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HOUSE BILL NO. 715

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact §§ 40.1-2.1, 40.1-28.9, and 40.1-28.10 of the Code of Virginia, relating to the minimum wage.

Patrons—Plum, Bagby, Boysko, Convirs-Fowler, Delaney, Gooditis, Hope, Krizek, Levine, Simon and Tyler

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-2.1, 40.1-28.9, and 40.1-28.10 of the Code of Virginia are amended and reenacted as follows:

§ 40.1-2.1. Application of title to Commonwealth and its agencies, etc.; safety and health program for public employees.

The provisions of this title, other than Article 1.1 (§ 40.1-28.8 et seq.) of Chapter 3, and any rules and regulations promulgated pursuant thereto shall not apply to the Commonwealth or any of its agencies, institutions, or political subdivisions, or any public body, unless, and to the extent that, coverage is extended by specific regulation of the Commissioner or the Board. The Commissioner is authorized to establish and maintain an effective and comprehensive occupational safety and health program applicable to employees of the Commonwealth, its agencies, institutions, political subdivisions, or any public body. Such program shall be subject to any State plan submitted to the federal government for State enforcement of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), or any other regulation promulgated under Title 40.1. The Commissioner or the Board shall establish procedures and adopt regulations for enforcing the program that shall include provisions for (i) the issuance of proposed penalties; (ii) the payment of such penalties or a negotiated sum in lieu of such penalties; (iii) the deposit of such payments into the general fund of the state treasury; (iv) fair hearings, including judicial review; and (v) other sanctions to be applied for violations.

§ 40.1-28.9. Definition of terms.

A. As used in this article:

A. "Employer" includes any individual, partnership, association, corporation, business trust, or any person or groups of persons acting directly or indirectly in the interest of an employer in relation to an employee;

B. "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 on a voluntary basis;
- 4. Newsboys, shoe-shine boys, caddies on golf courses, babysitters, ushers, doormen, concession attendants and cashiers in theaters;
- 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 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 boys' and/or girls' 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. ~~Repealed.~~
- 12. Any person whose employment is covered by the Fair Labor Standards Act of 1938 as amended;
- 13. Any person whose earning capacity is impaired by physical deficiency, mental illness, or intellectual disability;
- 14. 12. Students participating in a bona fide educational program;
- 15. 13. Any person employed by an employer who does not have four or more persons employed at

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58 any one time; provided that husbands, wives, sons, daughters and parents of the employer shall not be  
59 counted in determining the number of persons employed;

60 ~~16.~~ 14. Any person who is less than 18 years of age and who is currently enrolled on a full-time  
61 basis in any secondary school, institution of higher education or trade school, provided the person is not  
62 employed more than 20 hours per week;

63 ~~16A.~~ 15. Any person of any age who is currently enrolled on a full-time basis in any secondary  
64 school, institution of higher education or trade school and is in a work-study program or its equivalent  
65 at the institution at which he or she is enrolled as a student; or

66 ~~17.~~ 16. Any person who is less than 18 years of age and who is under the jurisdiction and direction  
67 of a juvenile and domestic relations district court.

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

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

76 ~~D.~~ B. In determining the wage of a tipped employee, the amount paid such employee by his  
77 employer shall be deemed to be increased on account of tips by an amount determined by the employer,  
78 except in the case of an employee who establishes by clear and convincing evidence that the actual  
79 amount of tips received by him was less than the amount determined by the employer. In such case, the  
80 amount paid such employee by his employer shall be deemed to have been increased by such lesser  
81 amount.

82 **§ 40.1-28.10. Minimum wages.**

83 ~~Every~~ A. Prior to January 1, 2019, every employer shall pay to each of his employees wages at a  
84 rate not less than the federal minimum wage and a or, if applicable, the federal training wage as  
85 prescribed by the U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.).

86 B. From January 1, 2019, until January 1, 2021, every employer shall pay to each of his employees  
87 wages at a rate not less than the greater of (i) \$10.10 per hour or (ii) the federal minimum wage as  
88 prescribed by the U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.).

89 C. From and after January 1, 2021, every employer shall pay to each of his employees wages at a  
90 rate not less than the greater of (i) the adjusted state hourly minimum wage or (ii) the federal minimum  
91 wage as prescribed by the U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.). As used in this  
92 subsection, "adjusted state hourly minimum wage" means the amount established by the Commissioner  
93 pursuant to subsection D.

94 D. By October 1, 2020, and biennially thereafter, the Commissioner shall establish the adjusted state  
95 hourly minimum wage that shall be in effect during the 24-month period commencing on the following  
96 January 1. The Commissioner shall set the adjusted state hourly minimum wage at the sum of (i) the  
97 amount of the state hourly minimum wage rate that is in effect on the date such adjustment is made and  
98 (ii) a percentage of the amount described in clause (i) that is equal to the percentage by which the  
99 United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published  
100 by the Bureau of Labor Statistics of the U.S. Department of Labor, or a successor index as calculated  
101 by the U.S. Department of Labor, has increased during the two most recent calendar years for which  
102 such information is available. The amount of each biennial adjustment shall not be less than zero.