WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014

ENROLLED

House Bill No. 201

(By Mr. Speaker, (Mr. Miley)
and Delegate Armstead)
(By Request of the Executive)

Passed May 21, 2014

In effect from passage.
AN ACT to amend and reenact §21-5C-1, §21-5C-2 and §21-5C-4 of the Code of West Virginia, 1931, as amended, as contained in chapter one hundred twenty-four, Acts of the Legislature, regular session, 2014, and to amend and reenact §21-5C-6 of said code, all relating to the application of minimum wage and maximum hour standards; modifying the definition of the term “employer”; clarifying the definition of the term “hours worked”; clarifying operative dates; requiring legislative rules; and authorizing promulgation of emergency rules.

Be it enacted by the Legislature of West Virginia:

That §21-5C-1, §21-5C-2 and §21-5C-4 of the Code of West Virginia, 1931, as amended, as contained in chapter one hundred
twenty-four, Acts of the Legislature, regular session, 2014, be amended and reenacted, and that §21-5C-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-1. Definitions.

As used in this article:

(a) "Commissioner" means the Commissioner of Labor or his or her duly authorized representatives.

(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.

(c) "Wage" means compensation due an employee by reason of his or her 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 prior to January 1, 2015, the term "employer" does not include any individual, partnership, association, corporation, person or group of persons or similar unit if eighty percent of the persons employed by him or her are subject to any federal act relating to minimum wage, maximum hours and overtime compensation: Provided, however, That after December 31, 2014, for the purposes of section three of this article, the term "employer" does not include any individual, partnership, association, corporation, person or group of persons or similar
unit if eighty percent of the persons employed by him or her are
subject to any federal act relating to 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, pinboys and pin chasers in bowling lanes; (4) traveling
salesmen and outside salesmen; (5) services performed by an
individual in the employ of his or her 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 or her 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 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 automobiles, trailers, trucks, farm implements, aircraft
if employed by a nonmanufacturing establishment primarily
engaged 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; (18) any person employed on a per diem basis by the Senate, the House of Delegates, or the Joint Committee on Government 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; or (19) any person employed as a seasonal employee of a commercial whitewater outfitter where the seasonal employee works less than seven months in any one calendar year and, in such case, only for the limited purpose of exempting the seasonal employee from the maximum wage provisions of section three of this article.

(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" means the hours for which an employee is employed: Provided, That in determining hours worked for the purposes of sections two and three of this article, 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.


(a) Minimum wage:

(1) After June 30, 2006, every employer shall pay to each of his or her employees wages at a rate not less than $5.85 per hour.
(2) After June 30, 2007, every employer shall pay to each of his or her employees wages at a rate not less than $6.55 per hour.

(3) After June 30, 2008, every employer shall pay to each of his or her employees wages at a rate not less than $7.25 per hour.

(4) After December 31, 2014, every employer shall pay to each of his or her employees wages at a rate not less than $8.00 per hour.

(5) After December 31, 2015, every employer shall pay to each of his or her employees wages at a rate not less than $8.75 per hour.

(6) When the federal minimum hourly wage as prescribed by 29 U.S.C. §206 (a) (1) is equal to or greater than the wage rate prescribed in the applicable provision of this subsection, every employer shall pay to each of his or her employees wages at a rate of not less than the federal minimum hourly wage as prescribed by 29 U.S.C. §206 (a) (1). The minimum wage rates required under this subsection shall be thereafter adjusted in accordance with adjustments made in the federal minimum hourly rate. The adoption of the federal minimum wage provided by this subsection includes only the federal minimum hourly rate prescribed in 29 U.S.C. §206 (a) (1) and does not include other wage rates, or conditions, exclusions, or exceptions to the federal minimum hourly wage rate. In addition, adoption of the federal minimum hourly wage rate does not extend or modify the scope or coverage of the minimum wage rate required under this subsection.

(b) Training wage:

(1) Notwithstanding the provisions set forth in subsection (a) of this section to the contrary, an employer may pay an employee first hired after June 30, 2006, a subminimum training wage not less than $5.15 per hour: Provided, That an employer
may pay an employee first hired after December 31, 2014, a 
subminimum training wage not less than $6.40 per hour.

