19100314D

1   **SENATE BILL NO. 1017**
2   Offered January 9, 2019
3   Prefiled August 20, 2018
4 *A BILL to amend and reenact §§ 40.1-28.9 and 40.1-28.10 of the Code of Virginia, relating to the*
5   *minimum wage.*
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                Patrons—Marsden; Delegate: Kory
7   —————————
8   Referred to Committee on Commerce and Labor
9   —————————
10   **Be it enacted by the General Assembly of Virginia:**
11 **1. That §§ 40.1-28.9 and 40.1-28.10 of the Code of Virginia are amended and reenacted as follows:**
12   **§ 40.1-28.9. Definition of terms.**
13   *A.* As used in this article:
14   A. "Employer" includes any individual, partnership, association, corporation, business trust, or any
15 person or groups of persons acting directly or indirectly in the interest of an employer in relation to an
16 employee;
17   B. "Employee" includes any individual employed by an employer, except the following:
18   1. Any person employed as a farm laborer or farm employee;
19   2. Any person employed in domestic service or in or about a private home or in an eleemosynary
20 institution primarily supported by public funds;
21   3. Any person engaged in the activities of an educational, charitable, religious or nonprofit
22 organization where the relationship of employer-employee does not, in fact, exist, or where the services
23 rendered to such organizations are on a voluntary basis;
24   4. Newsboys, shoe-shine boys, caddies on golf courses, babysitters, ushers, doormen, concession
25 attendants and cashiers in theaters;
26   5. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and
27 operators;
28   6. Any person under the age of 18 in the employ of his father, mother or legal guardian;
29   7. Any person confined in any penal or corrective institution of the State or any of its political
30 subdivisions or admitted to a state hospital or training center operated by the Department of Behavioral
31 Health and Developmental Services;
32   8. Any person employed by a boys' and/or girls' summer camp *for boys, girls, or both boys and*
33 *girls*;
34   9. Any person under the age of 16, regardless of by whom employed;
35   10. Any person who normally works and is paid based on the amount of work done;
36   11. [Repealed.]
37   12. Any person whose employment is covered by the Fair Labor Standards Act of 1938 as amended;
38   13. Any person whose earning capacity is impaired by physical deficiency, mental illness, or
39 intellectual disability;
40   14. *12.* Students participating in a bona fide educational program;
41   15. *13.* Any person employed by an employer who does not have four or more persons employed at
42 any one time; provided that husbands, wives, sons, daughters and parents of the employer shall not be
43 counted in determining the number of persons employed;
44   16. *14.* Any person who is less than 18 years of age and who is currently enrolled on a full-time
45 basis in any secondary school, institution of higher education or trade school, provided the person is not
46 employed more than 20 hours per week;
47   16A. *15.* Any person of any age who is currently enrolled on a full-time basis in any secondary
48 school, institution of higher education or trade school and is in a work-study program or its equivalent
49 at the institution at which he or she is enrolled as a student;
50   17. *16.* Any person who is less than 18 years of age and who is under the jurisdiction and direction
51 of a juvenile and domestic relations district court.
52   *"Employer" includes any individual, partnership, association, corporation, or business trust or any*
53 *person or groups of persons acting directly or indirectly in the interest of an employer in relation to an*
54 *employee. "Employer" includes the Commonwealth; any of its agencies, institutions, or political*
55 *subdivisions; and any public body.*
56   *"Tipped employee" means an employee engaged in an occupation in which he customarily and*
57 *regularly receives more than $30 a month in tips.*
58   C. "Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash

59 on demand or upon acceptance at full value; provided, wages may include the reasonable cost to the
60 employer of furnishing meals and for lodging to an employee, if such board or lodging is customarily
61 furnished by the employer, and used by the employee.
62 ~~D.~~ *B.* In determining the wage of a tipped employee, the amount paid such employee by his
63 employer shall be deemed to be increased on account of tips by an amount determined by the employer,
64 except in the case of an employee who establishes by clear and convincing evidence that the actual
65 amount of tips received by him was less than the amount determined by the employer. In such case, the
66 amount paid such employee by his employer shall be deemed to have been increased by such lesser
67 amount. *Commencing July 1, 2019, the amount of the credit by which payments to a tipped employee*
68 *are deemed to be increased on account of tips shall not exceed the limit established pursuant to clause*
69 *(b) of subsections B, C, D, and E of § 40.1-28.10.*
70 **§ 40.1-28.10. Minimum wages.**
71 ~~Every~~ *A. Prior to July 1, 2019, every* employer shall pay to each of his employees wages at a rate
72 not less than the federal minimum wage ~~and a~~ *or, if applicable, the* training wage as prescribed by the
73 U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.).
74 *B. On and after July 1, 2019, but before July 1, 2020, every employer shall pay to each of his*
75 *employees wages at a rate not less than the greater of (i) $8.00 per hour or (ii) the federal minimum*
76 *wage as prescribed by the U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.). During this period,*
77 *(a) the cash wage paid to a tipped employee by his employer shall not be less than 50 percent of the*
78 *minimum wage established pursuant to the preceding sentence and (b) the credit used to determine the*
79 *wage of a tipped employee as provided under subsection B of § 40.1-28.9 shall equal the difference*
80 *between the cash wage established pursuant to clause (a) and the minimum wage established pursuant*
81 *to the preceding sentence.*
82 *C. On and after July 1, 2020, but before July 1, 2021, every employer shall pay to each of his*
83 *employees wages at a rate not less than the greater of (i) $9.00 per hour or (ii) the federal minimum*
84 *wage as prescribed by the U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.). During this period,*
85 *(a) the cash wage paid to a tipped employee by his employer shall not be less than 50 percent of the*
86 *minimum wage established pursuant to the preceding sentence and (b) the credit used to determine the*
87 *wage of a tipped employee as provided under subsection B of § 40.1-28.9 shall equal the difference*
88 *between the cash wage established pursuant to clause (a) and the minimum wage established pursuant*
89 *to the preceding sentence.*
90 *D. On and after July 1, 2021, but before July 1, 2022, every employer shall pay to each of his*
91 *employees wages at a rate not less than the greater of (i) $10.10 per hour or (ii) the federal minimum*
92 *wage as prescribed by the U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.). During this period,*
93 *(a) the cash wage paid to a tipped employee by his employer shall not be less than 50 percent of the*
94 *minimum wage established pursuant to the preceding sentence and (b) the credit used to determine the*
95 *wage of a tipped employee as provided under subsection B of § 40.1-28.9 shall equal the difference*
96 *between the cash wage established pursuant to clause (a) and the minimum wage established pursuant*
97 *to the preceding sentence.*
98 *E. From and after July 1, 2022, every employer shall pay to each of his employees wages at a rate*
99 *not less than the greater of (i) $11.25 per hour or (ii) the federal minimum wage as prescribed by the*
100 *U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.). From and after such date, (a) the cash wage*
101 *paid to a tipped employee by his employer shall not be less than 50 percent of the minimum wage*
102 *established pursuant to the preceding sentence and (b) the credit used to determine the wage of a tipped*
103 *employee as provided under subsection B of § 40.1-28.9 shall equal the difference between the cash*
104 *wage established pursuant to clause (a) and the minimum wage established pursuant to the preceding*
105 *sentence.*