Enrolled

Senate Bill 377

BY SENATOR MAYNARD

[Passed February 20, 2019; in effect 90 days from passage]
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AN ACT to amend and reenact §21-5C-1 of the Code of West Virginia, 1931, as amended, relating
to minimum wage and maximum hours standards for employees; excluding seasonal
amusement park workers from maximum hour requirements; and defining terms.

Be it enacted by the Legislature of West Virginia:

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 80 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 §21-5C-3 of this code, the term “employer” does not include any individual,
partnership, association, corporation, person or group of persons, or similar unit if 80 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 62 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, or 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
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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 hours provisions of §21-
5C-3 of this code; or (20) any person employed as a seasonal employee of an amusement park
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
hours provisions of §21-5C-3 of this code.

(g) “Work week” means a regularly recurring period of 168 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 §21-5C-2 and §21-5C-3 of this code, 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 the employee is employed to perform and activities which
are preliminary to or postliminary to the principal activity or activities, subject to such exceptions
as the commissioner may by rules define.

(i) “Amusement park” means any person or organization which holds a permit for the
operation of an amusement ride or amusement attraction under §21-10-1 et seq. of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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 bill approved this the 1st Day of March, 2019.

Governor