

H. B. 201

(By Mr. Speaker, (Mr. Miley) and Delegate Armstead)

[By Request of the Executive]

[Introduced May 19, 2014; referred to the
Committee on Finance.]

A BILL 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

1 Any individual employed by the United States; (2) any individual engaged in the activities of an
2 educational, charitable, religious, fraternal or nonprofit organization where the employer-employee
3 relationship does not in fact exist, or where the services rendered to such organizations are on a
4 voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pinboys and pin chasers in bowling
5 lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an individual in the
6 employ of his or her parent, son, daughter or spouse; (6) any individual employed in a bona fide
7 professional, executive or administrative capacity; (7) any person whose employment is for the
8 purpose of on-the-job training; (8) any person having a physical or mental handicap so severe as to
9 prevent his or her employment or employment training in any training or employment facility other
10 than a nonprofit sheltered workshop; (9) any individual employed in a boys or girls summer camp;
11 (10) any person sixty-two years of age or over who receives old-age or survivors benefits from the
12 Social Security Administration; (11) any individual employed in agriculture as the word agriculture
13 is defined in the Fair Labor Standards Act of 1938, as amended; (12) any individual employed as a
14 firefighter by the state or agency thereof; (13) ushers in theaters; (14) any individual employed on
15 a part-time basis who is a student in any recognized school or college; (15) any individual employed
16 by a local or interurban motorbus carrier; (16) so far as the maximum hours and overtime
17 compensation provisions of this article are concerned, any salesman, parts man or mechanic
18 primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, aircraft if
19 employed by a nonmanufacturing establishment primarily engaged in the business of selling such
20 vehicles to ultimate purchasers; (17) any employee with respect to whom the United States
21 Department of Transportation has statutory authority to establish qualifications and maximum hours
22 of service; (18) any person employed on a per diem basis by the Senate, the House of Delegates, or

1 the Joint Committee on Government and Finance of the Legislature of West Virginia, other
 2 employees of the Senate or House of Delegates designated by the presiding officer thereof, and
 3 additional employees of the Joint Committee on Government and Finance designated by such joint
 4 committee; or (19) any person employed as a seasonal employee of a commercial whitewater
 5 outfitter where the seasonal employee works less than seven months in any one calendar year and,
 6 in such case, only for the limited purpose of exempting the seasonal employee from the maximum
 7 wage provisions of section three of this article.

8 (g) "Workweek" means a regularly recurring period of one hundred sixty-eight hours in the
 9 form of seven consecutive twenty-four hour periods, need not coincide with the calendar week, and
 10 may begin any day of the calendar week and any hour of the day.

11 (h) "Hours worked" means the hours for which an employee is employed: *Provided, That*
 12 in determining hours worked for the purposes of sections two and three of this article, ~~the hours for~~
 13 ~~which an employee is employed~~, there shall be excluded any time spent in changing clothes or
 14 washing at the beginning or end of each workday, time spent in walking, riding or traveling to and
 15 from the actual place of performance of the principal activity or activities which such employee is
 16 employed to perform and activities which are preliminary to or postliminary to said principal activity
 17 or activities, subject to such exceptions as the commissioner may by rules and regulations define.

18 **§21-5C-2. Minimum wages.**

19 (a) *Minimum wage:*

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

22 (2) After June 30, 2007, every employer shall pay to each of his or her employees wages at a

1 rate not less than \$6.55 per hour.

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

4 (4) After ~~January 1, 2015~~ December 31, 2014, every employer shall pay to each of his or her
5 employees wages at a rate not less than \$8.00 per hour.

6 (5) After ~~January 1, 2016~~ December 31, 2015, every employer shall pay to each of his or her
7 employees wages at a rate not less than \$8.75 per hour.

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

19 (b) *Training wage:*

20 (1) Notwithstanding the provisions set forth in subsection (a) of this section to the contrary,
21 an employer may pay an employee first hired after ~~January 1, 2015~~ June 30, 2006, a subminimum
22 training wage not less than ~~\$6.40~~ \$5.15 per hour: Provided, That an employer may pay an employee

1 first hired after December 31, 2014, a subminimum training wage not less than \$6.40 per hour.

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

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

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

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

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

8 **§21-5C-4. Credits.**

9 Prior to January 1, 2015, in determining whether an employer is paying an employee wages
10 and overtime compensation as provided in sections two and three of this article, there shall be
11 provided in accordance with the regulations which shall be promulgated by the commissioner a
12 credit to the employer of ~~seventy~~ twenty percent of the hourly rate of the amount paid an employee
13 customarily receiving gratuities, and a reasonable credit for board and lodging furnished to an
14 employee: *Provided*, That after December 31, 2014, in determining whether an employer is paying
15 an employee wages and overtime compensation as provided in sections two and three of this article,
16 there shall be provided in accordance with the legislative rules proposed for promulgation by the
17 commissioner a credit to the employer of seventy percent of the hourly rate of the amount paid an
18 employee customarily receiving gratuities, and a reasonable credit for board and lodging furnished
19 to an employee. The commissioner shall ~~promulgate regulations~~ propose legislative rules for
20 promulgation relating to maximum allowances to employers for room and board furnished to
21 employees: *Provided*, however, That the employer shall be required to furnish to the commissioner
22 upon request, documentary evidence that the employee is receiving at least seventy percent of the

1 minimum wage in gratuities or is receiving room and lodging in accordance with the rules and
2 regulations promulgated by the commissioner.

3 **§21-5C-6. Duties and powers of commissioner of labor.**

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

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

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

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

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

7 (f) The commissioner shall enforce and administer the provisions of this article in accordance
8 with chapter twenty-nine-a of this code. The commissioner or his or her authorized representatives
9 are empowered to enter and inspect such places, question such employees and investigate such facts,
10 conditions, or matters as they may deem appropriate, to determine whether any person, firm or
11 corporation has violated any provision of this article, or any rule or regulation issued hereunder or
12 which may aid in the enforcement of the provisions of this article.

NOTE: The purpose of the bill is to clarify the intent of the Legislature in its enactment of Enrolled House Bill No. 4283 to increase the minimum wage, passed March 8, 2014, effective June 6, 2014. The language of the bill inadvertently imposed upon many employers of the state the provisions of state law governing maximum hours and overtime for employees. This bill provides that those employers would continue to be governed by federal law governing maximum hours and overtime as provided under existing law. The bill would also provide a consistent operative date for the substantive provisions of the amendments to the affected sections, all to be effective after December 31, 2014. Finally, the bill would require legislative rules, specify the authority of the commissioner to enforce rules, and authorize emergency rules prior to January 1, 2015, to implement and administer the amendments made to article §21-5C during 2014, and to revise employee exemptions under state law to conform with federal law.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.