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OFFICE OF
SECRETARY OF STATE
DEPT. OF STATE, WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1976

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ENROLLED

Committee Substitute for
HOUSE BILL No. 1301

(By Mr. *Hogg*.....)

— ● —

PASSED March 13,..... 1976

In Effect July 1, 1976..... Passage



FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 4/1/76

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1307

(By MR. KOPP)

(Originating in the House Committee on the Judiciary)

[Passed March 13, 1976; in effect July 1, 1976.]

AN ACT to amend and reenact sections two and three, 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; and overtime compensation.

Be it enacted by the Legislature of West Virginia:

That sections two and three, 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-2. Minimum wages.

1 On and after the first day of July, one thousand nine
2 hundred seventy-six, every employer shall pay to each of his
3 employees wages at a rate not less than two dollars and twenty
4 cents per hour.

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

1 (a) On and after the first day of July, one thousand nine

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

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

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

16 (2) Payments made for occasional periods when no work
17 is performed due to vacation, holiday, illness, failure of
18 the employer to provide sufficient work, or other similar
19 cause; reasonable payments for traveling expenses, or other
20 expenses, incurred by an employee in the furtherance of his
21 employer's interests and properly reimbursable by the em-
22 ployer, and other similar payments to an employee which
23 are not made as compensation for his hours of employment;

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

41 (4) Contributions irrevocably made by an employer to a
42 trustee or third person pursuant to a bona fide plan for
43 providing old-age, retirement, life, accident, or health in-
44 surance or similar benefits for employees;

45 (5) Extra compensation provided by a premium rate paid
46 for certain hours worked by the employee in any day or
47 workweek because such hours are hours worked in excess of
48 eight in a day or in excess of the maximum workweek ap-
49 plicable to such employee under subsection (a) or in excess
50 of the employee's normal working hours or regular working
51 hours, as the case may be;

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

58 (7) Extra compensation provided by a premium rate paid
59 to the employee, in pursuance of an applicable employment
60 contract or collective bargaining agreement, for work out-
61 side of the hours established in good faith by the con-
62 tract or agreement as the basic, normal or regular work-
63 week where such premium rate is not less than one and
64 one-half times the rate established in good faith by the
65 contract or agreement for like work performed during such
66 workweek.

67 (c) No employer shall be deemed to have violated sub-
68 section (a) by employing any employee for a workweek in
69 excess of the maximum workweek applicable to such employee
70 under subsection (a) if such employee is employed pursuant
71 to a bona fide individual contract, or pursuant to an agree-
72 ment made as a result of collective bargaining by repre-
73 sentatives of employees, if the duties of such employee neces-
74 sitate irregular hours of work, and the contract or agree-
75 ment (1) specifies a regular rate of pay of not less than
76 the minimum hourly rate provided in section two and com-
77 pensation at not less than one and one-half times such rate
78 for all hours worked in excess of such maximum workweek,

79 and (2) provides a weekly guaranty of pay for not more than
80 sixty hours based on the rates so specified.

81 (d) No employer shall be deemed to have violated sub-
82 section (a) by employing any employee for a workweek in
83 excess of the maximum workweek applicable to such employee
84 under such subsection if, pursuant to an agreement or under-
85 standing arrived at between the employer and the employee
86 before performance of the work, the amount paid to the
87 employee for the number of hours worked by him in such
88 workweek in excess of the maximum workweek applicable to
89 such employee under such subsection:

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

94 (2) In the case of an employee performing two or more
95 kinds of work for which different hourly or piece rates have
96 been established, is computed at rates not less than one and
97 one-half times such bona fide rates applicable to the same
98 work when performed during nonovertime hours; or

99 (3) Is computed at a rate not less than one and one-
100 half times the rate established by such agreement or under-
101 standing as the basic rate to be used in computing overtime
102 compensation thereunder: *Provided*, That the rate so estab-
103 lished shall be authorized by regulation by the commissioner
104 as being substantially equivalent to the average hourly earnings
105 of the employee, exclusive of overtime premiums, in the
106 particular work over a representative period of time; and if
107 (i) the employee's average hourly earnings for the workweek
108 exclusive of payments described in subdivisions (1) through
109 (7) of subsection (b) are not less than the minimum hourly
110 rate required by applicable law, and (ii) extra overtime com-
111 pensation is properly computed and paid on other forms of
112 additional pay required to be included in computing the
113 regular rate.

114 (e) Extra compensation paid as described in subdivisions
115 (5), (6) and (7) of subsection (b) shall be creditable toward
116 overtime compensation payable pursuant to this section.

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

James L. Davis

Chairman Senate Committee

Clarence C. Chustad Jr

Chairman House Committee

Originated in the House.

Takes effect July 1, 1976.

J. C. Dillon, Jr.

Clerk of the Senate

W. Blankenship

Clerk of the House of Delegates

W. D. Brothman

President of the Senate

Lewis F. W. Thomas

Speaker House of Delegates

The within *approved* this the *31st*
March day of _____, 1976.

Orval Faubus Jr.

Governor

PRESENTED TO THE
GOVERNOR

Date 3/25/76

Time 2:00 p.m.