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2 A bill to be entitled

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

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

48
49 Be It Enacted by the Legislature of the State of Florida:

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

54 95.11 Limitations other than for the recovery of real
55 property.--Actions other than for recovery of real property
56 shall be commenced as follows:

57 | (2) WITHIN FIVE YEARS.--

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

59 | (3) WITHIN FOUR YEARS.--

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

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

64 | 448.110 State minimum wage; annual wage adjustment;
 65 | enforcement.--

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

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

73 | (3) Effective May 2, 2005, employers shall pay employees a
 74 | minimum wage at an hourly rate of \$6.15 for all hours worked in
 75 | Florida. Only those individuals entitled to receive the federal
 76 | minimum wage under the federal Fair Labor Standards Act and its
 77 | implementing regulations shall be eligible to receive the state
 78 | minimum wage pursuant to s. 24, Art. X of the State Constitution
 79 | and this section. The provisions of ss. 213 and 214 of the
 80 | federal Fair Labor Standards Act, as interpreted by applicable
 81 | federal regulations and implemented by the Secretary of Labor,
 82 | are incorporated herein.

83 | (4) (a) Beginning September 30, 2005, and annually on
 84 | September 30 thereafter, the Agency for Workforce Innovation

85 shall calculate an adjusted state minimum wage rate by
86 increasing the state minimum wage by the rate of inflation for
87 the 12 months prior to September 1. In calculating the adjusted
88 state minimum wage, the agency shall use the Consumer Price
89 Index for Urban Wage Earners and Clerical Workers, not
90 seasonally adjusted, for the South Region, or a successor index
91 as calculated by the United States Department of Labor. Each
92 adjusted state minimum wage rate shall take effect on the
93 following January 1, with the initial adjusted minimum wage rate
94 to take effect on January 1, 2006.

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

112 with the state minimum wage rate information and effective date
113 in a timely manner.

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

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

133 (b) The employer shall have 15 calendar days after receipt
134 of the notice to pay the total amount of unpaid wages or
135 otherwise resolve the claim to the satisfaction of the person
136 aggrieved. The statute of limitations for bringing an action
137 pursuant to this section shall be tolled during this 15-day
138 period. If the employer fails to pay the total amount of unpaid
139 wages or otherwise resolve the claim to the satisfaction of the

140 person aggrieved, then the person aggrieved may bring a claim
141 for unpaid minimum wages, the terms of which must be consistent
142 with the contents of the notice.

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

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

166 (d) Any civil action brought under s. 24, Art. X of the
167 State Constitution and this section shall be subject to s.
168 768.79.

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

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

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

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

189 (11) Except for calculating the adjusted state minimum
190 wage and publishing the initial state minimum wage and any
191 annual adjustments thereto, the authority of the Agency for
192 Workforce Innovation in implementing s. 24, