

CHAMBER ACTION

1 The Economic Development, Trade & Banking Committee recommends  
2 the following:

3  
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to the state minimum wage; amending s.  
8 95.11, F.S.; providing periods of limitations on actions  
9 for violations of the Florida Minimum Wage Act; creating  
10 s. 448.110, F.S., the Florida Minimum Wage Act; providing  
11 legislative intent to implement s. 24, Art. X of the State  
12 Constitution in accordance with authority granted to the  
13 Legislature therein; requiring employers to pay certain  
14 employees a minimum wage for all hours worked in Florida;  
15 incorporating provisions of the federal Fair Labor  
16 Standards Act; requiring the minimum wage to be adjusted  
17 annually; providing a formula for calculating such  
18 adjustment; requiring the Agency for Workforce Innovation  
19 and the Department of Revenue to annually publish the  
20 amount of the initial and adjusted minimum wage; providing  
21 criteria for posting; requiring the agency to provide  
22 written notice to certain employers; providing a deadline  
23 for the notice to be mailed; providing that employers are

24 responsible for maintaining their current addresses with  
25 the agency; requiring the agency to provide the department  
26 with certain information; prohibiting discrimination or  
27 adverse action against persons exercising constitutional  
28 rights under s. 24, Art. X of the State Constitution;  
29 providing for civil action by aggrieved persons; requiring  
30 aggrieved persons bringing civil actions to provide  
31 written notice to their employers alleged to have violated  
32 the act; providing information that must be included in  
33 the notice; providing a deadline by which an employer  
34 alleged to have violated the act must pay the unpaid wages  
35 in question or resolve the claim to the aggrieved person's  
36 satisfaction; providing a statute of limitations period;  
37 providing that aggrieved persons who prevail in their  
38 actions may be entitled to liquidated damages and  
39 reasonable attorney's fees and costs; authorizing  
40 additional legal or equitable relief for aggrieved persons  
41 who prevail in such actions; providing that punitive  
42 damages may not be awarded; providing that actions brought  
43 under the act are subject to s. 768.79, F.S.; authorizing  
44 the Attorney General to bring a civil action and seek  
45 injunctive relief; providing a fine; providing statutes of  
46 limitations; authorizing class actions; declaring the act  
47 the exclusive remedy under state law for violations of s.  
48 24, Art. X of the State Constitution; providing for  
49 implementation measures; designating ss. 448.01-448.110,  
50 F.S., as part I of ch. 448, F.S.; providing a part title;  
51 providing for severability; providing an effective date.

52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79

Be It Enacted by the Legislature of the State of Florida:

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

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

(2) WITHIN FIVE YEARS.--

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

(3) WITHIN FOUR YEARS.--

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

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

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

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

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

(3) Effective May 2, 2005, employers shall pay employees a minimum wage at an hourly rate of \$6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal

80 minimum wage under the federal Fair Labor Standards Act and its  
 81 implementing regulations shall be eligible to receive the state  
 82 minimum wage pursuant to s. 24, Art. X of the State Constitution  
 83 and this section. The provisions of ss. 213 and 214 of the  
 84 federal Fair Labor Standards Act, as interpreted by applicable  
 85 federal regulations and implemented by the Secretary of Labor,  
 86 are incorporated herein.

87 (4)(a) Beginning September 30, 2005, and annually on  
 88 September 30 thereafter, the Agency for Workforce Innovation  
 89 shall calculate an adjusted state minimum wage rate by  
 90 increasing the state minimum wage by the rate of inflation for  
 91 the 12 months prior to September 1. In calculating the adjusted  
 92 state minimum wage, the agency shall use the Consumer Price  
 93 Index for Urban Wage Earners and Clerical Workers, not  
 94 seasonally adjusted, for the South Region, or a successor index  
 95 as calculated by the United States Department of Labor. Each  
 96 adjusted state minimum wage rate shall take effect on the  
 97 following January 1, with the initial adjusted minimum wage rate  
 98 to take effect on January 1, 2006.

99 (b) The Agency for Workforce Innovation and the Department  
 100 of Revenue shall annually publish the amount of the initial and  
 101 adjusted state minimum wage, as applicable, and the effective  
 102 date. Publication shall occur by posting the adjusted state  
 103 minimum wage rate and the effective date on the Internet home  
 104 pages of the agency and the department by October 15 of each  
 105 year. In addition, to the extent funded in the General  
 106 Appropriations Act, the agency shall provide written notice of  
 107 the rate and the effective date of the adjusted state minimum

HB 1709

2005  
CS

108 wage to all employers registered in the most current  
109 unemployment compensation database. Such notice shall be mailed  
110 by November 15 of each year using the addresses included in the  
111 database. Employers are responsible for maintaining current  
112 address information in the unemployment compensation database.  
113 The agency shall not be responsible for failure to provide  
114 notice due to incorrect or incomplete address information in the  
115 database. The agency shall provide the Department of Revenue  
116 with the state minimum wage rate information and effective date  
117 in a timely manner.

