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SENATE BILL NO. 352

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Commerce and Labor)
 (Patron Prior to Substitute—Senator Surovell)
 Senate Amendments in [] - February 14, 2022

A BILL to amend and reenact §§ 40.1-33.3 and 40.1-33.4 of the Code of Virginia, relating to paid sick leave; health care providers and grocery store workers; waiver for certain employees.

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-33.3 and 40.1-33.4 of the Code of Virginia are amended and reenacted as follows:

§ 40.1-33.3. Definitions.

As used in this article, unless the context requires a different meaning:

"Employee" means ~~a~~ *an individual who works as a* (i) home health worker ~~who works on average at least 20 hours per week or 90 hours per month,~~ (ii) health care provider, or (iii) grocery store worker.

"Employee" does not include an individual who (i) is licensed, registered, or certified by a health regulatory board within the Department of Health Professions; (ii) is employed by a hospital licensed by the Department of Health; and (iii) works, on average, no more than 30 hours per month.

"Employer" has the same meaning as provided in § 40.1-2. "Employer" does not include any agency of the federal government.

"Family member" means:

1. Regardless of age, a biological child, adopted or foster child, stepchild, legal ward, child to whom the employee stands in loco parentis, or individual to whom an employee stood in loco parentis when the individual was a minor;

2. A biological parent, foster parent, stepparent, adoptive parent, legal guardian of an employee or an employee's spouse, or individual who stood in loco parentis to an employee when the employee or employee's spouse was a minor child;

3. An individual to whom an employee is legally married under the laws of any state;

4. A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of an employee or the employee's spouse;

5. An individual for whom an employee is responsible for providing or arranging care, including helping that individual obtain diagnostic, preventive, routine, or therapeutic health treatment; or

6. Any other individual related by blood or affinity whose close association with an employee is the equivalent of a family relationship.

"Grocery store worker" means a store employee primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, or fresh meats, fish, and poultry and a store employee in any area that is not separately owned within a grocery store where the food is prepared and served, including a bakery, deli, and meat and seafood departments.

"Health care provider" has the same meaning as provided in § 8.01-581.1.

"Home health worker" means an individual who provides personal care, respite, or companion services to an individual who receives consumer-directed services under the state plan for medical assistance services.

"Paid sick leave" means leave that is compensated at the same hourly rate and with the same benefits, including health care benefits, as an employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in § 40.1-33.5; however, such hourly rate shall not be less than the minimum wage amount set forth in § 40.1-28.10 without reduction for any tip credit that the employer would otherwise be permitted to claim.

§ 40.1-33.4. Accrual of paid sick leave; waiver for certain employees.

A. All employees shall accrue a minimum of one hour of paid sick leave for every 30 hours worked. Paid sick leave shall be carried over to the year following the year in which it was accrued. An employee shall not accrue or use more than 40 hours of paid sick leave in a year, unless the employer selects a higher limit.

B. Employees who are exempt from overtime requirements under 29 U.S.C. § 213(a)(1) of the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., will be assumed to work 40 hours in each workweek for purposes of paid sick leave accrual unless their normal workweek is less than 40 hours, in which case paid sick leave accrues on the basis of that normal workweek.

C. Paid sick leave as provided in this section shall begin to accrue at the commencement of employment. An employer may provide all paid sick leave that an employee is expected to accrue in a year at the beginning of the year.

D. Any employer with a paid leave policy, such as a paid time off policy, that provides an employee an amount of paid leave sufficient to meet the requirements of this section and that may be used for the

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60 same purposes and under the same conditions as paid sick leave under this article shall not be required
61 to provide additional paid sick leave to any employee that is eligible for paid leave under the policy.

62 E. Any employer that has entered into a bona fide collective bargaining agreement that requires the
63 employer to provide an amount of paid leave sufficient to meet the requirements of this section and that
64 may be used for the same purposes and under the same conditions as paid sick leave under this article
65 shall not be required to provide additional paid sick leave to any employee covered by such collective
66 bargaining agreement.

67 F. *An employee who (i) is licensed, registered, or certified by a health regulatory board within the*
68 *Department of Health Professions, (ii) is employed by a hospital licensed by the Department of Health,*
69 *and (iii) works, on average, no more than 30 hours per month may waive the right to accrue and use*
70 *sick leave under the provisions of this article. Such waiver shall be in writing and signed by the*
71 *employee and the employer. If an employee waives his rights in accordance with this subsection, the*
72 *employer shall be deemed to have satisfied the provisions of this article with respect to such employee.*

73 G. *Notwithstanding the provisions of this article, an employer shall not be required to provide paid*
74 *sick leave under the provisions of this article to any employee who is (i) licensed, registered, or certified*
75 *by a health regulatory board within the Department of Health professions; (ii) employed by a facility*
76 *licensed by the Department of Health; or (iii) employed by the University of Virginia Medical Center or*
77 *Virginia Commonwealth University Health System Authority and who is employed on a pro re nata or*
78 *as-needed basis is not subject to the provisions of this article, regardless of the number of hours worked*
79 *in the month.*

80 **2. That the provisions of the first enactment of this act shall become effective on January 1, 2023.**

81 **3. That the Department of Labor and Industry shall develop guidelines for retail employers that**
82 **sell groceries to comply with the provisions of this act and shall publish such guidelines by**
83 **December 1, 2022.**

84 **[4. That the provisions of this act shall not become effective unless an appropriation effectuating**
85 **the purposes of this act is included in a general appropriation act passed in 2022 by the General**
86 **Assembly that becomes law.]**