

1 **ENROLLED**

2 **H. B. 201**

3
4 (By Mr. Speaker, (Mr. Miley) and Delegate Armstead)

5 [By Request of the Executive]

6 [Passed May 21, 2014; in effect from passage.]
7
8
9

10 AN ACT to amend and reenact §21-5C-1, §21-5C-2 and §21-5C-4 of the
11 Code of West Virginia, 1931, as amended, as contained in
12 chapter one hundred twenty-four, Acts of the Legislature,
13 regular session, 2014, and to amend and reenact §21-5C-6 of
14 said code, all relating to the application of minimum wage
15 and maximum hour standards; modifying the definition of the
16 term "employer"; clarifying the definition of the term "hours
17 worked"; clarifying operative dates; requiring legislative
18 rules; and authorizing promulgation of emergency rules.

19 *Be it enacted by the Legislature of West Virginia:*

20 That §21-5C-1, §21-5C-2 and §21-5C-4 of the Code of West
21 Virginia, 1931, as amended, as contained in chapter one hundred
22 twenty-four, Acts of the Legislature, regular session, 2014, be
23 amended and reenacted, and that §21-5C-6 of said code be amended
24 and reenacted, all to read as follows:

1 **ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR**
2 **EMPLOYEES.**

3 **§21-5C-1. Definitions.**

4 As used in this article:

5 (a) "Commissioner" means the Commissioner of Labor or his or
6 her duly authorized representatives.

7 (b) "Wage and hour director" means the wage and hour director
8 appointed by the Commissioner of Labor as chief of the Wage and
9 Hour Division.

10 (c) "Wage" means compensation due an employee by reason of his
11 or her employment.

12 (d) "Employ" means to hire or permit to work.

13 (e) "Employer" includes the State of West Virginia, its
14 agencies, departments and all its political subdivisions, any
15 individual, partnership, association, public or private
16 corporation, or any person or group of persons acting directly or
17 indirectly in the interest of any employer in relation to an
18 employee; and who employs during any calendar week six or more
19 employees as herein defined in any one separate, distinct and
20 permanent location or business establishment: *Provided*, That prior
21 to January 1, 2015, the term "employer" does not include any
22 individual, partnership, association, corporation, person or group
23 of persons or similar unit if eighty percent of the persons
24 employed by him or her are subject to any federal act relating to

1 minimum wage, maximum hours and overtime compensation: *Provided,*
2 *however,* That after December 31, 2014, for the purposes of section
3 three of this article, the term "employer" does not include any
4 individual, partnership, association, corporation, person or group
5 of persons or similar unit if eighty percent of the persons
6 employed by him or her are subject to any federal act relating to
7 maximum hours and overtime compensation.

8 (f) "Employee" includes any individual employed by an employer
9 but shall not include: (1) Any individual employed by the United
10 States; (2) any individual engaged in the activities of an
11 educational, charitable, religious, fraternal or nonprofit
12 organization where the employer-employee relationship does not in
13 fact exist, or where the services rendered to such organizations
14 are on a voluntary basis; (3) newsboys, shoeshine boys, golf
15 caddies, pinboys and pin chasers in bowling lanes; (4) traveling
16 salesmen and outside salesmen; (5) services performed by an
17 individual in the employ of his or her parent, son, daughter or
18 spouse; (6) any individual employed in a bona fide professional,
19 executive or administrative capacity; (7) any person whose
20 employment is for the purpose of on-the-job training; (8) any
21 person having a physical or mental handicap so severe as to prevent
22 his or her employment or employment training in any training or
23 employment facility other than a nonprofit sheltered workshop; (9)
24 any individual employed in a boys or girls summer camp; (10) any

