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SENATE BILL NO. 79

Offered January 8, 2020

Prefiled November 26, 2019

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; tipped employees.*

Patrons—Marsden; Delegate: Kory

Referred to Committee on Commerce and Labor

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. 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. Caddies on golf courses;
 5. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and operators;
 6. Any person under the age of 18 in the employ of his father, mother, parent or legal guardian;
 7. 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. Any person employed by a summer camp for boys, girls, or both boys and girls;
 9. 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. Any person whose earning capacity is impaired by physical deficiency, mental illness, or intellectual disability;
 13. Students participating in a bona fide educational program;
 14. Any person employed by an employer who that does not have four or more persons employed at any one time; provided that husbands, wives, the spouse, sons, daughters, children, and parents of the an individual employer shall not be counted in determining the number of persons employed;
 15. 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. 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;
 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. 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.
- "Tipped employee" means an employee engaged in an occupation in which he customarily and regularly receives more than \$30 a month in tips.
- "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.
- "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

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59 shall be deemed to be increased on account of tips by an amount determined by the employer, except in
60 the case of an employee who establishes by clear and convincing evidence that the actual amount of tips
61 received by him was less than the amount determined by the employer. In such case, the amount paid
62 such employee by his employer shall be deemed to have been increased by such lesser amount.
63 *Commencing July 1, 2020, the amount of the credit by which payments to a tipped employee are deemed*
64 *to be increased on account of tips shall not exceed the limit established pursuant to subsection B of §*
65 *40.1-28.10.*

66 **§ 40.1-28.10. Minimum wages.**

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

70 B. *On and after July 1, 2020, the cash wage paid to a tipped employee by his employer shall not be*
71 *less than 50 percent of the minimum wage established pursuant to subsection A. The credit used to*
72 *determine the wage of a tipped employee as provided under subsection B of § 40.1-28.9 shall equal the*
73 *difference between the cash wage established pursuant to this subsection and the minimum wage*
74 *established pursuant to subsection A.*