

SENATE BILL 2409

By Lamar

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 12 and Title 50, relative to wages.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 2, is amended by adding the following as a new part:

50-2-301.

As used in this part:

(1) "Cancellation" or "cancelled":

(A) Means:

(i) When used with respect to a trip or delivery, the trip or delivery ends prior to drop-off of an order with the consumer; and

(ii) When used with respect to trips including multiple deliveries, the trip ends prior to the completion of all planned drop-offs on the trip; and

(B) Includes a cancellation initiated by a consumer, a food delivery employee, an employer, or a third-party food delivery service or third-party courier service;

(2) "Commissioner" means the commissioner of labor and workforce development or the commissioner's designee;

(3) "Department" means the department of labor and workforce development;

(4) "Employ" means to permit or suffer to work in employment or a gainful occupation;

(5) "Employee" means an individual:

(A) Born or naturalized in the United States, subject to its jurisdiction, and employed by an employer; or

(B) Legally present in this country and employed by an employer;

(6) "Employer" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group or persons, not involved in interstate commerce, acting directly or indirectly in the interest of an employer in relation to an employee;

(7) "Trip time" means the span of time between the moment a food delivery employee accepts an offer from a third-party food delivery service, third-party courier service, or an employer, to perform a trip with a pickup or drop-off location in this state, or receives an assignment to perform such a trip, through the moment such trip is completed or cancelled; and

(8) "Wages":

(A) Means compensation paid to an employee in the form of legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value; and

(B) May include the reasonable cost to the employer, as determined by the commissioner, of furnishing meals or lodging to an employee, if furnished by the employer and used by the employee.

50-2-302.

(a) An employer shall pay each food delivery employee wages at an hourly rate not less than the federal minimum wage established pursuant to the federal Fair Labor

Standards Act of 1938 (29 U.S.C. § 201 et seq.), as amended, or pay each food delivery employee wages at an hourly rate not less than the minimum wage established pursuant to subsection (b) and (c), whichever rate is greater.

(b)

(1) On and after July 1, 2024, the minimum wage for a food delivery employee who engages in trip time in this state must not be less than twelve dollars (\$12.00) an hour and must increase with the cost of living each year in accordance with subdivision (b)(2).

(2) On July 1, 2024, the base compensation of twelve dollars (\$12.00) an hour must be adjusted in accordance with the formula contained in § 8-23-101(d)(3) reflecting the percentage of change between calendar year 2023 and calendar year 2024. Each subsequent July 1, a similar adjustment must be made based upon the percentage of change in the average consumer price index between the two (2) calendar years preceding July 1 of the year in which the adjustment is made. A reduction must not be made by way of adjustment on account of any decrease in the average consumer price index between two (2) successive calendar years.

(c) Notwithstanding subsection (b), an employer shall not pay a food delivery employee less than one and one-half (1.5) times the regular wage rate for any work done by the food delivery employee in excess of forty (40) hours during a work week.

50-2-303.

(a) An employer who violates the minimum wage requirements of this part is liable to the food delivery employee affected for the amount of unpaid minimum wages. If a judgment is rendered in favor of a food delivery employee in an action brought in a court of competent jurisdiction to recover unpaid wages under this part, then the

judgment must include, in addition to the unpaid wages adjudged to be due, an amount equal to those wages as damages. In addition to a judgment awarded to the food delivery employee, the court shall require the employer to pay court costs and reasonable attorney's fees incurred by the food delivery employee.

(b) An action to recover damages pursuant to this section must be instituted within two (2) years from the date the wages were due, except in a case where the court finds the employer willfully violated this part, then the action to recover damages must be instituted within three (3) years.

50-2-304.

In the administration of this part, the commissioner shall cooperate, to the fullest extent with this part, with the administrator of the wage and hour division of the United States department of labor.

50-2-305.

This part does not affect or diminish the right of food delivery employees to bargain collectively through representatives of the food delivery employees' own choosing in order to establish wages in excess of the applicable minimum wages under this part.

50-2-306.

Employees who are exempt from the minimum wage requirements of the federal Fair Labor Standards Act of 1938 pursuant to 29 U.S.C. § 213 are exempt from this part to the same extent those employees are exempt under the federal Fair Labor Standards Act of 1938.

50-2-307.

Within existing resources of the department, the commissioner shall promulgate rules to effectuate this part that are consistent with the federal Fair Labor Standards Act

of 1938 (29 U.S.C. § 201 et seq.). The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. If a provision of this act or its application to a person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 3. For purposes of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2024, the public welfare requiring it.