WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED

HOUSE BILL No. 610

(By Mr. Speaker, Mr. Bovarsky mnp)

PASSED MARCH 6 1971

In Effect JULY 1, 1971

FILED IN THE OFFICE
JOHN H. DOCHERTY, IV
SECRETARY OF STATE
THIS DATE 3-17-71
ENROLLED

House Bill No. 610
(By Mr. Speaker, Mr. Boiarsky, and Mr. Kopp)

[Passed March 6, 1971; in effect July 1, 1971.]

AN ACT to amend and reenact sections one, two, three, four and seven, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to minimum wages and maximum hours for certain employees, definitions of terms, credit for board and lodging, offenses and penalties.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and seven, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re-enacted 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 duly authorized representatives.

3 (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.

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

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

6 (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 location or business establishment: Provided, That the term "employer" shall not include any individual, partner-
ship, association, corporation, person or group of persons
or similar unit if eighty percent 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 by the United States; (2) any individual en-
gaged in the activities of an educational, charitable, religi-
ous, fraternal or nonprofit organization where the em-
ployer-employee relationship does not in fact exist,
or where the services rendered to such organizations
are on a voluntary basis; (3) newsboys, shoeshine boys,
golf caddies, pin boys and pin chasers in bowling lanes;
(4) traveling salesmen and outside salesmen; (5) ser-
VICES performed by an individual in the employ of his
parent, son, daughter or spouse; (6) any individual
employed in a bona fide professional, executive or ad-
ministrative capacity; (7) any person whose employ-
ment is for the purpose of on-the-job training; (8) 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 nonprofit sheltered workshop; (9) any individual employed in a boys or girls summer camp; (10) any person sixty-two years of age or over who receives old age or survivors benefits from the social security administration; (11) any individual employed in agriculture as the word agriculture is defined in the Fair Labor Standards Act of 1938, as amended; (12) any individual employed as a firefighter by the state or agency thereof; (13) ushers in theaters; (14) any individual employed on a part-time basis who is a student in any recognized school or college; (15) any individual employed by a local or interurban motorbus carrier; (16) so far as the maximum hours and overtime compensation provisions of this article are concerned, any salesman, partsman or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; (17) any employee with respect to whom the
United States Department of Transportation has statutory authority to establish qualifications and maximum hours of service.

(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 of this article, 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.

1. On and after the first day of July, one thousand nine hundred seventy-one, and until the thirtieth day of June, one thousand nine hundred seventy-two, every employer shall pay to each of his employees wages at a rate not less than one dollar and twenty cents per hour; on and after the first day of July, one thousand nine hundred seventy-two, and until the thirtieth day of June, one thousand nine hundred seventy-three, every employer shall pay to each of his employees wages at a rate not less than one dollar and forty cents per hour; on and after the first day of July, one thousand nine hundred seventy-three, every employer shall pay to each of his employees wages at a rate not less than one dollar and sixty cents per hour.

§21-5C-3. Maximum hours; overtime compensation.

1. (a) On or 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 payments to an employee which are not made as compensation 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 employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profitsharing plan or trust or bona fide thrift or savings plan, meeting 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 efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the commissioner) 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 nonovertime 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
70 good faith by the contract or agreement for like work performed during such workweek.

72 (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.

77 (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 subdivisions (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 com-
puting the regular rate.
(e) Extra compensation paid as described in subdi-
visions (5), (6) and (7) of subsection (b) shall be credit-
able toward overtime compensation payable pursuant to
this section.
§21-5C-4. Credits.

1 In determining whether an employer is paying an
employee wages and overtime compensation as provided
in sections two and three of this article, there shall be
provided in accordance with the regulations which shall
be promulgated by the commissioner a credit of twenty-five cents an hour for an employee customarily receiving gratuities, and a reasonable credit for board and lodging furnished to an employee. The commissioner shall promulgate regulations relating to maximum allowances to employers for room and board furnished to employees.

§21-5C-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,
13 upon conviction thereof, shall be fined not less than one
14 hundred dollars nor more than five hundred dollars.
15 (b) Any employer, labor organization, employee, or
16 other person, alone or in concert, who in any manner
17 wilfully discriminates against any person with respect
18 to wages, hours of work or overtime compensation be-
19 cause of race, religion, color, national origin, ancestry,
20 age or sex, shall be guilty of a misdemeanor, and, upon
21 conviction thereof, shall be fined not less than two hun-
22 dred and fifty nor more than one thousand dollars, or
23 imprisoned in the county jail for not more than one
24 year, or both fined and imprisoned.
25 (c) Any employer who wilfully violates any other
26 provision of this article shall be guilty of a misdemeanor,
27 and, upon conviction thereof, shall be fined not more
28 than one hundred dollars.
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 July 1, 1971.

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 March, 1971.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/10/21
Time 2:25 p.m.

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Mar 17 0 22 AM '71

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA