shall be fined not more
 19 than one hundred dollars.

Sec. 8. Civil Remedy of Employee, Limitation of

2 **Actions.**—Any employer who pays an employee less
 3 than the applicable wage rate to which such employee
 4 is entitled under or by virtue of this article shall be
 5 liable to such employee for the unpaid wages; an agree-
 6 ment by an employee to work for less than the appli-
 7 cable wage rate is hereby declared by the Legislature
 8 of West Virginia to be against public policy and unen-
 9 forceable.

10 In any such action the amount recoverable shall be
 11 limited to such unpaid wages as should have been paid

12 by the employer within two years next preceding the
13 commencement of such action. Nothing in this article
14 shall be construed to limit the right of an employee to
15 recover upon a contract of employment.

Sec. 9. Wage and Hour Division; Wage and Hour Director; Duties.—The commissioner of labor shall establish within the department of labor a division to be known as the wage and hour division, which shall be a separate administrative division with respect to personnel and duties. The division shall be in charge of a wage and hour director. The wage and hour director, employees, and representatives within the wage and hour division shall, under the direction of the commissioner of labor, carry out such duties and functions as are necessary to effectuate the provisions of this article. The wage and hour director, representatives and employees within the wage and hour division shall be selected by the commissioner of labor in the same manner as other employees of the department of labor.

Sec. 10. Relation to Other Laws.—Any standards relating to minimum wages, maximum hours, overtime

3 compensation or other working conditions in effect under
 4 any other law of this state on the effective date of this
 5 article, which are more favorable to employees than
 6 those applicable to such employees under this article
 7 shall not be deemed to be amended, rescinded or other-
 8 wise affected by this article but shall continue in full
 9 force and effect and may be enforced as provided by law.

Sec. 11. Severability.—If any provision of this article
 2 or the application thereof to any person or circumstance
 3 is held invalid, the invalidity shall not affect other pro-
 4 visions or applications of the article which can be given
 5 effect without the invalid provision or application, and
 6 to this end the provisions of this article are severable.

Enr. Com. Sub. for H. B. No. 217] 18

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

O. Ray Parker

Chairman Senate Committee

James W. Loop

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Harmon Meyer

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

Howard Roberson

President of the Senate

H. Raban White

Speaker House of Delegates

FEB 15 2 03 PM '66

OFFICE OF THE GOVERNOR

The within *Approved* this the *15th*
day of *February*, 1966.

Herbert C. Smith

Governor

PRESENTED TO THE
GOVERNOR

Date 2/14/66

Time 1:30 PM

FILED

FEB 15 7 54 PM '66

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA