WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014

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.
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.

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.

(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 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 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", 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.


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

(5) After January 1, 2016, 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 subparagraph 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 subdivision 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 subdivision.
(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 January 1, 2015, 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:

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

(ii) 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 minimum hourly wage as prescribed by 29 U.S.C. §206(g)(1). The minimum wage rates required under this subparagraph 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 subdivision includes only the federal minimum hourly 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 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 subdivision.

(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
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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).

§21-5C-4. Credits.

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 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 promulgate regulations relating to maximum allowances to employers for room and board furnished to employees: Provided, 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

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

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