

SB0789/857079/1

BY: Finance Committee

AMENDMENTS TO SENATE BILL 789
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, 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 18, strike “AT LEAST”; in the same line, after “50” insert “OR MORE RETAIL”; 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 20, strike “AT LEAST”; in the same line, after “50” insert “OR MORE RETAIL”; in line 21, after “STATE” insert “FOR EACH WORKING DAY IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR”; in line 24, after “(4)” insert “(I)”; strike beginning with “HAS” in line 24 down through “ARTICLE” in line 25 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”; and after line 25, insert:

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

(Over)

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

2. A RESTAURANT.”.

On page 3, in line 2, strike “OR”; in line 4, 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 5, after “IN” insert “PARAGRAPH (4) OF THIS SUBSECTION OR”; in line 6, after “EMPLOYEE” insert “AT A RETAIL ESTABLISHMENT”; strike beginning with the colon in line 6 down through “1.” in line 7; in line 8, strike “; OR” and substitute a period; after line 8, 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 9, strike “2.” and substitute “(2) AN EMPLOYER MAY NOT EMPLOY AN EMPLOYEE AT A RETAIL ESTABLISHMENT FOR”; after line 10, 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 11, strike “(II)” and substitute “(4)”; strike beginning with “SUBPARAGRAPH” in line 12 down through “PARAGRAPH” in line 13 and substitute “PARAGRAPH (1) OF THIS SUBSECTION”; in line 15, strike “(2) THE” and substitute “(5) A”; in the same line, strike “PARAGRAPH (1) OF”; in line 22, after “AGREE” insert “IN WRITING”; in line 23, strike “AND DOCUMENT THE AGREEMENT”; and strike beginning with “DETERMINES” in line 27 down through “SECTION” in line 28 and substitute “RECEIVES A COMPLAINT UNDER PARAGRAPH (1) OF THIS SUBSECTION”.

On page 4, in line 1, 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 2 down through “ARTICLE” in line 3 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 OCCURRED WITHIN 3 YEARS AFTER AN EMPLOYEE FILED A PREVIOUS COMPLAINT THAT LED TO A DETERMINATION THAT A VIOLATION HAD OCCURRED.

(Over)

(4) THE PROVISIONS OF PARAGRAPHS (2)(II) AND (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 4, strike “(3) (I)” and substitute “(6)”; in line 5, strike “FIRST”; in the same line, strike “(2)(II)” and substitute “(3)”; strike beginning with the colon in line 6 down through “1.” in line 7; in line 7, after “ORDER” insert “AND CIVIL PENALTY”; strike beginning with the semicolon in line 8 down through “2.” in line 21 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 24 through 29, inclusive; after line 29, 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 31, strike “October 1, 2010” and substitute “March 1, 2011”.