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HOUSE BILL NO. 1259

Offered January 10, 2018

Prefiled January 10, 2018

A BILL to amend and reenact §§ 40.1-2.1 and 40.1-28.9 of the Code of Virginia, relating to the Virginia Minimum Wage Act; excluded employees; tips excluded from wages.

Patrons—Krizek, Boysko, Torian, Adams, D.M., Ayala, Bagby, Carroll Foy, Convirs-Fowler, Gooditis, Guzman, Hope, Hurst, Levine, McQuinn, Plum, Rodman, Simon, Tyler and Ward

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-2.1 and 40.1-28.9 of the Code of Virginia are amended and reenacted as follows:

§ 40.1-2.1. Application of title to Commonwealth and its agencies, etc.; safety and health program for public employees.

The provisions of this title, *other than Article 1.1 (§ 40.1-28.8 et seq.) of Chapter 3*, and any rules and regulations promulgated pursuant thereto shall not apply to the Commonwealth or any of its agencies, institutions, or political subdivisions, or any public body, unless, and to the extent that, coverage is extended by specific regulation of the Commissioner or the Board. The Commissioner is authorized to establish and maintain an effective and comprehensive occupational safety and health program applicable to employees of the Commonwealth, its agencies, institutions, political subdivisions, or any public body. Such program shall be subject to any State plan submitted to the federal government for State enforcement of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), or any other regulation promulgated under Title 40.1. The Commissioner or the Board shall establish procedures and adopt regulations for enforcing the program that shall include provisions for (i) the issuance of proposed penalties; (ii) the payment of such penalties or a negotiated sum in lieu of such penalties; (iii) the deposit of such payments into the general fund of the state treasury; (iv) fair hearings, including judicial review; and (v) other sanctions to be applied for violations.

§ 40.1-28.9. Definitions; wages of tipped employees.

A. As used in this article:

A. "Employer" includes any individual, partnership, association, corporation, business trust, or any person or groups of persons acting directly or indirectly in the interest of an employer in relation to an employee;

B. "Employee" includes any individual employed by an employer, except the following:

1. ~~Any person employed as a farm laborer or farm employee;~~
2. Any person employed in domestic service or in or about a private home or in an eleemosynary institution primarily supported by public funds;

3. Any person engaged in the activities of an educational, charitable, religious or nonprofit organization where the relationship of employer-employee does not, in fact, exist, or where the services rendered to such organizations are on a voluntary basis;

4. ~~Newsboys, shoe-shine boys, caddies on golf courses, babysitters, ushers, doormen, concession attendants and cashiers in theaters~~ 3. ~~Babysitters;~~

5. 4. Traveling salesmen or outside salesmen working on a commission basis; ~~taxicab drivers and operators;~~

6. 5. Any person under the age of 18 in the employ of his father, mother or legal guardian;

7. 6. Any person confined in any penal or corrective institution of the State or any of its political subdivisions or admitted to a state hospital or training center operated by the Department of Behavioral Health and Developmental Services;

8. 7. Any person employed by a ~~boys' and/or girls'~~ summer camp for boys, girls, or both;

9. 8. Any person under the age of 16, regardless of by whom employed;

10. 9. Any person who normally works and is paid based on the amount of work done;

11. ~~[Repealed.]~~

12. ~~Any person whose employment is covered by the Fair Labor Standards Act of 1938 as amended;~~
13. 10. Any person whose earning capacity is impaired by physical deficiency, mental illness, or intellectual disability, *only to the extent that such person performed services for an employer prior to July 1, 2020;*

14. 11. Students participating in a bona fide educational program;

15. 12. Any person employed by an employer who does not have four or more persons employed at any one time; provided that husbands, wives, sons, daughters, and parents of the employer shall not be

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58 counted in determining the number of persons employed;

59 ~~16.~~ 13. Any person who is less than 18 years of age and who is currently enrolled on a full-time
60 basis in any secondary school, institution of higher education, or trade school, provided *that* the person
61 is not employed more than 20 hours per week;

62 ~~16A.~~ 14. Any person of any age who is currently enrolled on a full-time basis in any secondary
63 school, institution of higher education, or trade school and is in a work-study program or its equivalent
64 at the institution at which ~~he or she~~ *the person* is enrolled as a student; *or*

65 ~~17.~~ 15. Any person who is less than 18 years of age and who is under the jurisdiction and direction
66 of a juvenile and domestic relations district court.

67 C. "Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash
68 on demand or upon acceptance at full value; provided, *that* wages may include the reasonable cost to
69 the employer of furnishing meals and for lodging to an employee, if such board or lodging is
70 customarily furnished by the employer, and used by the employee.

71 ~~D.~~ B. In determining the wage of a tipped *paid to any employee*, ~~the amount paid such employee by~~
72 ~~his employer shall be deemed to be increased on account of tips by an amount determined by the~~
73 ~~employer, except in the case of an employee who establishes by clear and convincing evidence that the~~
74 ~~actual, the amount of tips received by him was less than the amount determined by the employer. In~~
75 ~~such case, the amount paid such employee by his employer shall be deemed to have been increased by~~
76 ~~such lesser amount excluded from such determination.~~