

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971

ENROLLED

HOUSE BILL No. 610

(By Mr. SPEAKER, MR. BOIARSKY AND)

PASSED MARCH 6, 1971

In Effect JULY 1, 1971 Passage



FILED IN THE OFFICE
JOHN D. ROCKWELLER, IV
SECRETARY OF STATE
THIS DATE 3-17-71

610

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
3 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 by
8 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 em-
15 ployer 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 percent of the persons employed
22 by him are subject to any federal act relating to minimum
23 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 by the United States; (2) any individual en-
27 gaged in the activities of an educational, charitable, religi-
28 ous, fraternal or nonprofit organization where the em-
29 ployer-employee relationship does not in fact exist,
30 or where the services rendered to such organizations
31 are on a voluntary basis; (3) newsboys, shoeshine boys,
32 golf caddies, pin boys and pin chasers in bowling lanes;
33 (4) traveling salesmen and outside salesmen; (5) ser-
34 vices performed by an individual in the employ of his
35 parent, son, daughter or spouse; (6) any individual
36 employed in a bona fide professional, executive or ad-
37 ministrative capacity; (7) any person whose employ-
38 ment is for the purpose of on-the-job training; (8) any
39 person having a physical or mental handicap so severe
40 as to prevent his employment or employment training

41 in any training or employment facility other than a
42 nonprofit sheltered workshop; (9) any individual em-
43 ployed in a boys or girls summer camp; (10) any per-
44 son sixty-two years of age or over who receives old
45 age or survivors benefits from the social se-
46 curity administration; (11) any individual em-
47 ployed in agriculture as the word agriculture is
48 defined in the Fair Labor Standards Act of 1938,
49 as amended; (12) any individual employed as
50 a firefighter by the state or agency thereof; (13) ushers
51 in theaters; (14) any individual employed on a part-time
52 basis who is a student in any recognized school or col-
53 lege; (15) any individual employed by a local or inter-
54 urban motorbus carrier; (16) so far as the maximum
55 hours and overtime compensation provisions of this ar-
56 ticle are concerned, any salesman, partsman or mechanic
57 primarily engaged in selling or servicing automobiles,
58 trailers, trucks, farm implements, or aircraft if employed
59 by a nonmanufacturing establishment primarily engaged
60 in the business of selling such vehicles to ultimate pur-
61 chasers; (17) any employee with respect to whom the

62 United States Department of Transportation has statu-
63 tory authority to establish qualifications and maximum
64 hours of service.

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

70 (h) "Hours worked", in determining for the purposes
71 of sections two and three of this article, the hours for
72 which an employee is employed, there shall be excluded
73 any time spent in changing clothes or washing at the
74 beginning or end of each workday, time spent in walking,
75 riding or traveling to and from the actual place of per-
76 formance of the principal activity or activities which
77 such employee is employed to perform and activities
78 which are preliminary to or postliminary to said prin-
79 cipal activity or activities, subject to such exceptions
80 as the commissioner may by rules and regulations de-
81 fine.

§21-5C-2. Minimum wages.

1 On and after the first day of July, one thousand nine
2 hundred seventy-one, and until the thirtieth day of June,
3 one thousand nine hundred seventy-two, every em-
4 ployer shall pay to each of his employees wages at a
5 rate not less than one dollar and twenty cents per hour;
6 on and after the first day of July, one thousand nine
7 hundred seventy-two, and until the thirtieth day of June,
8 one thousand nine hundred seventy-three, every em-
9 ployer shall pay to each of his employees wages at a
10 rate not less than one dollar and forty cents per
11 hour; on and after the first day of July, one thousand
12 nine hundred seventy-three, every employer shall pay
13 to each of his employees wages at a rate not less than
14 one dollar and sixty cents per hour.

