

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.

[Handwritten Signature]
Chairman Senate Committee

[Handwritten Signature]
Chairman House Committee

Originated in the House.

Takes effect from passage.

[Handwritten Signature]
Clerk of the Senate

[Handwritten Signature]
Clerk of the House of Delegates

[Handwritten Signature]
President of the Senate

[Handwritten Signature]
Speaker House of Delegates

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

[Handwritten Signature]
Governor

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SECY. OF STATE