WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

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ENROLLED

HOUSE BILL No. 125

(By Mr. Kopera and Mr. Kopelman)

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PASSED March 9, 1974

In Effect June 1, 1974 Passage

C 641

FOR THE OFFICE
EDGAR F. BISHOP III
SECRETARY OF STATE
THIS DATE 3-20-74
AN ACT to amend and reenact sections one, two, three and four, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing number of employees in definition of employer; increasing minimum wage and reducing maximum hours for overtime compensation standards for employees allowing and fixing certain credits.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three and four, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted 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.
(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 location or business establishment: Provided, That the term "employer" shall not include any individual, partnership, 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 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; (3) newsboys, shoeshine boys, golf caddies, pin boys and pin chasers in bowling lanes; (4) traveling salesmen and outside salesmen; (5) services 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 administrative capacity; (7) any person whose employment 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 in-
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, parts-
man or mechanic primarily engaged in selling or servicing auto-
mobiles, trailers, trucks, farm implements, or aircraft if
employed by a nonmanufacturing establishment primarily en-
gaged 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.


On and after the first day of July, one thousand nine hun-
dred seventy-four and until the thirtieth day of June, one
thousand nine hundred seventy-five, every employer shall pay
to each of his employees wages at a rate not less than one dol-
lar and eighty cents per hour; on and after the first day of
July, one thousand nine hundred seventy-five, every employer
shall pay to each of his employees wages at a rate not less
than two dollars per hour.

§21-SC-3. Maximum hours; overtime compensation.

(a) On and after the first day of July, one thousand nine
hundred seventy-four, and until the thirtieth day of June, one
thousand nine hundred seventy-five, no employer shall employ
any of his employees for a workweek longer than forty-six
hours, unless such employee receives compensation for his
employment in excess of the hours above specified at a rate of
not less than one and one-half times the regular rate at which he
is employed; on and after the first day of July, one thousand
nine hundred seventy-five, no employer shall employ any of
his employees for a workweek longer than forty-four 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 remunera-
tion for employment paid to, or on behalf of, the employee,
but shall not be deemed to include:

(1) Sums paid as gifts; payment 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 em-
ployer 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 com-
ensation 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 profit-sharing
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 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 guar-
anty of pay for not more than sixty hours based on the rates
so specified.

(d) No employer shall be deemed to have violated subsec-
tion (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 per-
formance of the work, the amount paid to the employee for
the number of hours worked by him in such workweek in ex-
cess 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 nonovertime 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 nonovertime 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 compensa-
tion thereunder: Provided, That the rate so established shall
be authorized by regulation by the commissioner as being sub-
stantially equivalent to the average hourly earnings of the em-
ployee over a representative period of time; and if (i) the employee’s
average hourly earnings for the workweek exclusive of pay-
ments described in subdivisions (1) through (7) of subsection
(b) are not less than the minimum hourly rate required by ap-
licable law, and (ii) extra overtime compensation is proper-
ly computed and paid on other forms of additional pay re-
quired to be included in computing the regular rate.

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

§21-SC-4. Credits.

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 to the employer of twenty per cent of the hourly rate of the amount paid 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: Provided, That the employer shall be required to furnish to the commissioner upon request, documentary evidence that the employee is receiving at least twenty per cent of the minimum wage in gratuities or is receiving room and lodging in accordance with the rules and regulations promulgated by the commissioner.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

\[Signature\]
Chairman Senate Committee

\[Signature\]
Chairman House Committee

Originated in the House.
Takes effect July 1, 1974.

\[Signature\]
Clerk of the Senate

\[Signature\]
Clerk of the House of Delegates

\[Signature\]
President of the Senate

\[Signature\]
Speaker House of Delegates

The within \textit{Approved} the 19th day of \textit{March}, 1974.

\[Signature\]
Governor