WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1966

ENROLLED

HOUSE BILL No. 217

(Passed February 28, 1966)

In Effect Ninety Days from Passage

FILED IN THE OFFICE
BUD DEPOY
SECRETARY OF STATE
1966 2-15-66
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:

(a) "Commissioner" means the commissioner of labor or his duly authorized representatives.

(b) "Wage and Hour Director" means the wage and hour director appointed by the commissioner of labor as chief of the wage and hour division.

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

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

(e) "Employer" includes the state of West Virginia, its agencies, departments, and all its political subdivisions, any individual, partnership, association, public or private corporation, or any person or group of persons acting directly or indirectly in the interest of any employer in relation to an employee, and who employs during any calendar week six or more employees as herein defined in any one separate, distinct and permanent loca-
Provided, That the term "employer" shall not include any individual, partnership, association, corporation, person or group of persons or similar unit if eighty per cent of the persons employed by him are subject to any federal act relating to minimum wage, maximum hours and overtime compensation.

(f) "Employee" includes any individual employed by an employer but shall not include (1) any individual employed in agriculture as the word agriculture is defined in the Fair Labor Standards Act of 1938, as amended; (2) any individual employed by the United States and any individual employed as a fire fighter by the state or any agency thereof; (3) any individual subject to any federal act relating to minimum wage, maximum hours and overtime compensation; (4) any individual engaged in the activities of an educational, charitable, religious, fraternal, or nonprofit organization where the employer-employee relationship does not in fact exist, or where the services rendered to such organizations are on a voluntary basis; (5) newsboys, shoeshine boys, golf caddies, pin boys and pin chasers in bowling lanes, ushers
in theatres; (6) traveling salesmen or outside salesmen; (7) services performed by an individual in the employ of his parent, son, daughter or spouse; (8) any individual employed in a bona fide professional, executive or administrative capacity; (9) any individual employed on a part-time basis and who is a student at any recognized school or college; (10) any individual engaged in educational programs in any hospital licensed by the state of West Virginia; (11) any individual employed in a non-profit nursing home, or a nursing home licensed by the state of West Virginia and primarily engaged in the care of the aged or infirmed; (12) any person whose employment is for the purpose of on-the-job training; (13) any person having a physical or mental handicap so severe as to prevent his employment or employment training in any training or employment facility other than a non-profit sheltered workshop; (14) any individual employed by a local or interurban motorbus carrier; (15) any individual employed in a boys or girls summer camp; (16) any person sixty-two years of age or over who receives old age or survivors benefits from the social security administration.
(g) "Workweek" means a regularly recurring period of one hundred sixty-eight hours in the form of seven consecutive twenty-four hour periods, need not coincide with the calendar week, and may begin any day of the calendar week and any hour of the day.

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

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

Sec. 3. Maximum Hours.—(a) On and after January
one, one thousand nine hundred sixty-seven, no employer shall employ any of his employees for a workweek longer than forty-eight hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

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

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

(2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in
the furtherance of his employer's interests and properly
reimbursable by the employer; and other similar pay-
ments to an employee which are not made as compen-
sation for his hours of employment;

(3) Sums paid in recognition of services performed
during a given period if either, (a) both the fact that
payment is to be made and the amount of the payment
are determined at the sole discretion of the employer at
or near the end of the period and not pursuant to any
prior contract, agreement, or promise causing the em-
ployee to expect such payments regularly; or (b) the
payments are made pursuant to a bona fide profit-shar-
ing plan or trust or bona fide thrift or savings plan, meet-
ing the requirements of the commissioner set forth in
appropriate regulation which he shall issue, having due
regard among other relevant factors, to the extent to
which the amounts paid to the employee are determined
without regard to hours of work, production, or effi-
ciency; or (c) the payments are talent fees (as such talent
fees are defined and delimited by regulations of the com-
missioner) paid to performers, including announcers, on
radio and television programs;
(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in non-overtime hours on other days; or

(7) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement,
for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workweek where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workweek.

(c) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in section two and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.
(d) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection.

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

(2) In the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during non-overtime hours; or
(3) Is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: Provided, That the rate so established shall be authorized by regulation by the commissioner as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time; and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (b) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(e) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (b) shall be creditable toward overtime compensation payable pursuant to this section.

Sec. 4. Credits.—In determining whether an employer
is paying an employee a wage rate of not less than one
dollar an hour or at a rate of one and one-half times his
regular rate for work in excess of forty-eight hours in
one workweek, there shall be provided in accordance
with regulations which shall be promulgated by the com-
missioner a credit of forty cents an hour for an employee
customarily receiving gratuities, and a reasonable credit
for board and lodging furnished to the employee. The
commissioner shall promulgate regulations relating to
maximum allowances to employees for room and board
furnished to employees.

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

Sec. 6. Duties and Powers of Commissioner of Labor.

—(a) It shall be the duty of the commissioner to enforce
and administer the provisions of this article, and to pro-
mulgate such rules and regulations, in accordance with
chapter twenty-nine-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, as shall
be needful to give effect to the provisions of this article.
(b) The commissioner is authorized at reasonable
times to enter the place of business of an employer sub-
ject to the provisions of this article, for purposes of:
(1) Inspecting and examining, and copying, photograph-
ing or otherwise reproducing all payroll records of the em-
ployer directly relating to wages and hours of employment
of persons employed by him; (2) questioning or otherwise
examining persons employed by the employer on the
subject of wages and hours of their employment, and
gratuities received or earned in such employment.
(c) The commissioner is authorized and empowered
to make investigations to determine whether there is
reasonable cause to believe that any person is an employer
as defined in section one of this article, or whether there
is reasonable cause to believe that any provision of this
article is being or has been violated.
(d) The commissioner is authorized and empowered to file criminal complaints against persons whom the commissioner has reasonable cause to believe have committed any offense created or defined by the provisions of this article.

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

Sec. 7. Offenses and Penalties.—(a) Any employer who wilfully discharges or in any manner wilfully discriminates against any employee because such employee has made complaint to his employer, or to the commissioner, that he has not been paid wages in accordance with the wage and hour provisions of this article, or because such employee has instituted or is about to institute any civil action, or file any petition or criminal complaint against the employer by reason of the provisions
of this article, or because such employee has testified
or is about to testify in any administrative proceeding,
civil action, or criminal action under this article, shall
be guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not less than one hundred dollars nor more
than five hundred dollars.

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

Sec. 8. Civil Remedy of Employee, Limitation of

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

In any such action the amount recoverable shall be
limited to such unpaid wages as should have been paid
by the employer within two years next preceding the
commencement of such action. Nothing in this article
shall be construed to limit the right of an employee to
recover upon a contract of employment.

Sec. 9. Wage and Hour Division; Wage and Hour Di-
rector; Duties.—The commissioner of labor shall estab-
lish 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, em-
ployees, 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 re-
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compensation or other working conditions in effect under
any other law of this state on the effective date of this
article, which are more favorable to employees than
those applicable to such employees under this article
shall not be deemed to be amended, rescinded or other-
wise affected by this article but shall continue in full
force and effect and may be enforced as provided by law.

Sec. 11. Severability.—If any provision of this article
or the application thereof to any person or circumstance
is held invalid, the invalidity shall not affect other pro-
visions or applications of the article which can be given
effect without the invalid provision or application, and
to this end the provisions of this article are severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor