ENROLLED

Committee Substitute

for

Senate Bill 606

SENATORS MAYNARD AND PLYMALE, original sponsors

[Passed April 8, 2017; in effect 90 days from passage]
WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

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[Passed April 8, 2017; in effect 90 days from passage]
AN ACT to amend and reenact §21-5C-1 of the Code of West Virginia, 1931, as amended, relating to minimum wage and maximum hour standards for employees by a recreational establishment which does not operate for more than seven months in any calendar year during the preceding calendar year or had average receipts for any six months of the year which were not more than thirty-three and one-third per centum of its average receipts for the other six months of that year; and requiring any such employee is compensated on a salary basis in an annual amount of not less than two thousand eighty times the West Virginia state minimum wage as stated in section two of this article.

Be it enacted by the Legislature of West Virginia:

That §21-5C-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted 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; (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; or (20) any person employed by a recreational establishment which:

(A) Does not operate for more than seven months in any calendar year; or (B) during the preceding calendar year had average receipts for any six months of the year which were not more than thirty-three and one-third per centum of its average receipts for the other six months of that year: Provided, That any such person is compensated on a salary basis in an annual amount of not less than two thousand eighty times the West Virginia state minimum wage as stated in section two of this article.

(g) “Work week” means a regularly recurring period of one hundred sixty-eight hours in the form of seven consecutive 24-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.
Enr. CS for SB 606

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

Mark R. Warner
Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is disappeared this the Day of April 2017.

Governor
PRESENTED TO THE GOVERNOR

APR 20 2017

Time 10:48 AM