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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO LABOR AND LABOR RELATIONS --MINIMUM WAGES

Introduced By: Senator Frank A. Ciccone

Date Introduced: January 26, 2021

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative findings:

2 (1) Promoting the welfare of the citizens of Rhode Island, its most important asset, and
3 those who work within the State's borders is of the foremost importance to the General Assembly;
4 and

5 (2) After years of inaction by the United States Congress, it is time for States to lift families
6 out of poverty and stimulate the economy by raising the minimum wage; and

7 (3) The cost of living in Rhode Island has increased, it currently costs a Rhode Island
8 resident between two to three times the Federal Poverty just to meet their basic needs; and

9 (4) The minimum wage does not provide a living wage for Rhode Island families. The
10 Economic Progress Institute in its 2018 Standard of Need publication has calculated that full-time
11 minimum wage workers in Rhode Island are unable to meet their basic needs; and

12 (5) An estimated 20,200 workers in the State of Rhode Island work for minimum wage and
13 close to 1 in 4 minimum wage workers are parents; and

14 (6) Phasing in the wage increase over time will allow businesses to adjust and result in
15 reasonable annual increases in expenses.

16 SECTION 2. Sections 28-12-2, 28-12-3 and 28-12-5 of the General Laws in Chapter 28-
17 12 entitled "Minimum Wages" are hereby amended to read as follows:

18 **28-12-2. Definitions.**

19 As used in this chapter:

- 1 (1) "Advisory board" means a board created as provided in § 28-12-6;
- 2 (2) "Commissioner" means the minimum-wage commissioner appointed by the director of
3 labor and training as chief of the division of labor standards;
- 4 (3) "Director" means the director of labor and training, or his or her duly authorized
5 representative;
- 6 (4) "Employ" means to suffer or to permit to work;
- 7 (5) "Employee" means any person who performs work for an employer for monetary
8 compensation within the State, to include persons who perform work for an employer on a full-
9 time, part-time, seasonal or temporary basis ~~includes any individual suffered or permitted to work~~
10 ~~by an employer;~~
- 11 (6) "Employee" shall not include:
- 12 (i) Any individual employed in domestic service or in or about a private home;
- 13 (ii) Any individual employed by the United States;
- 14 (iii) Any individual engaged in the activities of an educational, charitable, religious, or
15 nonprofit organization where the employer-employee relationship does not, in fact, exist, or where
16 the services rendered to the organizations are on a voluntary basis;
- 17 (iv) Newspaper deliverers on home delivery, shoe shiners in shoe shine establishments,
18 caddies on golf courses, pin persons in bowling alleys, ushers in theatres;
- 19 (v) Traveling salespersons or outside salespersons;
- 20 (vi) Service performed by an individual in the employ of his or her son, daughter, or spouse
21 and service performed by a child under the age of twenty-one (21) in the employ of his or her father
22 or mother;
- 23 (vii) Any individual employed between May 1 and October 1 in a resort establishment that
24 regularly serves meals to the general public and that is open for business not more than six (6)
25 months a year;
- 26 (viii) Any individual employed by an organized camp that does not operate for more than
27 seven (7) months in any calendar year. However, this exemption does not apply to individuals
28 employed by the camp on an annual, full-time basis. "Organized camp" means any camp, except a
29 trailer camp, having a structured program including, but not limited to, recreation, education, and
30 religious, or any combination of these.
- 31 (7) "Employer" includes any individual, partnership, association, corporation, business
32 trust, or any person, or group of persons, acting directly, or indirectly, in the interest of an employer,
33 in relation to an employee and shall include the State of Rhode Island;
- 34 (8) "Occupation" means any occupation, service, trade, business, industry, or branch or

1 group of industries or employment or class of employment in which individuals are gainfully
2 employed;

3 (9) "Wage" means compensation due to an employee by reason of his or her employment;

4 [\(10\) "Consumer Price Index – All Urban Consumers" \("CPI-U"\) means the national,](#)
5 [annual average of the Consumer Price Index for all urban consumers as reported by the United](#)
6 [States Bureau of Labor Statistics, with the Series identification number of CUUR0000SA0.](#)

7 **28-12-3. Minimum wages.**

8 (a) Every employer shall pay to each of his or her employees: commencing July 1, 1999,
9 at least the minimum wage of five dollars and sixty-five cents (\$5.65) per hour. Commencing
10 September 1, 2000, the minimum wage is six dollars and fifteen cents (\$6.15) per hour.

11 (b) Commencing January 1, 2004, the minimum wage is six dollars and seventy-five cents
12 (\$6.75) per hour.

13 (c) Commencing March 1, 2006, the minimum wage is seven dollars and ten cents (\$7.10)
14 per hour.

15 (d) Commencing January 1, 2007, the minimum wage is seven dollars and forty cents
16 (\$7.40) per hour.

17 (e) Commencing January 1, 2013, the minimum wage is seven dollars and seventy-five
18 cents (\$7.75) per hour.

19 (f) Commencing January 1, 2014, the minimum wage is eight dollars (\$8.00) per hour.

20 (g) Commencing January 1, 2015, the minimum wage is nine dollars (\$9.00) per hour.

21 (h) Commencing January 1, 2016, the minimum wage is nine dollars and sixty cents (\$9.60)
22 per hour.

23 (i) Commencing January 1, 2018, the minimum wage is ten dollars and ten cents (\$10.10)
24 per hour.

25 (j) Commencing January 1, 2019, the minimum wage is ten dollars and fifty cents (\$10.50)
26 per hour.

27 (k) Commencing October 1, 2020, the minimum wage is eleven dollars and fifty cents
28 (\$11.50) per hour.

29 [\(l\) Commencing July 1, 2021, the minimum wage is thirteen dollars \(\\$13.00\) per hour.](#)

30 [\(m\) Commencing July 1, 2022, the minimum wage is fourteen dollars \(\\$14.00\) per hour.](#)

31 [\(n\) Commencing July 1, 2023, the minimum wage is fifteen dollars \(\\$15.00\) per hour.](#)

32 [\(o\) Commencing July 1, 2024 and each July 1st thereafter, the minimum wage then in](#)
33 [effect shall be increased by the increase, if any, in the cost of living. The increase in the cost of](#)
34 [living shall be measured by the percentage increase, if any, as of August of the previous year over](#)

1 [the level as of August of the year preceding that year in the Consumer Price Index for All Urban](#)
2 [Consumers, CPI-U, for the Northeast Region, or its successor index, as published by the United](#)
3 [States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of](#)
4 [the minimum wage increase rounded to the nearest multiple of 5 cents.](#)

5 **28-12-5. Employees receiving gratuities.**

6 (a) Every employer shall pay to each of his or her employees who are engaged in any work
7 or employment in which gratuities have customarily and usually constituted a part of his or her
8 weekly income, the rate as provided by §§ 28-12-3 and 28-12-3.1.

9 (b) Allowance for gratuities as part of the hourly wage rate for restaurants, hotels, and other
10 industries, except taxicabs and limited public motor vehicles, shall be an amount equal to the
11 applicable minimum rates as provided by §§ 28-12-3 and 28-12-3.1 less two dollars and eighty-
12 nine cents (\$2.89) per hour. "Gratuities" means voluntary monetary compensation received directly
13 or indirectly by the employee for services rendered.

14 (c) Each employer desiring to deduct for gratuities as part of the minimum rates as provided
15 in §§ 28-12-3 and 28-12-3.1 wages paid to an employee shall provide substantial evidence that the
16 amount shall be set out in the formula in subsection (b) of this section; however, the cash wage
17 shall not be less than two dollars and eighty-nine cents (\$2.89) per hour; provided, however, that
18 commencing January 1, 2016, the cash wage shall increase by fifty cents (\$.50) to an amount not
19 less than three dollars and thirty-nine cents (\$3.39) per hour; provided further, that commencing
20 January 1, 2017, the cash wage shall increase by fifty cents (\$.50) to an amount not less than three
21 dollars and eighty-nine cents (\$3.89) per hour; [provided further that as of July 1, 2021 the cash](#)
22 [wage shall no less than half the minimum wage established by §§ 28-12-3 and 28-12-3.1.](#)

23 (d) The director of labor and training shall notify employers concerning what type of proof
24 shall be accepted as substantial evidence for the purpose of this subsection. Employees involved
25 shall be entitled to a hearing on the question of the amount of deduction if they so desire.

26 (e) In cases where wages are figured by the employer on an incentive basis in such a manner
27 that an employee of reasonable average ability earns at least the minimum wage established by §§
28 28-12-3 and 28-12-3.1, it shall be taken that the employer has complied with this statute. It shall be
29 of no concern to the director of labor and training how the employer arrives at its wage scale so
30 long as it is not unreasonable in its demands on the employee.

