1	HOUSE BILL NO. 296
2	AMENDMENT IN THE NATURE OF A SUBSTITUTE
3	(Proposed by the House Committee on Commerce and Energy
4	on)
5	(Patron Prior to SubstituteDelegate McNamara)
6	A BILL to amend and reenact § 40.1-28.9 of the Code of Virginia, relating to minimum wage; definition
7	of wages.
8	Be it enacted by the General Assembly of Virginia:
9	1. That § 40.1-28.9 of the Code of Virginia is amended and reenacted as follows:
10	§ 40.1-28.9. Definitions; determining wage of tipped employee.
11	A. As used in this article:
12	"Adjusted state hourly minimum wage" means the amount established by the Commissioner
13	pursuant to subsection H of § 40.1-28.10.
14	"Domestic service" means services related to the care of an individual in a private home or the
15	maintenance of a private home or its premises, on a permanent or temporary basis, including services
16	performed by individuals such as companions, cooks, waiters, butlers, maids, valets, and chauffeurs.
17	"Employee" includes any individual employed by an employer. "Employee" includes a home care
18	provider. "Employee" does not include the following:
19	1. Any person employed as a farm laborer or farm employee;
20	2. Any person engaged in the activities of an educational, charitable, religious, or nonprofit
21	organization where the relationship of employer-employee does not, in fact, exist or where the services
22	rendered to such organization are on a voluntary basis;
23	3. Caddies on golf courses;
24	4. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and
25	operators;
26	5. Any person under the age of 18 in the employ of his parent or legal guardian;

27	6. Any person confined in any penal or corrective institution of the Commonwealth or any of its
28	political subdivisions or admitted to a state hospital or training center operated by the Department of
29	Behavioral Health and Developmental Services;
30	7. Any person employed by a summer camp for boys, girls, or both boys and girls;
31	8. Any person under the age of 16, regardless of by whom employed;
32	9. Any person who is paid pursuant to 29 U.S.C. § 214(c) of the Fair Labor Standards Act of 1938,
33	as amended;
34	10. Students participating in a bona fide educational program;
35	11. Any person who is less than 18 years of age and who is currently enrolled on a full-time basis
36	in any secondary school, institution of higher education, or trade school, provided that the person is not
37	employed more than 20 hours per week;
38	12. Any person of any age who is currently enrolled on a full-time basis in any secondary school,
39	institution of higher education, or trade school and is in a work-study program or its equivalent at the
40	institution at which he is enrolled as a student;
41	13. Any person who works as a babysitter for fewer than 10 hours per week;
42	14. Any person participating as an au pair in the U.S. Department of State's Exchange Visitor
43	Program governed by 22 C.F.R. § 62.31;
14	15. Any individual employed as a temporary foreign worker as governed by 20 C.F.R. Part 655;
1 5	and
1 6	16. Any person who is exempt from the federal minimum wage pursuant to 29 U.S.C. § 213(a)(3).
17	"Employer" includes any individual, partnership, association, corporation, or business trust or any
48	person or group of persons acting directly or indirectly in the interest of an employer in relation to an
1 9	employee. "Employer" includes the Commonwealth, any of its agencies, institutions, or political
50	subdivisions, and any public body.

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"Federal minimum wage" means the minimum wage or, if applicable, the federal training wage

"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 a 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.

"Tipped employee" means an employee who in the course of employment customarily and regularly receives tips totaling more than \$30 each month from persons other than the employee's employer.

"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. "Wages" includes the reasonable cost to the employer of (i) furnishing meals and lodging to an employee—if, provided that such board or lodging is customarily furnished by the employer and used by the employee, and (ii) providing payments for health care benefits to an employee, provided that the employee is paid a cash wage at a rate not less than the greater of (a) \$11.00 per hour or (b) the federal minimum wage.

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. An employer shall not classify an individual as a tipped employee if the individual is prohibited by applicable federal or state law or regulation from soliciting tips.

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