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FIRST REPRINT

A.B. 456

ASSEMBLY BILL NO. 456—COMMITTEE
ON COMMERCE AND LABOR

MARCH 25, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Increases the minimum wage required to be paid to employees in private employment in this State. (BDR 53-1104)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to wages; increasing the minimum wage paid to employees in private employment in this State; revising provisions governing the administration and enforcement of the minimum wage provisions; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 16 of Article 15 of the Nevada Constitution requires private employers to pay a minimum wage of \$5.15 per hour worked if the employer provides certain health benefits or \$6.15 per hour worked if the employer does not provide such benefits. The Constitution also requires the minimum wage to be adjusted each year by the amount of any increase in the federal minimum wage over \$5.15 per hour or, if greater, by the cumulative increase in the cost of living measured by the Consumer Price Index (CPI), except the CPI adjustment for any 1-year period may not be greater than 3 percent. (Nev. Const. Art. 15, § 16) Existing law requires the Labor Commissioner, in accordance with federal law, to establish by regulation the minimum wage that may be paid per hour to an employee in private employment in this State. (NRS 608.250) The minimum wage in Nevada is currently \$7.25 if the employer provides certain health benefits and \$8.25 if the employer does not provide such benefits. **Section 1.5** of this bill removes the requirement for the Labor Commissioner to adopt regulations and instead places the current minimum wage in the law and requires each employer to pay to each employee, beginning on July 1, 2020, a wage that is not less than: (1) \$9 per hour worked, if the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution; and (2) \$8 per hour worked, if the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution. **Section 1.5** also provides that the minimum wage must be increased by 75 cents on July 1 of each year until 2024 when the minimum wage reaches: (1) \$12 per hour worked, if the employer does



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not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution; and (2) \$11 per hour worked if the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution. **Section 1.5** also removes certain exceptions to the minimum wage requirement, which have been held to be unconstitutional by the Nevada Supreme Court. (Thomas v. Nev. Yellow Cab Corp., 130 Nev. 484 (2014)) **Sections 1.3, 2.5 and 2.7** of this bill make conforming changes. **Section 2.3** of this bill allows the Labor Commissioner to adopt any regulations necessary to administer and enforce the minimum wage laws.

Section 16 of Article 15 of the Nevada Constitution allows an employee claiming that he or she was paid less than the minimum wage required by that provision to bring a civil action against his or her employer. Under this constitutional provision, if the employee prevails in the civil action, the employee: (1) is entitled to all legal and equitable remedies appropriate to remedy the violation, including back pay, damages, reinstatement or injunctive relief; and (2) must be awarded reasonable attorney's fees and costs. (Nev. Const. Art. 15, § 16) **Section 2** of this bill places in statute the language of the minimum wage provision of the Nevada Constitution: (1) authorizing an employee who prevails in a civil action to recover all legal or equitable remedies appropriate to remedy the violation, including back pay, damages, reinstatement or injunctive relief; and (2) requiring a court to award reasonable attorney's fees and costs to an employee who prevails in such a civil action. **Section 3** of this bill makes this bill become effective on July 1, 2019.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. (Deleted by amendment.)

Sec. 1.3. NRS 608.018 is hereby amended to read as follows:

608.018 1. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate ~~{prescribed pursuant to}~~ *set forth in* NRS 608.250 works:

(a) More than 40 hours in any scheduled week of work; or

(b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

2. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate ~~{prescribed pursuant to}~~ *set forth in* NRS 608.250 works more than 40 hours in any scheduled week of work.

3. The provisions of subsections 1 and 2 do not apply to:

(a) ~~{Except as otherwise provided in paragraphs (o) and (p), employees}~~ *Employees* who are not covered by the minimum wage provisions of ~~{NRS 608.250;}~~ *Section 16 of Article 15 of the Nevada Constitution;*



(b) Outside buyers;

(c) Employees in a retail or service business if their regular rate is more than 1 1/2 times the minimum wage, and more than half their compensation for a representative period comes from commissions on goods or services, with the representative period being, to the extent allowed pursuant to federal law, not less than 1 month;

(d) Employees who are employed in bona fide executive, administrative or professional capacities;

(e) Employees covered by collective bargaining agreements which provide otherwise for overtime;

(f) Drivers, drivers' helpers, loaders and mechanics for motor carriers subject to the Motor Carrier Act of 1935, as amended;

(g) Employees of a railroad;

(h) Employees of a carrier by air;

(i) Drivers or drivers' helpers making local deliveries and paid on a trip-rate basis or other delivery payment plan;

(j) Drivers of taxicabs or limousines;

(k) Agricultural employees;

(l) Employees of business enterprises having a gross sales volume of less than \$250,000 per year;

(m) Any salesperson or mechanic primarily engaged in selling or servicing automobiles, trucks or farm equipment;

(n) A mechanic or worker for any hours to which the provisions of subsection 3 or 4 of NRS 338.020 apply;

(o) A domestic worker who resides in the household where he or she works if the domestic worker and his or her employer agree in writing to exempt the domestic worker from the requirements of subsections 1 and 2; and

(p) A domestic service employee who resides in the household where he or she works if the domestic service employee and his or her employer agree in writing to exempt the domestic service employee from the requirements of subsections 1 and 2.

4. As used in this section, "domestic worker" has the meaning ascribed to it in NRS 613.620.

Sec. 1.5. NRS 608.250 is hereby amended to read as follows:

608.250 1. ~~{Except as otherwise provided in this section, the Labor Commissioner shall, in accordance with federal law, establish by regulation the minimum wage which may be paid to employees in private employment within the State. The Labor Commissioner shall prescribe increases in the minimum wage in accordance with those prescribed by federal law, unless the Labor Commissioner determines that those increases are contrary to the public interest.~~

~~2. The provisions of subsection 1 do not apply to:~~

~~(a) Casual babysitters.~~



~~—(b) Domestic service employees who reside in the household where they work.~~

~~—(c) Outside salespersons whose earnings are based on commissions.~~

~~—(d) Employees engaged in an agricultural pursuit for an employer who did not use more than 500 days of agricultural labor in any calendar quarter of the preceding calendar year.~~

~~—(e) Taxicab and limousine drivers.~~

~~—(f) Persons with severe disabilities whose disabilities have diminished their productive capacity in a specific job and who are specified in certificates issued by the Rehabilitation Division of the Department of Employment, Training and Rehabilitation.~~

—3.] Each employer shall pay to each employee of the employer a wage of not less than:

(a) Beginning July 1, 2019:

(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$7.25 per hour worked.

(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$8.25 per hour worked.

(b) Beginning July 1, 2020:

(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$8.00 per hour worked.

(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$9.00 per hour worked.

(c) Beginning July 1, 2021:

(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$8.75 per hour worked.

(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$9.75 per hour worked.

(d) Beginning July 1, 2022:

(1) If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$9.50 per hour worked.

(2) If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$10.50 per hour worked.

(e) Beginning July 1, 2023:



(1) *If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$10.25 per hour worked.*

(2) *If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$11.25 per hour worked.*

(f) *Beginning July 1, 2024:*

(1) *If the employer offers health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$11.00 per hour worked.*

(2) *If the employer does not offer health benefits to the employee in the manner described in Section 16 of Article 15 of the Nevada Constitution, \$12.00 per hour worked.*

2. It is unlawful for any person to employ, cause to be employed or permit to be employed, or to contract with, cause to be contracted with or permit to be contracted with, any person for a wage less than that established by ~~the Labor Commissioner pursuant to the provisions of~~ this section.

Sec. 2. NRS 608.260 is hereby amended to read as follows:

608.260 1. If any employer pays any employee a lesser amount than the minimum wage ~~prescribed by regulation of the Labor Commissioner pursuant to the provisions of~~ set forth in NRS 608.250, the employee may, at any time within 2 years, bring a civil action ~~to recover the difference between the amount paid to the employee and the amount of the minimum wage.~~ against the employer. A contract between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action.

2. *If the employee prevails in a civil action brought pursuant to subsection 1:*

(a) *The employee is entitled to all remedies available under the law or in equity appropriate to remedy the violation by the employer which may include, without limitation, back pay, damages, reinstatement or injunctive relief; and*

(b) *The court must award the employee reasonable attorney's fees and costs.*

Sec. 2.3. NRS 608.270 is hereby amended to read as follows:

608.270 1. The Labor Commissioner shall:

(a) Administer and enforce the provisions of NRS 608.250; ~~and~~

(b) *Adopt any regulations necessary to carry out the duties set forth in paragraph (a); and*

(c) *Furnish the district attorney of any county or the Attorney General all data and information concerning violations of the*



provisions of NRS 608.250, occurring in the county coming to the attention of the Labor Commissioner.

2. Each district attorney shall, if a complaint is made to him or her by the Labor Commissioner or by any aggrieved person, prosecute each violation of the provisions of NRS 608.250 that occurs in the district attorney's county. If any such district attorney fails, neglects or refuses for 20 days to commence a prosecution for a violation of the provisions of NRS 608.250, after being furnished data and information concerning the violation, and diligently to prosecute the same to conclusion, the district attorney is guilty of a misdemeanor, and in addition thereto must be removed from office.

Sec. 2.5. NRS 435.220 is hereby amended to read as follows:

435.220 1. The Administrator shall adopt regulations governing jobs and day training services, including, without limitation, regulations that set forth:

(a) Standards for the provision of quality care and training by providers of jobs and day training services;

(b) The requirements for the issuance and renewal of a certificate; and

(c) The rights of consumers of jobs and day training services, including, without limitation, the right of a consumer to file a complaint and the procedure for filing the complaint.

2. The Division may enter into such agreements with public and private agencies as it deems necessary for the provision of jobs and day training services. Any such agreements must include a provision stating that employment is the preferred service option for all adults of working age.

3. For the purpose of entering into an agreement described in subsection 2, if the qualifications of more than one agency are equal, the Division shall give preference to the agency that will provide persons with intellectual disabilities or persons with developmental disabilities with training and experience that demonstrates a progression of measurable skills that is likely to lead to competitive employment outcomes that provide employment that:

(a) Is comparable to employment of persons without intellectual disabilities or persons without developmental disabilities; and

(b) Pays at or above the minimum wage ~~{prescribed by regulation of the Labor Commissioner pursuant to}~~ set forth in NRS 608.250.

Sec. 2.7. NRS 435.225 is hereby amended to read as follows:

435.225 1. A partnership, firm, corporation or association, including, without limitation, a nonprofit organization, or a state or local government or agency thereof shall not provide jobs and day training services in this State without first obtaining a certificate from the Division.



2. A natural person other than a person who is employed by an entity listed in subsection 1 shall not provide jobs and day training services in this State without first obtaining a certificate from the Division.

3. For the purpose of issuing a certificate pursuant to this section, if the qualifications of more than one applicant are equal, the Division shall give preference to the natural person who, or the nonprofit organization, state or local government or agency thereof that, will provide persons with intellectual disabilities or persons with developmental disabilities with training and experience that demonstrates a progression of measurable skills that is likely to lead to competitive employment outcomes that provide employment that:

(a) Is comparable to employment of persons without intellectual disabilities or persons without developmental disabilities; and

(b) Pays at or above the minimum wage ~~{prescribed by regulation of the Labor Commissioner pursuant to}~~ *set forth in NRS 608.250.*

4. Each application for the issuance or renewal of a certificate issued pursuant to this section must include a provision stating that employment is the preferred service option for all adults of working age.

Sec. 3. This act becomes effective on July 1, 2019.