118 (5) It shall be unlawful for an employer or any other  
119 party to discriminate in any manner or take adverse action  
120 against any person in retaliation for exercising rights  
121 protected pursuant to s. 24, Art. X of the State Constitution.  
122 Rights protected include, but are not limited to, the right to  
123 file a complaint or inform any person of his or her potential  
124 rights pursuant to s. 24, Art. X of the State Constitution and  
125 to assist him or her in asserting such rights.

126 (6)(a) Any person aggrieved by a violation of this section  
127 may bring a civil action in a court of competent jurisdiction  
128 against an employer violating this section or a party violating  
129 subsection (5). However, prior to bringing any claim for unpaid  
130 minimum wages pursuant to this section, the person aggrieved  
131 shall notify the employer alleged to have violated this section,  
132 in writing, of an intent to initiate such an action. The notice  
133 must identify the minimum wage to which the person aggrieved  
134 claims entitlement, the actual or estimated work dates and hours

135 for which payment is sought, and the total amount of alleged  
 136 unpaid wages through the date of the notice.

137 (b) The employer shall have 15 calendar days after receipt  
 138 of the notice to pay the total amount of unpaid wages or  
 139 otherwise resolve the claim to the satisfaction of the person  
 140 aggrieved. The statute of limitations for bringing an action  
 141 pursuant to this section shall be tolled during this 15-day  
 142 period. If the employer fails to pay the total amount of unpaid  
 143 wages or otherwise resolve the claim to the satisfaction of the  
 144 person aggrieved, then the person aggrieved may bring a claim  
 145 for unpaid minimum wages, the terms of which must be consistent  
 146 with the contents of the notice.

147 (c)1. Upon prevailing in an action brought pursuant to  
 148 this section, aggrieved persons shall recover the full amount of  
 149 any unpaid back wages unlawfully withheld plus the same amount  
 150 as liquidated damages and shall be awarded reasonable attorney's  
 151 fees and costs. As provided under the Fair Labor Standards Act,  
 152 pursuant to s. 11 of the Portal-to-Portal Act of 1947, 29 U.S.C.  
 153 s. 260, if the employer proves by a preponderance of the  
 154 evidence that the act or omission giving rise to such action was  
 155 in good faith and that the employer had reasonable grounds for  
 156 believing that his or her act or omission was not a violation of  
 157 s. 24, Art. X of the State Constitution, the court may, in its  
 158 sound discretion, award no liquidated damages or award any  
 159 amount thereof not to exceed an amount equal to the amount of  
 160 unpaid minimum wages. The court shall not award any economic  
 161 damages on a claim for unpaid minimum wages not expressly  
 162 authorized in this section.

163        2. Upon prevailing in an action brought pursuant to this  
 164 section, aggrieved persons shall also be entitled to such legal  
 165 or equitable relief as may be appropriate to remedy the  
 166 violation including, without limitation, reinstatement in  
 167 employment and injunctive relief. However, any entitlement to  
 168 legal or equitable relief in an action brought under s. 24, Art.  
 169 X of the State Constitution shall not include punitive damages.

170        (d) Any civil action brought under s. 24, Art. X of the  
 171 State Constitution and this section shall be subject to s.  
 172 768.79.

173        (7) The Attorney General may bring a civil action to  
 174 enforce this section. The Attorney General may seek injunctive  
 175 relief. In addition to injunctive relief, or in lieu thereof,  
 176 for any employer or other person found to have willfully  
 177 violated this section, the Attorney General may seek to impose a  
 178 fine of \$1,000 per violation, payable to the state.

179        (8) The statute of limitations for an action brought  
 180 pursuant to this section shall be 4 years from the date the  
 181 alleged violation occurred, except that in an action alleging a  
 182 willful violation the statute of limitations shall be 5 years  
 183 from the date the alleged violation occurred.

184        (9) Actions brought pursuant to this section may be  
 185 brought as a class action pursuant to Rule 1.220, Florida Rules  
 186 of Civil Procedure. In any class action brought pursuant to this  
 187 section, the plaintiffs shall prove, by a preponderance of the  
 188 evidence, the individual identity of each class member and the  
 189 individual damages of each class member.

HB 1709

2005  
CS

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

193       (11) Except for calculating the adjusted state minimum  
 194 wage and publishing the initial state minimum wage and any  
 195 annual adjustments thereto, the authority of the Agency for  
 196 Workforce Innovation in implementing s. 24, Art. X of the State  
 197 Constitution, pursuant to this section, shall be limited to that  
 198 authority expressly granted by the Legislature.

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

202       Section 4. If any provision of this act or its application  
 203 to any person or circumstance is held invalid, the invalidity  
 204 shall not affect the other provisions or applications of the act  
 205 which can be given effect without the invalid provision or  
 206 application, and to this end the provisions of this act are  
 207 severable.

208       Section 5. This act shall take effect upon becoming a law.