1 person sixty-two years of age or over who receives old-age or
2 survivors benefits from the Social Security Administration; (11)
3 any individual employed in agriculture as the word agriculture is
4 defined in the Fair Labor Standards Act of 1938, as amended; (12)
5 any individual employed as a firefighter by the state or agency
6 thereof; (13) ushers in theaters; (14) any individual employed on
7 a part-time basis who is a student in any recognized school or
8 college; (15) any individual employed by a local or interurban
9 motorbus carrier; (16) so far as the maximum hours and overtime
10 compensation provisions of this article are concerned, any
11 salesman, parts man or mechanic primarily engaged in selling or
12 servicing automobiles, trailers, trucks, farm implements, aircraft
13 if employed by a nonmanufacturing establishment primarily engaged
14 in the business of selling such vehicles to ultimate purchasers;
15 (17) any employee with respect to whom the United States Department
16 of Transportation has statutory authority to establish
17 qualifications and maximum hours of service; (18) any person
18 employed on a per diem basis by the Senate, the House of Delegates,
19 or the Joint Committee on Government and Finance of the Legislature
20 of West Virginia, other employees of the Senate or House of
21 Delegates designated by the presiding officer thereof, and
22 additional employees of the Joint Committee on Government and
23 Finance designated by such joint committee; or (19) any person
24 employed as a seasonal employee of a commercial whitewater

1 outfitter where the seasonal employee works less than seven months
2 in any one calendar year and, in such case, only for the limited
3 purpose of exempting the seasonal employee from the maximum wage
4 provisions of section three of this article.

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

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

19 **§21-5C-2. Minimum wages.**

20 (a) *Minimum wage:*

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

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

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

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

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

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

24 (b) *Training wage:*

1 (1) Notwithstanding the provisions set forth in subsection (a)
2 of this section to the contrary, an employer may pay an employee
3 first hired after June 30, 2006, a subminimum training wage not
4 less than \$5.15 per hour: *Provided*, That an employer may pay an
5 employee first hired after December 31, 2014, a subminimum training
6 wage not less than \$6.40 per hour.

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

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

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

17 (3) When the federal subminimum training wage as prescribed by
18 29 U.S.C. §206 (g) (1) is equal to or greater than the wage rate
19 prescribed in subdivision (1) of this subsection, every employer
20 shall pay to each of his or her employees wages at a rate of not
21 less than the federal subminimum training wage as prescribed by 29
22 U.S.C. §206 (g) (1). The subminimum training wage rates required
23 under this subsection shall be thereafter adjusted in accordance
24 with adjustments made in the federal subminimum training wage rate.

1 The adoption of the federal subminimum training wage provided by
2 this subsection includes only the federal subminimum training wage
3 rate prescribed in 29 U.S.C. §206 (g) (1) and does not include
4 other wage rates, or conditions, exclusions, or exceptions to the
5 federal subminimum training wage rate. In addition, adoption of
6 the federal subminimum training wage rate does not extend or modify
7 the scope or coverage of the subminimum training wage rate required
8 under this subsection.

9 (c) Notwithstanding any provision or definition to the
10 contrary, the wages established pursuant to this section are
11 applicable to all individuals employed by the State of West
12 Virginia, its agencies and departments, regardless if the employee
13 or employer are subject to any federal act relating to minimum
14 wage: *Provided*, That at no time may the minimum wage established
15 pursuant to this section fall below the federal minimum hourly wage
16 as prescribed by 29 U.S.C. §206(a)(1), and at no time may the
17 subminimum training wage established pursuant to this section fall
18 below the federal subminimum training wage rate as prescribed by 29
19 U.S.C. §206 (g) (1).

20 **§21-5C-4. Credits.**

21 Prior to January 1, 2015, in determining whether an employer
22 is paying an employee wages and overtime compensation as provided
23 in sections two and three of this article, there shall be provided
24 in accordance with the regulations which shall be promulgated by

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

20 **§21-5C-6. Duties and powers of commissioner of labor.**

21 (a) It shall be the duty of the commissioner to enforce and
22 administer the provisions of this article and rules promulgated
23 thereunder, and to promulgate such rules and regulations, in
24 accordance with chapter twenty-nine-a of the Code of West Virginia,

1 1931, as amended, as shall be needful to give effect to the
2 provisions of this article. The commissioner is authorized to
3 promulgate emergency rules prior to January 1, 2015, to implement
4 and administer the amendments made to this article in 2014. If the
5 commissioner makes a finding that a conflict exists between state
6 and federal standards defining employee exemptions, the
7 commissioner is further authorized to promulgate emergency rules
8 prior to January 1, 2015, for the purpose of revising the state
9 standards to conform with federal law.

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

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

24 (d) The commissioner is authorized and empowered to file

1 criminal complaints against persons whom the commissioner has
2 reasonable cause to believe have committed any offense created or
3 defined by the provisions of this article.

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

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