31 (f) Where, in the case of the employment of a full-time student who has not attained his or
32 her nineteenth (19th) birthday engaged in the activities of a nonprofit association or corporation,
33 whose aims and objectives are religious, educational, librarial, or community service in nature, the
34 employer-employee relationship does exist, the employer shall pay to each such employee wages

1 at a rate of not less than ninety percent (90%) of the minimum wage as specified in § 28-12-3. In
2 case of any conflict between provisions of this section and those of § 28-12-3.1, the provisions of
3 § 28-12-3.1 shall govern.

4 SECTION 3. Chapter 28-12 of the General Laws entitled "Minimum Wages" is hereby
5 amended by adding thereto the following section:

6 **28-12-26. Effect of declaration of state of emergency.**

7 (a) For work performed during a declared state of emergency, the effective minimum wage
8 established by this Act shall be calculated at 1.5 times the regular minimum wage rate under § 28-
9 12-3.

10 (b) The provisions of this section shall not apply to work performed under a teleworking
11 arrangement allowing the Employee to work from home.

12 (c) This shall take effect July 1, 2022.

13 SECTION 4. Sections 28-14-19 and 28-14-19.2 of the General Laws in Chapter 28-14
14 entitled "Payment of Wages" are hereby amended to read as follows:

15 **28-14-19. Enforcement powers and duties of director of labor and training.**

16 (a) It shall be the duty of the director to ~~insure~~ ensure compliance with the provisions of
17 this chapter and chapter 12 of this title. The director or his or her designee may investigate any
18 violations thereof, institute or cause to be instituted actions for the collection of wages and institute
19 action for penalties or other relief as provided for within and pursuant to those chapters. The
20 director or his or her authorized representatives are empowered to hold hearings and he or she shall
21 cooperate with any employee in the enforcement of a claim against his or her employer in any case
22 whenever, in his or her opinion, the claim is just and valid.

23 (b) Upon receipt of a complaint or conducting an inspection under applicable law, the
24 director or his or her appropriate departmental designee is authorized to investigate to determine
25 compliance with chapter 12 of this title and/or this chapter.

26 (c) With respect to all complaints deemed just and valid, the director or his or her designee
27 shall within fifteen (15) business days of receipt of the complaint order a hearing thereon at a time
28 and place to be specified, and shall give notice thereof, together with a copy of the complaint or the
29 purpose thereof, or a statement of the facts disclosed upon investigation, which notice shall be
30 served personally or by mail on any person, business, corporation, or entity of any kind affected
31 thereby. The hearing shall be scheduled within thirty (30) days of service of a formal complaint as
32 provided herein. The person, business, corporation, or entity shall have an opportunity to be heard
33 in respect to the matters complained of at the time and place specified in the notice. The hearing
34 shall be conducted by the director or his or her designee. The hearing officer in the hearing shall be

1 deemed to be acting in a judicial capacity, and shall have the right to issue subpoenas, administer
2 oaths, and examine witnesses. The enforcement of a subpoena issued under this section shall be
3 regulated by Rhode Island civil practice law and rules. The hearing shall be expeditiously
4 conducted and upon such hearing the hearing officer shall determine the issues raised thereon and
5 shall make a determination and enter an order within thirty (30) days of the close of the hearing,
6 and forthwith serve a copy of the order, with a notice of the filing thereof, upon the parties to the
7 proceeding, personally or by mail. The order shall dismiss the complaint or direct payment of any
8 wages and/or benefits found to be due and/or award such other appropriate relief or penalties
9 authorized under chapter 12 of this title and/or this chapter, and the order may direct payment of
10 reasonable attorney's fees and costs to the complaining party. Interest at the rate of twelve percent
11 (12%) per annum shall be awarded in the order from the date of the nonpayment to the date of
12 payment.

13 (d) The order shall also require payment of a further sum as a civil penalty in an amount
14 up to two (2) times the total wages and/or benefits found to be due, or for violations of the minimum
15 wage provisions of this chapter a civil penalty of one hundred dollars (\$100) per day for each day
16 that a violation occurred, exclusive of interest, which shall be shared equally between the
17 department and the aggrieved party. In determining the amount of any penalty to impose, the
18 director or his or her designee shall consider the size of the employer's business, the good faith of
19 the employer, the gravity of the violation, the previous violations and whether or not the violation
20 was an innocent mistake or willful.

