

FILED

2014 APR -1 P 7 49

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2014

HB 4283



**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4283**

(By Delegates Barrett, Barill, Barker, Diserio,  
Lawrence, Manypenny, Marcum, D. Poling,  
Reynolds, Sponaugle and Young)



Passed March 8, 2014

In effect ninety days from passage.

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**H. B. 4283**

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(BY DELEGATES BARRETT, BARILL, BARKER, DISERIO,  
LAWRENCE, MANYPENNY, MARCUM, D. POLING,  
REYNOLDS, SPONAUGLE AND YOUNG)

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**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, all relating to minimum wage; providing definition for employer; establishing minimum wage amounts; establishing credit amount to employers for employees customarily receiving gratuities and certain other benefits.**

*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, be amended and reenacted all 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  
3 or her 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 reason  
8 of his or her 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  
13 corporation, or any person or group of persons acting directly or  
14 indirectly in the interest of any employer in relation to an  
15 employee; and who employs during any calendar week six or  
16 more employees as herein defined in any one separate, distinct  
17 and permanent location or business establishment.

18 (f) "Employee" includes any individual employed by an  
19 employer but shall not include: (1) Any individual employed by  
20 the United States; (2) any individual engaged in the activities of  
21 an educational, charitable, religious, fraternal or nonprofit  
22 organization where the employer-employee relationship does not  
23 in fact exist, or where the services rendered to such organizations  
24 are on a voluntary basis; (3) newsboys, shoeshine boys, golf  
25 caddies, pinboys and pin chasers in bowling lanes; (4) traveling  
26 salesmen and outside salesmen; (5) services performed by an  
27 individual in the employ of his or her parent, son, daughter or  
28 spouse; (6) any individual employed in a bona fide professional,  
29 executive or administrative capacity; (7) any person whose  
30 employment is for the purpose of on-the-job training; (8) any  
31 person having a physical or mental handicap so severe as to  
32 prevent his or her employment or employment training in any  
33 training or employment facility other than a nonprofit sheltered

34 workshop; (9) any individual employed in a boys or girls  
35 summer camp; (10) any person sixty-two years of age or over  
36 who receives old-age or survivors benefits from the social  
37 security administration; (11) any individual employed in  
38 agriculture as the word agriculture is defined in the Fair Labor  
39 Standards Act of 1938, as amended; (12) any individual  
40 employed as a fire fighter by the state or agency thereof; (13)  
41 ushers in theaters; (14) any individual employed on a part-time  
42 basis who is a student in any recognized school or college; (15)  
43 any individual employed by a local or interurban motorbus  
44 carrier; (16) so far as the maximum hours and overtime  
45 compensation provisions of this article are concerned, any  
46 salesman, parts man or mechanic primarily engaged in selling or  
47 servicing automobiles, trailers, trucks, farm implements, aircraft  
48 if employed by a nonmanufacturing establishment primarily  
49 engaged in the business of selling such vehicles to ultimate  
50 purchasers; (17) any employee with respect to whom the United  
51 States Department of Transportation has statutory authority to  
52 establish qualifications and maximum hours of service; (18) any  
53 person employed on a per diem basis by the Senate, the House  
54 of Delegates, or the Joint Committee on Government and  
55 Finance of the Legislature of West Virginia, other employees of  
56 the Senate or House of Delegates designated by the presiding  
57 officer thereof, and additional employees of the Joint Committee  
58 on Government and Finance designated by such joint committee;  
59 or (19) any person employed as a seasonal employee of a  
60 commercial whitewater outfitter where the seasonal employee  
61 works less than seven months in any one calendar year and, in  
62 such case, only for the limited purpose of exempting the seasonal  
63 employee from the maximum wage provisions of section three  
64 of this article.

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 hour  
69 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 in  
73 changing clothes or washing at the beginning or end of each  
74 workday, time spent in walking, riding or traveling to and from

75 the actual place of performance of the principal activity or  
76 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 the  
79 commissioner may by rules and regulations define.

**§21-5C-2. Minimum wages.**

1 (a) *Minimum wage:*

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

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

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

8 (4) After January 1, 2015, every employer shall pay to each  
9 of his or her employees wages at a rate not less than \$8.00 per  
10 hour.

11 (5) After January 1, 2016, every employer shall pay to each  
12 of his or her employees wages at a rate not less than \$8.75 per  
13 hour.

14 (6) When the federal minimum hourly wage as prescribed by  
15 29 U.S.C. §206(a)(1) is equal to or greater than the wage rate  
16 prescribed in the applicable provision of this subsection, every  
17 employer shall pay to each of his or her employees wages at a  
18 rate of not less than the federal minimum hourly wage as  
19 prescribed by 29 U.S.C. §206(a)(1). The minimum wage rates  
20 required under this subparagraph shall be thereafter adjusted in  
21 accordance with adjustments made in the federal minimum  
22 hourly rate. The adoption of the federal minimum wage provided  
23 by this subdivision includes only the federal minimum hourly  
24 rate prescribed in 29 U.S.C. §206(a)(1) and does not include  
25 other wage rates, or conditions, exclusions, or exceptions to the  
26 federal minimum hourly wage rate. In addition, adoption of the  
27 federal minimum hourly wage rate does not extend or modify the  
28 scope or coverage of the minimum wage rate required under this  
29 subdivision.

