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SENATE BILL NO. 7

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 27, 2020)

(Patrons Prior to Substitute—Senators Saslaw, Locke [SB 73], Marsden [SB 81], and Morrissey [SB 816])

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:

"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 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.~~ 12. Students participating in a bona fide educational program;

~~14.~~ 13. 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.~~ 14. 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.~~ 15. 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.~~ 16. 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.~~ 17. Any person who works as a babysitter for fewer than 10 hours per week.

"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.

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

"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 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 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 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 his employees wages at a rate not less than the greater of (i) \$9.75 per hour or (ii) the federal minimum wage.

C. From July 1, 2021, until July 1, 2022, every employer shall pay to each of his employees wages at a rate not less than the greater of (i) \$10.75 per hour or (ii) the federal minimum wage.

D. From July 1, 2022, until July 1, 2023, every employer shall pay to each of his employees wages at a rate not less than the greater of (i) \$11.75 per hour or (ii) the federal minimum wage.

E. From July 1, 2023, until July 1, 2024, (i) if the employer offers health benefits to the employee, the employer shall pay to such employees wages at a rate not less than the greater of (a) \$11.75 per hour or (b) the federal minimum wage and (ii) if the employer does not offer health benefits to the employee, the employer shall pay to such employees wages at a rate not less than the greater of (a) \$12.75 per hour or (b) the federal minimum wage.

F. From July 1, 2024, until July 1, 2025, (i) if the employer offers health benefits to the employee, the employer shall pay to such employees wages at a rate not less than the greater of (a) \$11.75 per hour or (b) the federal minimum wage and (ii) if the employer does not offer health benefits to the employee, the employer shall pay to such employees wages at a rate not less than the greater of (a) \$14 per hour or (b) the federal minimum wage.

G. From July 1, 2025, and thereafter, (i) if the employer offers health benefits to the employee, the employer shall pay to such employees wages at a rate not less than the greater of (a) \$11.75 per hour or (b) the federal minimum wage and (ii) if the employer does not offer health benefits to the employee, the employer shall pay to such employees wages at a rate not less than the greater of (a) \$15 per hour or (b) the federal minimum wage.

H. A training wage of not less than 75 percent of the minimum wage rate otherwise set pursuant to this section may be paid to an employee who is enrolled in an established employer on-the-job or other training program which meets standards set by regulations adopted by the Commissioner.

The period during which an employer may pay the training wage to the employee shall be the first 320 hours of work after hiring the employee in employment in an occupation in which the employee has no previous or similar or related experience.

An employer shall not utilize any employee paid the training wage in a manner that causes, induces, encourages, or assists any displacement or partial displacement of any currently employed worker, including any previous recipient of the training wage, by reducing hours of a currently employed worker, replacing a current or laid-off employee with a trainee, or relocating operations resulting in a loss of employment at a previous workplace, or in a manner that replaces, supplants, competes with, or duplicates any approved apprenticeship program. An employer who pays an employee a training wage shall make a good faith effort to continue to employ the employee after the period of the training wage expires and shall not hire the employee at the training wage unless there is a reasonable expectation that there will be regular employment, paying at or above the effective minimum wage, for the trainee upon the successful completion of the period of the training wage.

If the Commissioner determines that an employer has made repeated, knowing violations of the provisions of this subsection regarding the payment of a training wage, the Commissioner shall suspend the employer's right to pay a training wage for a period set pursuant to regulations adopted by the Commissioner, but not less than three years.

I. As used in this section "health benefits" means a group health plan or a health benefit plan as those terms are defined in § 38.2-3431; group health insurance coverage, a group health plan, or a health benefit plan as those terms are defined in § 38.2-3438, or a group health policy, as that term is defined in § 38.2-3551, offered by an employer to an employee.

2. That the Virginia Economic Development Partnership (VEDP) shall review the potential impact or consequences of instituting a regional minimum wage in the Commonwealth. VEDP shall complete its meetings by November 30, 2020, and shall submit to the General Assembly and the Governor an executive summary and a report of its findings and recommendations. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2021 Regular Session of the General Assembly and shall be posted on the

122 General Assembly's website.