(2) An employer may not pay the subminimum training 
wage set forth in subdivision (1) of this subsection to any 
individual:

(A) Who has attained or attains while an employee of the 
employer, the age of twenty years; or

(B) For a cumulative period of not more than ninety days per 
employee: Provided, That if any business has not been in 
operation for more than ninety days at the time the employer 
hired the employee, the employer may pay the employee the 
subminimum training wage set forth in subdivision (1) of this 
subsection for an additional period not to exceed ninety days.

(3) When the federal subminimum training wage as 
prescribed by 29 U.S.C. §206 (g) (1) is equal to or greater than 
the wage rate prescribed in subdivision (1) of this subsection, 
every employer shall pay to each of his or her employees wages 
at a rate of not less than the federal subminimum training wage 
as prescribed by 29 U.S.C. §206 (g) (1). The subminimum 
training wage rates required under this subsection shall be 
thereafter adjusted in accordance with adjustments made in the 
federal subminimum training wage rate. The adoption of the 
federal subminimum training wage provided by this subsection 
includes only the federal subminimum training wage rate 
prescribed in 29 U.S.C. §206 (g) (1) and does not include other 
wage rates, or conditions, exclusions, or exceptions to the federal 
subminimum training wage rate. In addition, adoption of the 
federal subminimum training wage rate does not extend or 
modify the scope or coverage of the subminimum training wage 
rate required under this subsection.

(c) Notwithstanding any provision or definition to the 
contrary, the wages established pursuant to this section are 
applicable to all individuals employed by the State of West
Virginia, its agencies and departments, regardless if the employee or employer are subject to any federal act relating to minimum wage: Provided, That at no time may the minimum wage established pursuant to this section fall below the federal minimum hourly wage as prescribed by 29 U.S.C. §206(a)(1), and at no time may the subminimum training wage established pursuant to this section fall below the federal subminimum training wage rate as prescribed by 29 U.S.C. §206(g)(1).

§21-5C-4. Credits.

Prior to January 1, 2015, 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 percent 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: Provided, That after December 31, 2014, 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 legislative rules proposed for promulgation by the commissioner a credit to the employer of seventy percent 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 propose legislative rules for promulgation relating to maximum allowances to employers for room and board furnished to employees: Provided, however, That the employer shall be required to furnish to the commissioner upon request, documentary evidence that the employee is receiving at least seventy percent of the minimum wage in gratuities or is receiving room and lodging in accordance with the rules and regulations promulgated by the commissioner.
§21-5C-6. Duties and powers of commissioner of labor.

(a) It shall be the duty of the commissioner to enforce and administer the provisions of this article and rules promulgated thereunder, and to promulgate such rules and regulations, in accordance with chapter twenty-nine-a of the Code of West Virginia, 1931, as amended, as shall be needful to give effect to the provisions of this article. The commissioner is authorized to promulgate emergency rules prior to January 1, 2015, to implement and administer the amendments made to this article in 2014. If the commissioner makes a finding that a conflict exists between state and federal standards defining employee exemptions, the commissioner is further authorized to promulgate emergency rules prior to January 1, 2015, for the purpose of revising the state standards to conform with federal law.

(b) The commissioner is authorized at reasonable times to enter the place of business of an employer subject to the provisions of this article, for purposes of: (1) Inspecting and examining, and copying, photographing or otherwise reproducing all payroll records of the employer directly relating to wages and hours of employment of persons employed by him or her; (2) questioning or otherwise examining persons employed by the employer on the subject of wages and hours of their employment, and gratuities received or earned in such employment.

(c) The commissioner is authorized and empowered to make investigations to determine whether there is reasonable cause to believe that any person is an employer as defined in section one of this article, or whether there is reasonable cause to believe that any provision of this article is being or has been violated.

(d) The commissioner is authorized and empowered to file criminal complaints against persons whom the commissioner has
reasonable cause to believe have committed any offense created or defined by the provisions of this article.

(e) The commissioner is authorized and empowered to institute civil actions seeking appropriate injunctive relief to compel an employer subject to this article to comply with the provisions of this article.

(f) The commissioner shall enforce and administer the provisions of this article in accordance with chapter twenty-nine-a of this code. The commissioner or his or her authorized representatives are empowered to enter and inspect such places, question such employees and investigate such facts, conditions, or matters as they may deem appropriate, to determine whether any person, firm or corporation has violated any provision of this article, or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 29th day of May, 2014.

Governor
PRESENTED TO THE GOVERNOR

MAY 23 2014

Time 7:40 p.m.