

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-16-81

Time 1:15 p.m.

No: 1033

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981

— ● —

# ENROLLED

HOUSE BILL No. 1033

(By Mr. Allbright )

— ● —

Passed March 6, 1981

In Effect From Passage



**ENROLLED**

**H. B. 1033**

(By MR. ALBRIGHT)

[Passed March 6, 1981; in effect from passage.]

AN ACT to amend and reenact section one, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to minimum wage and maximum hours standards for employees generally and setting forth definitions with respect thereto; and excluding certain individuals employed by the Legislature of West Virginia within the definition of "employee."

*Be it enacted by the Legislature of West Virginia:*

That section one, 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  
3 his duly authorized representatives.

4 (b) "Wage and hour director" means the wage and hour  
5 director appointed by the commissioner of labor as chief of the  
6 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, its  
11 agencies, departments and all its political subdivisions, any  
12 individual, partnership, association, public or private corpor-  
13 ation, or any person or group of persons acting directly or in-  
14 directly in the interest of any employer in relation to an em-  
15 ployee; and who employs during any calendar week six or more  
16 employees as herein defined in any one separate, distinct and  
17 permanent location or business establishment: *Provided*, That  
18 the term "employer" shall not include any individual, partner-  
19 ship, association, corporation, person or group of persons or  
20 similar unit if eighty percent of the persons employed by him  
21 are subject to any federal act relating to minimum wage,  
22 maximum hours and overtime compensation.

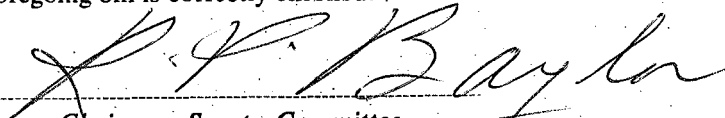
23 (f) "Employee" includes any individual employed by an  
24 employer but shall not include: (1) Any individual employed  
25 by the United States; (2) any individual engaged in the activi-  
26 ties of an educational, charitable, religious, fraternal or non-  
27 profit organization where the employer-employee relationship  
28 does not in fact exist, or where the services rendered to such  
29 organizations are on a voluntary basis; (3) newsboys, shoe-  
30 shine boys, golf caddies, pinboys and pin chasers in bowling  
31 lanes; (4) traveling salesmen and outside salesmen; (5) services  
32 performed by an individual in the employ of his parent, son,  
33 daughter or spouse; (6) any individual employed in a bona fide  
34 professional, executive or administrative capacity; (7) any  
35 person whose employment is for the purpose of on-the-job  
36 training; (8) any person having a physical or mental handicap  
37 so severe as to prevent his employment or employment train-  
38 ing in any training or employment facility other than a non-  
39 profit sheltered workshop; (9) any individual employed in a  
40 boys or girls summer camp; (10) any person sixty-two years of  
41 age or over who receives old-age or survivors benefits from  
42 the social security administration; (11) any individual em-  
43 ployed in agriculture as the word agriculture is defined in the  
44 Fair Labor Standards Act of 1938, as amended; (12) any  
45 individual employed as a fire fighter by the state or agency  
46 thereof; (13) ushers in theaters; (14) any individual employed  
47 on a part-time basis who is a student in any recognized school

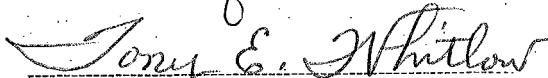
48 or college; (15) any individual employed by a local or inter-  
49 urban motorbus carrier; (16) so far as the maximum hours and  
50 overtime compensation provisions of this article are concerned,  
51 any salesman, partsman or mechanic primarily engaged in sell-  
52 ing or servicing automobiles, trailers, trucks, farm implements,  
53 aircraft if employed by a nonmanufacturing establishment pri-  
54 marily engaged in the business of selling such vehicles to ulti-  
55 mate purchasers; or (17) any employee with respect to whom  
56 the United States department of transportation has statutory  
57 authority to establish qualifications and maximum hours of  
58 service; (18) any person employed on a per diem basis by the  
59 senate, the house of delegates, or the joint committee on gov-  
60 ernment and finance of the Legislature of West Virginia, other  
61 employees of the senate or house of delegates designated by  
62 the presiding officer thereof, and additional employees of the  
63 joint committee on government and finance designated by  
64 such joint committee.

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

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

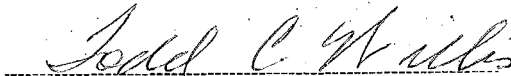
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

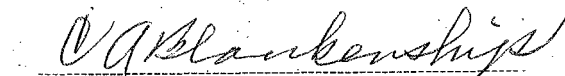
  
Chairman Senate Committee

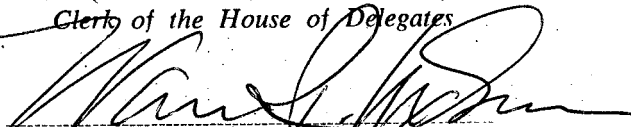
  
Chairman House Committee

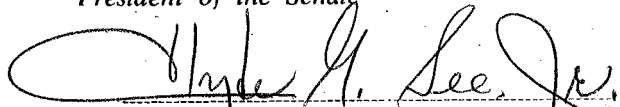
Originated in the House.

Takes effect from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker House of Delegates

The within is approved this the 16  
day of March, 1981.

  
Governor



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SECY. OF STATE