

1 A bill to be entitled
2 An act relating to the state minimum wage; amending s.
3 95.11, F.S.; providing periods of limitations on actions
4 for violations of the Florida Minimum Wage Act; creating
5 s. 448.110, F.S., the Florida Minimum Wage Act; providing
6 legislative intent to implement s. 24, Art. X of the State
7 Constitution in accordance with authority granted to the
8 Legislature therein; requiring employers to pay certain
9 employees a minimum wage; requiring the minimum wage to be
10 adjusted annually; providing a formula for calculating
11 such adjustment; requiring the Agency for Workforce
12 Innovation and the Department of Revenue to annually
13 publish the amount of the initial and adjusted minimum
14 wage; providing criteria for posting; requiring the agency
15 to provide written notice to certain employers; providing
16 a deadline for the notice to be mailed; providing that
17 employers are responsible for maintaining their current
18 addresses with the agency; requiring the agency to provide
19 the department with certain information; prohibiting
20 discrimination or adverse action against persons
21 exercising constitutional rights under s. 24, Art. X of
22 the State Constitution; providing for civil action by
23 aggrieved persons; requiring aggrieved persons bringing
24 civil actions to provide written notice to their employers
25 or other persons alleged to have violated the act;
26 providing information that must be included in the notice;
27 providing a deadline by which an employer or other person
28 alleged to have violated the act must pay the unpaid wages

29 | in question or resolve the claim to the aggrieved person's
 30 | satisfaction; providing that aggrieved persons who prevail
 31 | in their actions may be entitled to liquidated damages and
 32 | reasonable attorney's fees and costs; authorizing
 33 | additional legal or equitable relief for aggrieved parties
 34 | who prevail in such actions; providing that noneconomic
 35 | damages and punitive damages may not be awarded;
 36 | authorizing the Attorney General to bring a civil action
 37 | and seek injunctive relief; providing a fine; providing
 38 | statutes of limitations; authorizing class actions;
 39 | declaring the act the exclusive remedy under state law for
 40 | violations of s. 24, Art. X of the State Constitution;
 41 | providing for implementation measures; designating ss.
 42 | 448.01-448.110, F.S., as part I of ch. 448, F.S.;
 43 | providing a part title; providing an effective date.

44 |
 45 | Be It Enacted by the Legislature of the State of Florida:

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 47 | Section 1. Paragraph (d) is added to subsection (2) and
 48 | paragraph (q) is added to subsection (3) of section 95.11,
 49 | Florida Statutes, to read:

50 | 95.11 Limitations other than for the recovery of real
 51 | property.--Actions other than for recovery of real property
 52 | shall be commenced as follows:

53 | (2) WITHIN FIVE YEARS.--

54 | (d) An action alleging a willful violation of s. 448.110.

55 | (3) WITHIN FOUR YEARS.--

56 (q) An action alleging a violation, other than a willful
 57 violation, of s. 448.110.

58 Section 2. Section 448.110, Florida Statutes, is created
 59 to read:

60 448.110 State minimum wage; annual wage adjustment;
 61 enforcement.--

62 (1) This section may be cited as the "Florida Minimum Wage
 63 Act."

64 (2) The purpose of this section is to provide measures
 65 appropriate for the implementation of s. 24, Art. X of the State
 66 Constitution, in accordance with authority granted to the
 67 Legislature pursuant to s. 24(f), Art. X of the State
 68 Constitution.

69 (3) Effective May 2, 2005, employers shall pay employees a
 70 minimum wage at an hourly rate of \$6.15. Only those individuals
 71 entitled to receive the federal minimum wage under the federal
 72 Fair Labor Standards Act and implementing regulations shall be
 73 eligible to receive the state minimum wage pursuant to s. 24,
 74 Art. X of the State Constitution and this section.

75 (4)(a) Beginning September 30, 2005, and annually on
 76 September 30 thereafter, the Agency for Workforce Innovation
 77 shall calculate an adjusted state minimum wage rate by
 78 increasing the state minimum wage by the rate of inflation for
 79 the 12 months prior to September 1. In calculating the adjusted
 80 state minimum wage, the agency shall use the Consumer Price
 81 Index for Urban Wage Earners and Clerical Workers, not
 82 seasonally adjusted, for the South Region, or a successor index
 83 as calculated by the United States Department of Labor. Each

84 adjusted state minimum wage rate shall take effect on the
85 following January 1, with the initial adjusted minimum wage rate
86 to take effect on January 1, 2006.

87 (b) The Agency for Workforce Innovation and the Department
88 of Revenue shall annually publish the amount of the initial and
89 adjusted state minimum wage, as applicable, and the effective
90 date. Publication shall occur by posting the adjusted state
91 minimum wage rate and the effective date on the Internet home
92 pages of the agency and the department by October 15 of each
93 year. In addition, to the extent funded in the General
94 Appropriations Act, the agency shall provide written notice of
95 the rate and the effective date of the adjusted state minimum
96 wage to all employers registered in the most current
97 unemployment compensation database. Such notice shall be mailed
98 by November 15 of each year using the addresses included in the
99 database. Employers are responsible for maintaining current
100 address information in the unemployment compensation database.
101 The agency shall not be responsible for failure to provide
102 notice due to incorrect or incomplete address information in the
103 database. The agency shall provide the Department of Revenue
104 with the state minimum wage rate information and effective date
105 in a timely manner.

106 (5) It shall be unlawful for an employer or any other
107 party to discriminate in any manner or take adverse action
108 against any person in retaliation for exercising rights
109 protected pursuant to s. 24, Art. X of the State Constitution.
110 Rights protected include, but are not limited to, the right to
111 file a complaint or inform any person of his or her potential

112 rights pursuant to s. 24, Art. X of the State Constitution and
 113 to assist him or her in asserting such rights.

114 (6)(a) Any person aggrieved by a violation of this section
 115 may bring a civil action in a court of competent jurisdiction
 116 against an employer violating this section or a party violating
 117 subsection (5). However, prior to instituting a civil action
 118 pursuant to this section, the person aggrieved shall notify the
 119 employer or person alleged to have violated this section, in
 120 writing, of an intent to initiate such an action. The notice
 121 must identify the minimum wage to which the employee claims
 122 entitlement, the specific work dates and hours for which payment
 123 is sought, and the total amount of alleged unpaid wages through
 124 the date of the notice.

125 (b) The employer or person alleged to have violated this
 126 section shall have 15 calendar days after receipt of the notice
 127 to pay the total amount of unpaid wages or, if not paid in full,
 128 otherwise resolve the claim to the satisfaction of the person
 129 aggrieved. If the employer or person alleged to have violated
 130 this section fails to pay the total amount of unpaid wages or,
 131 if not paid in full, otherwise resolve the claim to the
 132 satisfaction of the person aggrieved, then the person aggrieved
 133 may bring a civil action pursuant to this section.

134 (c)1. Upon prevailing in an action brought pursuant to
 135 this section, aggrieved persons shall recover the full amount of
 136 any unpaid back wages unlawfully withheld plus the same amount
 137 as liquidated damages and shall be awarded reasonable attorney's
 138 fees and costs. As provided under the Fair Labor Standards Act,
 139 pursuant to s. 11 of the Portal-to-Portal Act of 1947, 61 Stat.

140 84, if the employer proves by a preponderance of the evidence
 141 that the act or omission giving rise to such action was in good
 142 faith and that the employer had reasonable grounds for believing
 143 that his or her act or omission was not a violation of s. 24,
 144 Art. X of the State Constitution, the court may, in its sound
 145 discretion, award no liquidated damages or award any amount
 146 thereof not to exceed an amount equal to the amount of unpaid
 147 minimum wages. The court shall not award any economic damages
 148 not expressly authorized in this section.

149 2. Upon prevailing in an action brought pursuant to this
 150 section, aggrieved persons shall also be entitled to such legal
 151 or equitable relief as may be appropriate to remedy the
 152 violation including, without limitation, reinstatement in
 153 employment and injunctive relief. However, any entitlement to
 154 legal or equitable relief in an action brought under s. 24, Art.
 155 X of the State Constitution shall not include noneconomic
 156 damages such as damages for pain and suffering or punitive
 157 damages.

158 (7) The Attorney General may bring a civil action to
 159 enforce this section. The Attorney General may seek injunctive
 160 relief. In addition to injunctive relief, or in lieu thereof,
 161 for any employer or other person found to have willfully
 162 violated this section, the Attorney General may seek to impose a
 163 fine of \$1,000 per violation, payable to the state.

164 (8) The statute of limitations for an action brought
 165 pursuant to this section shall be 4 years from the date the
 166 alleged violation occurred, except that in an action alleging a

167 willful violation the statute of limitations shall be 5 years
 168 from the date the alleged violation occurred.

169 (9) Actions brought pursuant to this section may be
 170 brought as a class action. In any class action brought pursuant
 171 to this section, the plaintiffs shall identify each class member
 172 and include proof of individual damages for each class member.

173 (10) This section shall constitute the exclusive remedy
 174 under state law for violations of s. 24, Art. X of the State
 175 Constitution.

176 (11) Except for calculating the adjusted state minimum
 177 wage and publishing the initial state minimum wage and any
 178 annual adjustments thereto, the authority of the Agency for
 179 Workforce Innovation in implementing s. 24, Art. X of the State
 180 Constitution, pursuant to this section, shall be limited to that
 181 authority expressly granted by the Legislature.

182 Section 3. Sections 448.01-448.110, Florida Statutes, are
 183 designated as part I of chapter 448, Florida Statutes, and
 184 entitled "Terms and Conditions of Employment."

185 Section 4. This act shall take effect upon becoming a law.