

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 2396 - SB 2409**

February 26, 2024

**SUMMARY OF BILL:** Establishes a minimum wage for food delivery employees of \$12 per hour and requires that it be adjusted annually to account for changes in the consumer pricing index (CPI).

Prohibits an employer from paying a food delivery driver less than one-and-a-half times the regular wage rate for any work performed in excess of forty hours during a work week.

Establishes that any employer found in violation of this act is liable to the food delivery driver for the amount of unpaid wages. Should judgment be rendered in a favor of an employee, such judgment must include damages, court costs, and reasonable attorney's fees.

Requires the Department of Labor and Workforce Development (DLWD) to cooperate with the administrator of the Wage and Hour Division of the United State Department of Labor (USDOL). Stipulates that employees exempt from the federal minimum wage pursuant to 29 U.S.C. § 213 are exempt from the provisions of this legislation.

**FISCAL IMPACT:**

**NOT SIGNIFICANT**

Assumptions:

- Currently, per the federal *Fair Labor Standards Act*, the federal minimum wage is set at \$7.25 per hour.
- An unknown portion of food delivery employees, as defined under this legislation, are assumed to be tipped employees, despite situated as independent contractors, as this legislation implies that food delivery employees of third-party food delivery services and third-party courier services fall under this minimum wage increase.
- Pursuant to 29 U.S.C. § 203(m)(2)(A), in determining the wage an employer must pay a tipped employee, the amount paid to such employee is required to equal the federal minimum wage regardless of whether the tips earned make up the difference between the base wage of \$2.13 an hour and the federal minimum wage of \$7.25 per hour.
- This legislation would set the minimum wage in Tennessee for food delivery employees at \$12 per hour and require that such employees be paid one-and-a-half times the regular wage rate for any work performed in excess of forty hours during a work week.

**HB 2396 - SB 2409**

- This legislation will not impact government employees, but rather, citizens who have chosen to act as independent contractors delivering food per contract with third-party food delivery service technology companies; therefore, this legislation will have no impact on state or local expenditures incurred for salaries or benefits.
- Based on Fiscal Review Committee staff research, the average rate for food delivery drivers in Tennessee exceeds \$12 per hour, with an average rate of \$15.37 per hour.
- Any increase in the number of wage complaints received by the DLWD is estimated to be not significant, and can be managed utilizing the department's existing resources.
- Any increase in citation fees received by the DLWD is estimated to be not significant.
- Most tort actions that could result from this legislation will be borne by private parties.
- Any additional workload to the courts can be accommodated with existing resources and personnel.
- Any fiscal impact to state or local government is estimated to be not significant.

## **IMPACT TO COMMERCE:**

**Other Fiscal Impact – Any increase in business revenue and expenditures cannot be quantified with reasonable certainty.**

### Assumptions:

- There are no known third-party food delivery service technology companies that are domiciled in Tennessee.
- Private citizens in Tennessee, who have chosen to act as independent contractors in contract with such companies deliver food to customers utilizing such companies' online applications or websites.
- This legislation will also impact those citizens employed directly by a business, i.e. direct restaurant or grocery delivery.
- This legislation is estimated to increase wages for an unknown number of independent contractors in the state who are in contract with such companies, as well as for food couriers who work directly for either restaurants, grocery stores, or similar businesses.
- Based on Fiscal Review Committee staff research, the average rate for food delivery drivers in Tennessee exceeds \$12 per hour, with an average rate of \$15.37 per hour.
- It is unknown how many food delivery employees in the state currently work in excess of 40 hours during any given work week, as well is their current hourly pay rate.
- It is assumed that this legislation could result in an increase in revenue to contracted employees; however, due to multiple unknown variables, any such increase cannot be determined with reasonable certainty.
- This legislation will result in an increase in expenditures for businesses which provide food courier services. Based on multiple unknown variables, including the number of employees employed by such businesses, whether such businesses are actually domiciled in this state, the increase in hourly pay rate, the number of hours worked by such employees, including the number of hours which such employees work in excess of

40 hour during any given work week, any increase in business expenditures for such companies cannot be determined with reasonable certainty.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

/jb