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**HOUSE BILL NO. 39**

Offered January 10, 2018

Prefiled November 29, 2017

*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.*

Patrons—Levine, Carroll Foy, Adams, D.M., Aird, Carr, Carter, Convirs-Fowler, Delaney, Guzman, Hurst, Jones, J.C., Kory, Murphy, Plum, Rodman, Roem, Simon and Tyler

Referred to Committee on Rules

**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. Definition of terms.**

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~~ *any of them* 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 ~~[Repealed.]~~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. ~~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; and~~

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 wages at a rate to be determined by local ordinance for work performed by the employees within the locality, from the July 1 that follows the date that the governing body of the locality satisfied the requirements of subsection B of § 40.1-28.10 until the next July 1. For any subsequent 12-month period commencing July 1, the maximum local alternative minimum wage shall be adjusted based on the change, if any, in the United States Average Consumer Price Index for all items, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, from its monthly

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58 *average, from the previous calendar year.*

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

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

69 **§ 40.1-28.10. Minimum wages.**

70 A. Every employer shall pay to each of his employees wages at a rate not less than the federal  
71 minimum wage ~~and a training wage~~ as prescribed by the U.S. Fair Labor Standards Act (29 U.S.C.  
72 § 201 et seq.); *however, in any locality in which a local alternative minimum wage requirement is in*  
73 *effect, every employer shall pay to each of his employees, for work performed by them within the*  
74 *locality, wages at a rate not less than the greater of (i) the federal minimum wage as prescribed by the*  
75 *U.S. Fair Labor Standards Act or (ii) the amount specified in the local alternative minimum wage*  
76 *requirement.*

77 B. Any locality may by ordinance, after a public hearing, impose a local alternative minimum wage  
78 requirement, as defined in § 40.1-28.9. However, no ordinance shall be passed until after descriptive  
79 notice of the proposed ordinance has been published once a week for two successive weeks prior to its  
80 passage in a newspaper having a general circulation in the locality. The second publication shall not be  
81 sooner than one calendar week after the first publication. The publication shall include a statement  
82 either that the publication contains the full text of the ordinance or that a copy of the full text of the  
83 ordinance is on file in the administrative office of the locality. Upon adoption of such ordinance, the  
84 locality shall deliver to the Commissioner a certified copy of the ordinance.