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

1 (a) On ~~or~~ after January one, one thousand nine hun-
2 dred sixty-seven no employer shall employ any of his
3 employees for a workweek longer than forty-eight hours,
4 unless such employee receives compensation for his
5 employment in excess of the hours above specified at

6 a rate not less than one and one-half times the regular
7 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 in-
10 clude all remuneration for employment paid to, or on
11 behalf of, the employee, but shall not be deemed to
12 include:

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

18 (2) Payments made for occasional periods when no
19 work is performed due to vacation, holiday, illness, failure
20 of the employer to provide sufficient work, or other sim-
21 ilar cause; reasonable payments for traveling expenses,
22 or other expenses, incurred by an employee in the fur-
23 therance of his employer's interests and properly reim-
24 bursable by the employer, and other similar payments
25 to an employee which are not made as compensation
26 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 profitsharing
35 plan or trust or bona fide thrift or savings plan, meeting
36 the requirements of the commissioner set forth in ap-
37 propriate 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 efficiency;
41 or (c) the payments are talent fees (as such talent fees
42 are defined and delimited by regulations of the commis-
43 sioner) 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 subsection
54 (a) or in excess of the employee's normal working hours
55 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
59 seventh day of the workweek, where such premium
60 rate is not less than one and one-half times the rate
61 established in good faith for like work performed in
62 nonovertime hours on other days; or

63 (7) Extra compensation provided by a premium rate
64 paid to the employee, in pursuance of an applicable em-
65 ployment 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

70 good faith by the contract or agreement for like work
71 performed during such workweek.

72 (c) No employer shall be deemed to have violated
73 subsection (a) by employing any employee for a work-
74 week in excess of the maximum workweek applicable
75 to such employee under subsection (a) if such employee
76 is employed pursuant to a bona fide individual contract,
77 or pursuant to an agreement made as a result of col-
78 lective bargaining by representatives of employees, if
79 the duties of such employee necessitate irregular hours
80 of work, and the contract or agreement (1) specifies a
81 regular rate of pay of not less than the minimum hourly
82 rate provided in section two and compensation at not
83 less than one and one-half times such rate for all hours
84 worked in excess of such maximum workweek, and (2)
85 provides a weekly guaranty of pay for not more than
86 sixty hours 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
100 the same work when performed during nonovertime
101 hours; 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 less
105 than one and one-half times such bona fide rates applic-
106 able to the same work when performed during non-
107 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 subdivisions (1) through (7) of
119 subsection (b) are not less than the minimum hourly
120 rate required by applicable law, and (ii) extra overtime
121 compensation is properly computed and paid on other
122 forms of additional pay required to be included in com-
123 puting the regular rate.

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

§21-5C-4. Credits.

1 In determining whether an employer is paying an
2 employee wages and overtime compensation as provided
3 in sections two and three of this article, there shall be
4 provided in accordance with the regulations which shall

5 be promulgated by the commissioner a credit of twenty-
6 five cents an hour for an employee customarily re-
7 ceiving gratuities, and a reasonable credit for board
8 and lodging furnished to an employee. The commis-
9 sioner shall promulgate regulations relating to maximum
10 allowances to employers for room and board furnished
11 to employees.

§21-5C-7. Offenses and penalties.

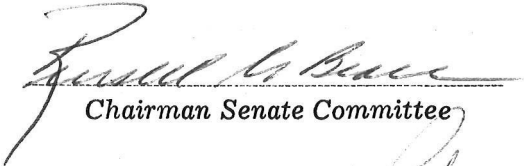
1 (a) Any employer who wilfully discharges or in any
2 manner wilfully discriminates against any employee
3 because such employee has made complaint to his em-
4 ployer, or to the commissioner, that he has not been paid
5 wages in accordance with the wage and hour provisions
6 of this article, or because such employee has instituted
7 or is about to institute any civil action, or file any petition
8 or criminal complaint against the employer by reason
9 of the provisions of this article, or because such em-
10 ployee has testified or is about to testify in any ad-
11 ministrative proceeding, civil action, or criminal action
12 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

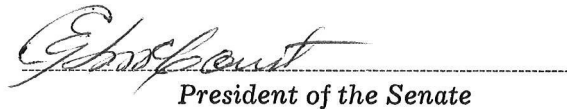

Chairman House Committee

Originated in the House.


Takes effect July 1, 1971.

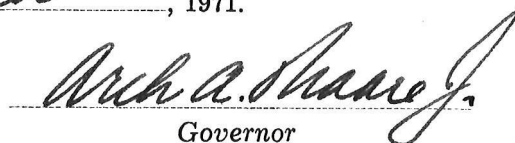

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within  this the 15th
day of March, 1971.


Governor

PRESENTED TO THE
GOVERNOR

RECEIVED

Date 3/10/71

MAR 17 9 22 AM '71

Time 2:25 p.m.

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA