

HB1299/113793/1

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL 1299
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, after “Delegates” insert “Manno,”; in the same line, strike “Manno,”; in line 10, strike “authorizing” and substitute “requiring”; in line 11, after “circumstances,” insert “subjecting certain provisions of this Act to certain notice and hearing requirements; requiring the Commissioner to consider certain factors when determining whether a violation of this Act has occurred or the amount of a certain civil penalty;”; and strike beginning with “authorizing” in line 12 down through “award” in line 13 and substitute “specifying that a certain employee may be entitled to a certain monetary amount and”; and in line 14, after “terms;” insert “providing for a delayed effective date;”.

AMENDMENT NO. 2

On page 2, in line 16, strike “AT LEAST”; in the same line, after “50” insert “OR MORE”; in the same line, after “EMPLOYEES” insert “FOR EACH WORKING DAY IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR”; in line 18, strike “AT LEAST”; in the same line, after “50” insert “OR MORE RETAIL”; in line 19, after “STATE” insert “FOR EACH WORKING DAY IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR”; in line 22, after “(4)” insert “(I)”; strike beginning with “HAS” in line 22 down through “ARTICLE” in line 23 and substitute “MEANS A PLACE OF BUSINESS WITH THE PRIMARY PURPOSE OF SELLING GOODS TO A CONSUMER WHO IS PRESENT AT THE PLACE OF BUSINESS AT THE TIME OF SALE”; after line 23, insert:

“(I) “RETAIL ESTABLISHMENT” DOES NOT INCLUDE:

(Over)

1. A WHOLESALER, AS DEFINED IN § 11-401(I) OF THE COMMERCIAL LAW ARTICLE; OR

2. A RESTAURANT.”;

and in line 29, strike “OR”.

On page 3, in line 2, after “MUNICIPALITY” insert “;

(4) WHO WORKS IN A CORPORATE OFFICE OR OTHER OFFICE LOCATION; OR

(5) WHO WORKS FOR AT LEAST 4 CONSECUTIVE HOURS FOR AN EMPLOYER AT A SINGLE LOCATION WITH 5 OR FEWER EMPLOYEES”;

in line 3, after “IN” insert “PARAGRAPH (4) OF THIS SUBSECTION OR”; in line 4, after “EMPLOYEE” insert “AT A RETAIL ESTABLISHMENT”; strike beginning with the colon in line 4 down through “1.” in line 5; in line 6, strike “; OR” and substitute a period; after line 6, insert:

“(II) AN EMPLOYEE IS NOT ENTITLED TO A 15 MINUTE SHIFT BREAK UNDER THIS PARAGRAPH IF THE EMPLOYEE IS ENTITLED TO A 30 MINUTE SHIFT BREAK UNDER PARAGRAPH (2) OF THIS SUBSECTION.”;

in line 7, strike “2.” and substitute “(2) AN EMPLOYER MAY NOT EMPLOY AN EMPLOYEE AT A RETAIL ESTABLISHMENT FOR”; after line 8, insert:

“(3) IF AN EMPLOYEE WORKS 8 CONSECUTIVE HOURS IN A SINGLE SHIFT, THE EMPLOYER SHALL PROVIDE AN ADDITIONAL NONWORKING SHIFT

BREAK OF AT LEAST 15 MINUTES FOR EVERY ADDITIONAL 4 CONSECUTIVE HOURS THE EMPLOYER EMPLOYS THE EMPLOYEE IN THE SHIFT.”;

in line 9, strike “(II)” and substitute “(4)”; strike beginning with “SUBPARAGRAPH” in line 10 down through “PARAGRAPH” in line 11 and substitute “PARAGRAPH (1) OF THIS SUBSECTION”; in line 13, strike “(2) THE” and substitute “(5) A”; in the same line, strike “PARAGRAPH (1) OF”; in line 15, after “1.” insert “A.”; in line 17, strike “2.” and substitute “B.”; in line 20, strike “(II)” and substitute “2.”; in the same line, after “AGREE” insert “IN WRITING”; in line 21, strike “AND DOCUMENT THE AGREEMENT”; strike beginning with “DETERMINES” in line 25 down through “SECTION” in line 26 and substitute “RECEIVES A COMPLAINT UNDER PARAGRAPH (1) OF THIS SUBSECTION”; in line 28, after “(II)” insert “DETERMINE WHETHER THE EMPLOYER HAS VIOLATED THIS SECTION.”

(3) IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER HAS VIOLATED THIS SECTION, THE COMMISSIONER SHALL:

(I)”;

and strike beginning with “CONSISTENT” in line 29 down through “ARTICLE” in line 30 and substitute “; AND”

(II) IN THE COMMISSIONER’S DISCRETION, ASSESS A CIVIL PENALTY OF:

1. UP TO \$300 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS SECTION; OR

2. UP TO \$600 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS SECTION IF THE VIOLATION

(Over)

OCCURRED WITHIN 3 YEARS AFTER AN EMPLOYEE FILED A PREVIOUS COMPLAINT THAT LED TO A DETERMINATION THAT A VIOLATION HAD OCCURRED.

(4) THE PROVISIONS OF PARAGRAPH (3) OF THIS SUBSECTION ARE SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(5) (I) IN DETERMINING WHETHER THERE IS A VIOLATION OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER IF THERE WAS A THREAT TO PUBLIC HEALTH OR SAFETY AT THE TIME THE VIOLATION IS ALLEGED TO HAVE OCCURRED.

(II) IN DETERMINING THE AMOUNT OF ANY CIVIL PENALTY TO BE IMPOSED, THE COMMISSIONER SHALL CONSIDER THE:

1. SERIOUSNESS OF THE VIOLATION;
2. SIZE OF THE EMPLOYER'S BUSINESS;
3. EMPLOYER'S GOOD FAITH IN COMPLYING WITH THIS SECTION; AND
4. EMPLOYER'S HISTORY OF VIOLATIONS UNDER THIS SECTION".

On page 4, in line 1, strike "(3)" and substitute "(6)"; in line 2, strike "FIRST"; in the same line, strike "(2) (II)" and substitute "(3)"; strike beginning with the colon in line 3 down through "(I)" in line 4; in line 4, after "ORDER" insert "AND CIVIL

PENALTY"; strike beginning with the semicolon in line 5 down through "(II)" in line 18 and substitute ".

(7) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER ISSUED FOR A SUBSEQUENT VIOLATION AGAINST THE SAME EMPLOYEE UNDER PARAGRAPH (3) OF THIS SUBSECTION WITHIN 3 YEARS AFTER THE EMPLOYEE FILED A COMPLAINT THAT IS DETERMINED TO BE A VIOLATION UNDER SUBSECTION (D) OF THIS SECTION,";

strike in their entirety lines 21 through 26, inclusive; after line 26, insert:

"(8) IF AN EMPLOYEE PREVAILS IN AN ACTION BROUGHT UNDER PARAGRAPH (7) OF THIS SUBSECTION, THE EMPLOYEE MAY BE ENTITLED TO:

(I) THREE TIMES THE VALUE OF THE EMPLOYEE'S HOURLY WAGE FOR EACH SHIFT BREAK VIOLATION OF THIS SECTION OCCURRING AFTER THE MOST RECENT VIOLATION AGAINST THE SAME EMPLOYEE; AND

(II) REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF THE EMPLOYEE.";

and in line 28, strike "October 1, 2010" and substitute "March 1, 2011".