30 (b) *Training wage:*

31 (1) Notwithstanding the provisions set forth in subsection (a)  
32 of this section to the contrary, an employer may pay an  
33 employee first hired after January 1, 2015, a subminimum  
34 training wage not less than \$6.40 per hour.

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

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

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

46 (3) When the federal subminimum training wage as  
47 prescribed by 29 U.S.C. §206(g)(1) is equal to or greater than the  
48 wage rate prescribed in subdivision (1) of this subsection, every  
49 employer shall pay to each of his or her employees wages at a  
50 rate of not less than the federal minimum hourly wage as  
51 prescribed by 29 U.S.C. §206(g)(1). The minimum wage rates  
52 required under this subparagraph shall be thereafter adjusted in  
53 accordance with adjustments made in the federal minimum  
54 hourly rate. The adoption of the federal minimum wage provided  
55 by this subdivision includes only the federal minimum hourly  
56 rate prescribed in 29 U.S.C. §206(g)(1) and does not include  
57 other wage rates, or conditions, exclusions, or exceptions to the  
58 federal minimum hourly wage rate. In addition, adoption of the  
59 federal minimum hourly wage rate does not extend or modify the  
60 scope or coverage of the minimum wage rate required under this  
61 subdivision.

62 (c) Notwithstanding any provision or definition to the  
63 contrary, the wages established pursuant to this section are  
64 applicable to all individuals employed by the State of West  
65 Virginia, its agencies, and departments, regardless if the  
66 employee or employer are subject to any federal act relating to

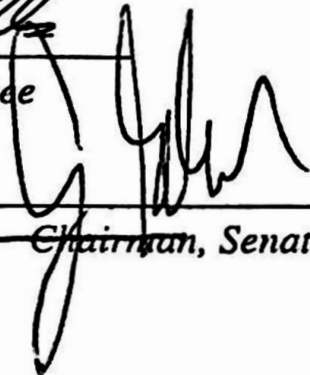
67 minimum wage: *Provided*, That at no time may the minimum  
68 wage established pursuant to this section fall below the federal  
69 minimum hourly wage as prescribed by 29 U.S.C. §206(a)(1).

**§21-5C-4. Credits.**

1 In determining whether an employer is paying an employee  
2 wages and overtime compensation as provided in sections two  
3 and three of this article, there shall be provided in accordance  
4 with the regulations which shall be promulgated by the  
5 commissioner a credit to the employer of seventy percent of the  
6 hourly rate of the amount paid an employee customarily  
7 receiving gratuities, and a reasonable credit for board and  
8 lodging furnished to an employee. The commissioner shall  
9 promulgate regulations relating to maximum allowances to  
10 employers for room and board furnished to employees:  
11 *Provided*, That the employer shall be required to furnish to the  
12 commissioner upon request, documentary evidence that the  
13 employee is receiving at least seventy percent of the minimum  
14 wage in gratuities or is receiving room and lodging in  
15 accordance with the rules and regulations promulgated by the  
16 commissioner.

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

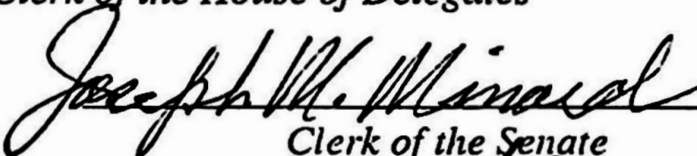
  
\_\_\_\_\_  
Chairman, House Committee

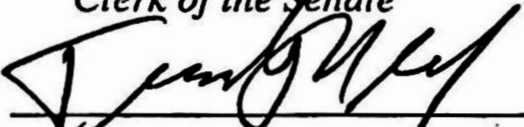
  
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Member — Chairman, Senate Committee

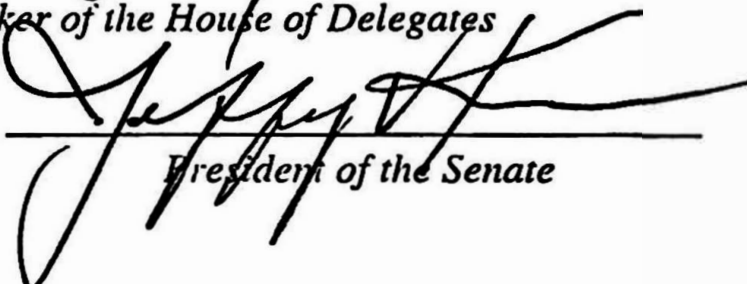
Originating in the House.

In effect ninety days 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 1st  
day of April, 2014.

  
\_\_\_\_\_  
Governor



PRESENTED TO THE GOVERNMENT

MAR 28 2014

Time 10:45 AM