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HOUSE BILL NO. 395

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 17, 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.

A. As used in this article:

"Adjusted minimum wage" means the amount established by the Commissioner pursuant to subsection F of § 40.1-28.10.

"Employee" includes any individual employed by an employer, ~~except the following~~. "Employee" includes home care providers. "Employee" does not include 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. 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 or legal guardian;

7. Any person confined in any penal or corrective institution of the State 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 ~~who is paid pursuant to 29 U.S.C. § 214(c) of 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 and parents of the 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 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. ~~16. Any person who works as a babysitter for fewer than 10 hours per week; or~~

17. Any individual employed as a temporary foreign worker as governed by 20 C.F.R. Part 655.

"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. "Employer" includes the Commonwealth; any of its agencies, institutions, or political subdivisions; and any public body.

"Federal minimum wage" means the federal minimum wage as prescribed by the U.S. Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

"Home care provider" means an individual who provides (i) home health services, including services provided by or under the direct supervision of any health care professional under a medical plan of care in a patient's residence on a visit or hourly basis to patients who have or are at risk of injury,

60 illness, or a disabling condition and require short-term or long-term interventions, or (ii) personal care
61 services, including assistance in personal care to include activities of daily living provided in an
62 individual's residence on a visit or hourly basis to individuals who have or are at risk of an illness,
63 injury, or disabling condition.

64 "Median household income" means the median household income published by the U.S. Census
65 Bureau in its annual American Community Survey.

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

70 "Wage region" means the regions of the Commonwealth established by the Commissioner pursuant to
71 subsection F of § 40.1-28.10.

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

77 **§ 40.1-28.10. Minimum wages.**

78 ~~Every~~ A. 1. Prior to January 1, 2021, every employer shall pay to each of his employees wages at a
79 rate not less than the federal minimum wage and a training wage as prescribed by the U.S. Fair Labor
80 Standards Act (29 U.S.C. § 201 et seq.).

81 2. Beginning January 1, 2021, every employer shall pay to each of his employees at a rate not less
82 than the federal minimum wage or 75 percent of the Virginia minimum wage provided for in this
83 section, whichever is greater. For the purposes of this subdivision "employee" means any person (i) who
84 is less than 22 years of age and who is currently enrolled on a full-time basis in any secondary school,
85 institution of higher education or trade school, provided the person is not employed more than 20 hours
86 per week or (ii) an individual who is enrolled in an established employer on-the-job or other training
87 program for a period not to exceed 90 days which meets standards set by regulations adopted by the
88 Commissioner;

89 B. From January 1, 2021, until July 1, 2022, every employer shall pay to each of his employees
90 wages at a rate not less than the greater of (i) \$9.50 per hour or (ii) the federal minimum wage.

91 C. From July 1, 2022, until July 1, 2023, every employer shall pay to each of his employees wages
92 at a rate not less than the greater of (i) \$ 10.50 per hour or (ii) the federal minimum wage.

93 D. From July 1, 2023, until July 1, 2024, every employer shall pay to each of his employees wages
94 at a rate not less than the greater of (i) \$ 11.50 per hour or (ii) the federal minimum wage.

95 E. From July 1, 2024, until July 1, 2025, every employer shall pay to each of his employees wages
96 at a rate not less than the greater of (i) the adjusted minimum wage for the wage region in which the
97 employer is located or (ii) the federal minimum wage.

98 F. By January 1 2024, the Commissioner shall establish wage regions in the Commonwealth by
99 dividing the state into contiguous regions with similar median household incomes and costs of living. In
100 establishing such wage regions, the Commissioner shall not divide a locality into more than one wage
101 region. By March 1, 2024, and annually thereafter, the Commissioner shall establish the adjusted
102 minimum wage for each wage region that shall be in effect during the 12-month period commencing on
103 the following July 1 as follows:

104 1. For the wage region with the highest median household income (Index Region), the adjusted
105 minimum wage for such wage region shall be the amount of the minimum wage for that wage region
106 that is in effect on the date such adjustment is made plus \$1.00. For any other wage region, the
107 adjusted minimum wage for the wage region shall be the sum of (i) the amount of the minimum wage
108 for the wage region that is in effect on the date such adjustment is made and (ii) the amount of the
109 increase in the minimum wage in the Index Region multiplied by the ratio of the wage region's median
110 household income to the median household income of the Index Region.

111 2. Once the adjusted minimum wage in the Index Region is \$15.00 or greater, the adjusted minimum
112 wage for the Index Region shall be the sum of (i) the amount of the minimum wage that is in effect on
113 the date such adjustment is made and (ii) a percentage of the amount described in clause (i) that is
114 equal to the percentage change in the United States Average Consumer Price Index for all items, all
115 urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of
116 Labor, or a successor index as calculated by the U.S. Department of Labor, during the most recent
117 calendar year for which such information is available, provided that such percentage change is not less
118 than zero.

119 3. Following the adjustment described in subdivision 2, for any other wage region, the adjusted
120 minimum wage for the wage region shall be the sum of (i) the amount of the minimum wage for the
121 wage region that is in effect on the date such adjustment is made and (ii) the amount of the increase, if

- 122 *any, in the minimum wage in the Index Region multiplied by the ratio of the wage region's median*
123 *household income to the median household income of the Index Region.*
124 *G. The Commissioner shall publish the adjusted minimum wage for each wage region on the*
125 *Department's website.*