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SENATE BILL NO. 804

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 9, 2020)

(Patron Prior to Substitute—Senator McClellan)

A BILL to amend and reenact § 40.1-28.9 of the Code of Virginia, relating to employees providing domestic service; minimum wage.

Be it enacted by the General Assembly of Virginia:

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

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

A. As used in this article:

"Domestic service" means services related to the care of an individual in a private home or the maintenance of a private home or its premises, on a permanent or temporary basis, including services performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs.

"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 does not have four or more persons employed at any one time; provided that husbands, wives, sons, daughters (i) the spouse, children, and parents of the employer shall not be counted in determining the number of persons employed and (ii) this exception shall not apply to persons employed as domestic service employees;
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.

"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 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

60 such employee by his employer shall be deemed to have been increased by such lesser amount.

61 **2. That the Secretary of Commerce and Trade shall convene a work group consisting of**
62 **representatives from the Department of Labor and Industry, the Virginia Employment**
63 **Commission, and the Workers' Compensation Commission to make recommendations, including**
64 **any necessary statutory and regulatory changes, with regard to protecting domestic service**
65 **employees from workplace harassment and discrimination, providing remedies for such employees**
66 **for the nonpayment of wages, ensuring the safety and health of such employees in the workplace,**
67 **and protecting such employees from loss of income as a result of unemployment or**
68 **employment-related injury by including coverage of such employees in the Virginia Unemployment**
69 **Compensation Act and the Virginia Workers' Compensation Act. The work group shall report its**
70 **findings and recommendations to the Chairs of the Senate Committee on Commerce and Labor**
71 **and the House Committee on Labor and Commerce by November 1, 2020.**