21 (e) The director may institute any action to recover unpaid wages or other compensation or
22 obtain relief as provided under this section with or without the consent of the employee or
23 employees affected.

24 (f) No agreement between the employee and employer to work for less than the applicable
25 wage and/or benefit rate or to otherwise work under and/or conditions in violation of applicable
26 law is a defense to an action brought pursuant to this section.

27 (g) The director shall notify the contractors' registration board of any order issued or any
28 determination hereunder that an employer has violated chapter 12 of this title, this chapter and/or
29 chapter 13 of title 37. The director shall notify the tax administrator of any determination hereunder
30 that may affect liability for an employer's payment of wages and/or payroll taxes.

31 (h) Commencing December 31, 2021, the director shall provide a bi-annual report to the
32 Senate Finance Committee Chair and the House Finance Committee chair a complete list of all
33 complaints filed for alleged violations of the Minimum Wage provisions of this chapter which
34 details the status of each complaint and any other enforcement action pursued by the director or his

1 [or her designee.](#)

2 **28-14-19.2. Private right of action to collect wages or benefits and for equitable relief.**

3 (a) Any employee or former employee, or any organization representing such an employee
4 or former employee aggrieved by the failure to pay wages and/or benefits or misclassification in
5 violation of chapter 12 of this title and/or this chapter may file a civil action in any court of
6 competent jurisdiction to obtain relief. An aggrieved party shall be entitled to recover any unpaid
7 wages and/or benefits, compensatory damages, and liquidated damages in an amount up to two (2)
8 times the amount of unpaid wages and/or benefits owed, as well as an award of appropriate
9 equitable relief, including reinstatement of employment, fringe benefits and seniority rights, ~~and~~
10 ~~reasonable attorney's fees and costs,~~ and/or such other appropriate relief or penalties authorized
11 under chapter 12 of this title and/or this chapter. [Any judgment rendered in favor of the employee](#)
12 [shall include an award of all costs associated with the filing the civil action including, but not](#)
13 [limited to, reasonable attorney's fees and costs.](#) In determining the amount of any penalty imposed
14 under this section, consideration shall be given to the size of the employer's business, the good faith
15 of the employer, the gravity of the violation, the history of previous violations, and whether or not
16 the violation was an innocent mistake or willful. Any unpaid fringe benefit contributions owed
17 pursuant to this section in any form shall be paid to the appropriate benefit fund: however, in the
18 absence of an appropriate fund, the benefit shall be paid directly to the aggrieved employee.

19 (b) An action instituted pursuant to this section may be brought by one or more employees
20 or former employees individually and/or on behalf of other employees similarly situated.

21 (c) No agreement between the employee and employer to work for less than the applicable
22 wage and/or benefit rate or to otherwise work under terms and/or conditions in violation of
23 applicable law is a defense to an action brought pursuant to this section.

24 (d) An employer's responsibility and liability hereunder is solely to the employer's own
25 employees.

26 (e) A civil action filed under this section may be instituted instead of, but not in addition
27 to, the director of labor and training enforcement procedures authorized by the above referenced
28 chapters, provided the civil action is filed prior to the date the director of labor and training issues
29 notice of an administrative hearing.

30 (f) The filing of a civil action under this section shall not preclude the director of labor and
31 training from investigating the matter and/or referring the matter to the attorney general,
32 contractors' registration board and/or the tax administrator.

33 (g) Any claim hereunder shall be forever barred unless commenced within three (3) years
34 after the cause of action accrued.

1 SECTION 5. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO LABOR AND LABOR RELATIONS --MINIMUM WAGES

1 This act would provide for an increase in the minimum wage commencing July 1, 2021, to
2 \$13.00 per hour with a \$1.00 increase to that amount on July 1, 2022, and on July 1, 2023. The act
3 would further provide for an annual increase thereafter commencing July 1, 2024, to an amount
4 calculated to be equal to an increase in the cost of living using the Consumer Price Index for All
5 Urban Consumers Northeast Region. The act also provides for a temporary increase to the
6 minimum wage for in person work performed during a declared emergency and would provide for
7 civil penalties of \$100 per day for each violation of the minimum wage provisions.

8 This act would take effect upon passage.

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