WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED

HOUSE BILL No. 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 his duly authorized representatives.

4 (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.

7 (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, shoe-shine boys, golf caddies, pinboys 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 non-profit 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 fire fighter 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 inter-
urban 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 sell-
ing or servicing automobiles, trailers, trucks, farm implements,
aircraft if employed by a nonmanufacturing establishment pri-
marily engaged in the business of selling such vehicles to ulti-
mate purchasers; or (17) any employee with respect to whom
the United States department of transportation has statutory
authority to establish qualifications and maximum hours of
service; (18) any person employed on a per diem basis by the
senate, the house of delegates, or the joint committee on gov-
ernment and finance of the Legislature of West Virginia, other
employees of the senate or house of delegates designated by
the presiding officer thereof, and additional employees of the
joint committee on government and finance designated by
such joint committee.

(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.
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 from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within ________ approved ________ this the ________ day of ________, 1981.

[Signature]
Governor