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SENATE BILL NO. 704

Offered January 14, 2015

Prefiled December 2, 2014

A BILL to amend and reenact §§ 40.1-28.9 and 40.1-28.10 of the Code of Virginia, relating to the minimum wage; local alternative minimum wage authorized; local referendum.

Patrons—Favola; Delegates: Hope, Kory and Simon

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 40.1-28.9 and 40.1-28.10 of the Code of Virginia are amended and reenacted as follows:

§ 40.1-28.9. Definitions.

A. As used in this article:

A. "Employer" includes any individual, partnership, association, corporation, business trust, or any person or groups of persons acting directly or indirectly in the interest of an employer in relation to an employee;

B. "Employee" includes any individual employed by an employer, except the following:

1. Any person employed as a farm laborer or farm employee;

2. Any person employed in domestic service or in or about a private home or in an eleemosynary institution primarily supported by public funds;

3. Any person engaged in the activities of an educational, charitable, religious or nonprofit organization where the relationship of employer-employee does not, in fact, exist, or where the services rendered to such organizations are on a voluntary basis;

4. Newsboys, shoe-shine boys, caddies on golf courses, babysitters, ushers, doormen, concession attendants and cashiers in theaters;

5. Traveling salesmen or outside salesmen working on a commission basis; taxicab drivers and operators;

6. Any person under the age of 18 in the employ of his father, mother or legal guardian;

7. Any person confined in any penal or corrective institution of the State or any of its political subdivisions or admitted to a state hospital or training center operated by the Department of Behavioral Health and Developmental Services;

8. Any person employed by a boys' and/or girls' summer camp;

9. Any person under the age of 16, regardless of by whom employed;

10. Any person who normally works and is paid based on the amount of work done;

~~11. [Repealed.]~~

~~12. Any person whose employment is covered by the Fair Labor Standards Act of 1938 as amended;~~

~~13. 11. Any person whose earning capacity is impaired by physical deficiency, mental illness, or intellectual disability;~~

~~14. 12. Students participating in a bona fide educational program;~~

~~15. 13. Any person employed by an employer who does not have four or more persons employed at any one time; provided that husbands, wives, sons, daughters and parents of the employer shall not be counted in determining the number of persons employed;~~

~~16. 14. Any person who is less than 18 years of age and who is currently enrolled on a full-time basis in any secondary school, institution of higher education or trade school, provided the person is not employed more than 20 hours per week;~~

~~16A. 15. Any person of any age who is currently enrolled on a full-time basis in any secondary school, institution of higher education or trade school and is in a work-study program or its equivalent at the institution at which he or she is enrolled as a student;~~

~~17. 16. Any person who is less than 18 years of age and who is under the jurisdiction and direction of a juvenile and domestic relations district court.~~

"Local alternative minimum wage requirement" means a requirement that every employer pay to each of his employees, for work performed by them within the locality:

1. From the July 1 that follows the date that the governing body of the locality satisfied the requirements of subdivision B 3 of § 40.1-28.10 until the next July 1, wages at a rate not less than \$8.25 per hour;

2. From the second July 1 that follows the date that the governing body of the locality satisfied the requirements of subdivision B 3 of § 40.1-28.10 until the next July 1, wages at a rate not less than \$9.25 per hour; and

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SB704

59 3. From and after the third July 1 that follows the date that the governing body of the locality
60 satisfied the requirements of subdivision B 3 of § 40.1-28.10, wages at a rate not less than \$10.50 per
61 hour.

62 C. "Wages" means legal tender of the United States or checks or drafts on banks negotiable into cash
63 on demand or upon acceptance at full value; provided, wages may include the reasonable cost to the
64 employer of furnishing meals and for lodging to an employee, if such board or lodging is customarily
65 furnished by the employer, and used by the employee.

66 D. B. In determining the wage of a tipped employee, the amount paid such employee by his
67 employer shall be deemed to be increased on account of tips by an amount determined by the employer,
68 except in the case of an employee who establishes by clear and convincing evidence that the actual
69 amount of tips received by him was less than the amount determined by the employer. In such case, the
70 amount paid such employee by his employer shall be deemed to have been increased by such lesser
71 amount.

72 **§ 40.1-28.10. Minimum wages.**

73 A. Every employer shall pay to each of his employees wages at a rate not less than the federal
74 minimum wage and a training wage as prescribed by the U.S. Fair Labor Standards Act (29 U.S.C.
75 § 201 et seq.); however, in any locality in which a local alternative minimum wage requirement is in
76 effect, every employer shall pay to each of his employees, for work performed by them within the
77 locality, wages at a rate not less than the greater of (i) the federal minimum wage as prescribed by the
78 U.S. Fair Labor Standards Act (29 U.S.C. § 201 et seq.) or (ii) the amount specified in the local
79 alternative minimum wage requirement.

80 B. Any locality may impose a local alternative minimum wage requirement upon satisfying the
81 following conditions:

82 1. The local alternative minimum wage requirement is approved in a referendum within the locality.
83 The referendum shall be held in accordance with § 24.2-684. The referendum may be initiated by a
84 resolution of the governing body of the locality. The clerk of the circuit court shall publish notice of the
85 election in a newspaper of general circulation in the locality once a week for three consecutive weeks
86 prior to the election. The ballot used shall be printed to read as follows:

87 "Shall the governing body of (...name of locality...) have the authority to require employers in the
88 locality to pay to each of his employees, for work performed by them within the locality, wages at a rate
89 not less than (i) \$8.25 per hour during the 12-month period commencing on the July 1 following the
90 delivery by the governing body of the locality to the Commissioner of Labor and Industry of certified
91 copies of a court order proclaiming the results of a referendum approving the imposition of the local
92 alternative minimum wage requirement and an ordinance of the governing body imposing the local
93 alternative minimum wage requirement; (ii) \$9.25 per hour during the 12-month period commencing on
94 the July 1 following the July 1 that the requirement in clause (i) became effective; and (iii) \$10.50 per
95 hour commencing on the July 1 following the July 1 that the requirement in clause (ii) became effective,
96 in accordance with subsection B of § 40.1-28.10 of the Code of Virginia?

97 [] Yes

98 [] No"

99 2. The governing body of the locality, following approval of the voters by a majority vote in a
100 referendum pursuant to subdivision 1, has adopted an ordinance imposing the local alternative minimum
101 wage requirement; and

102 3. The governing body of the locality has delivered to the Commissioner (i) a certified copy of the
103 order of the circuit court of the locality proclaiming the results of a referendum conducted pursuant to
104 subdivision 1 approving the imposition of the local alternative minimum wage requirement and (ii) a
105 certified copy of the ordinance adopted pursuant to subdivision 2.