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**HOUSE BILL NO. 395**

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations on February 7, 2020)

(Patrons Prior to Substitute—Delegates Ward, Carroll Foy [HB 433], Guzman [HB 583], and Plum [HB 615])

*A BILL to amend and reenact §§ 40.1-28.9 and 40.1-28.10 of the Code of Virginia, relating to the minimum wage.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 40.1-28.9 and 40.1-28.10 of the Code of Virginia are amended and reenacted as follows:**

**§ 40.1-28.9. Definitions; determining wage of tipped employee.**

A. As used in this article:

"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.~~ *2.* 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~~ *organization is* on a voluntary basis;

~~4.~~ *3.* Caddies on golf courses;

~~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~~ *parent* or legal guardian;

~~7.~~ *6.* Any person confined in any penal or corrective institution of the ~~State~~ *Commonwealth* 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 summer camp for boys, girls, or both boys and girls;

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

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

~~11. Any person whose employment is covered by the Fair Labor Standards Act of 1938, as amended;~~

~~12.~~ *9.* Any person whose earning capacity is impaired by physical deficiency, mental illness, or intellectual disability;

~~13.~~ *10.* Students participating in a bona fide educational program;

~~14. 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 counted in determining the number of persons employed;~~

~~15.~~ *11.* Any person who is less than 18 years of age and who is currently enrolled on a full-time basis in any secondary school, institution of higher education, or trade school, provided *that* the person is not employed more than 20 hours per week;

~~16.~~ *12.* Any person of any age who is currently enrolled on a full-time basis in any secondary school, institution of higher education, or trade school and is in a work-study program or its equivalent at the institution at which he ~~or she~~ is enrolled as a student; *or*

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

~~18.~~ *13.* Any person who works as a babysitter for fewer than 10 hours per week.

"Employer" includes any individual, partnership, association, corporation, *or* business trust~~,~~ or any person or ~~groups~~ *group* of persons acting directly or indirectly in the interest of an employer in relation to an employee. *"Employer" includes the Commonwealth, any of its agencies, institutions, or political subdivisions, and any public body.*

*"Federal minimum wage" means the minimum wage or, if applicable, the federal training wage prescribed by the U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.).*

*"Tipped employee" means an employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.*

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

B. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, except in

2/25/20 15:11

HOUSE SUBSTITUTE

HB395H2

the case of an employee who establishes by clear and convincing evidence that the actual amount of tips received by him was less than the amount determined by the employer. In such case, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount.

**§ 40.1-28.10. Minimum wages.**

~~Every~~ *A. Prior to July 1, 2020, every* employer shall pay to each of ~~his~~ *its* employees wages at a rate not less than the federal minimum wage ~~and a training wage as prescribed by the U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.)~~.

*B. From July 1, 2020, until July 1, 2021, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $10.00 per hour or (ii) the federal minimum wage.*

*C. From July 1, 2021, until July 1, 2022, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $11.25 per hour or (ii) the federal minimum wage.*

*D. From July 1, 2022, until July 1, 2023, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $12.00 per hour or (ii) the federal minimum wage.*

*E. From July 1, 2023, until July 1, 2024, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $13.00 per hour or (ii) the federal minimum wage.*

*F. From July 1, 2024, until July 1, 2025, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $14.00 per hour or (ii) the federal minimum wage.*

*G. From July 1, 2025, until July 1, 2026, every employer shall pay to each of its employees wages at a rate not less than the greater of (i) $15.00 per hour or (ii) the federal minimum wage.*

*H. From and after July 1, 2026, every employer shall pay to each of his employees wages at a rate not less than the greater of (i) the adjusted state hourly minimum wage or (ii) the federal minimum wage. As used in this subsection, "adjusted state hourly minimum wage" means the amount established by the Commissioner pursuant to subsection I.*

*I. By April 1, 2026, and annually thereafter, the Commissioner shall establish the adjusted state hourly minimum wage that shall be in effect during the 12-month period commencing on the following July 1. The Commissioner shall set the adjusted state hourly minimum wage at the sum of (i) the amount of the state hourly minimum wage rate that is in effect on the date such adjustment is made and (ii) a percentage of the amount described in clause (i) that is equal to the percentage by which the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or a successor index as calculated by the U.S. Department of Labor, has increased during the most recent calendar year for which such information is available. The amount of each annual adjustment shall not be less than zero.*