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SENATE BILL NO. 1376

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13, relating to small business parental leave tax credit.*

Patrons—Favola and Boysko

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13 as follows:

§ 58.1-439.12:13. Small business parental leave tax credit.

A. As used in this section, unless the context requires a different meaning:

"Full-time employee" means an employee in a job of an indefinite duration requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the employer's operations, which "normal year" must consist of at least 48 weeks, or (ii) a minimum of 1,680 hours per year. "Full-time employee" does not include any employee in a seasonal or temporary position.

"Parental leave" means absence or leave from work taken by a parent (i) for the birth of his child or the placement of a child with the parent for adoption or (ii) to care for such child. "Parental leave" does not include any (a) leave taken subsequent to 12 months following the date of birth of the child or the date of placement with the parent for adoption or (b) leave taken for a child who is 19 years of age or older on the date of placement with the parent for adoption. "Parental leave" is separate from any paid vacation, sick, or other paid leave.

"Small business" means a business that (i) has been operating for at least two full fiscal years immediately prior to the relevant taxable year; (ii) at the time of parental leave is at least 51 percent independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens; (iii) has, together with affiliates, fewer than 50 full-time employees for the relevant taxable year; and (iv) has one or more of its individual owners in control of both the management and daily business operations of the small business.

B. 1. For taxable years beginning on or after January 1, 2021, but before January 1, 2022, a small business shall be allowed a credit against the tax levied pursuant to § 58.1-320 or 58.1-400 for a portion of the salary or wages paid during the taxable year by the business to a full-time employee in a job within the Commonwealth for the period for which the employee is taking parental leave. The credit shall equal 65 percent of the first \$8,333 in salary or wages paid to each such employee for parental leave.

2. To be eligible for the credit, the small business shall allow full-time employees to take at least eight workweeks of parental leave per occurrence of birth of a child or placement of a child with the employee for adoption and shall pay the employee for each workweek of parental leave taken at an amount not less than 80 percent of the employee's weekly salary or wages payable or paid to the employee immediately prior to the employee taking parental leave. As a further condition of eligibility, the small business shall (i) allow full-time employees on parental leave to enroll in or continue health insurance coverage, including family coverage, offered or otherwise made available by the business on the same terms as if such employees continued to work and (ii) award such employees with sick, vacation, and other work leave for the period during which the small business is paying them for taking parental leave on the same terms as if such employees continued to work.

3. a. No tax credit shall be allowed for any leave taken for which the full-time employee used paid vacation, sick, or other paid leave that is not solely parental leave.

b. No tax credit shall be allowed for salary or wages paid after the first 12 workweeks of parental leave.

4. In any case in which both parents are full-time employees of the small business and take parental leave, the tax credit shall be limited to 65 percent of the first \$8,333 in salary or wages paid in aggregate for parental leave, and no credit shall be allowed for salary or wages paid after the first 12 workweeks of aggregate parental leave.

5. No tax credit shall be allowed for parental leave taken by a full-time employee who holds more than a 0.50 percent ownership interest in any class of stock or other security, debt or other obligation, capital, or other ownership of the small business.

C. The Department shall administer the credit under this section. Small businesses seeking the tax

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59 credit under this section shall apply to the Department on forms prescribed by the Department. Only
60 upon approval of the application and issuance of a tax credit by the Department shall a small business
61 be allowed to claim any credit. The Department shall review complete applications on a first-come,
62 first-served basis and issue tax credits accordingly. The total amount of tax credits that the Department
63 may issue each fiscal year pursuant to this section shall not exceed \$5.5 million.

64 D. The amount of the credit claimed by any small business shall not exceed the total amount of tax
65 imposed by this chapter upon the small business for the taxable year. Any tax credit not usable for the
66 taxable year for which the credit was issued may be carried over to the extent usable for the next seven
67 taxable years or until the total amount of the tax credit has been taken, whichever occurs sooner.

68 The amount of any credit attributable to a partnership, electing small business corporation (S
69 corporation), or limited liability company shall be allocated to the individual partners, shareholders, or
70 members, respectively, in proportion to their ownership or interest in such business entities.

71 E. The Department shall develop and publish guidelines for the administration of the credit. The
72 guidelines shall include eligibility guidelines and procedural guidelines for applying for the credit. The
73 guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

74 F. The provisions of this section targeting the credit to small businesses and limiting the credit to
75 jobs within the Commonwealth are integral to the purpose of the credit earned pursuant to this section
76 and shall not be deemed severable.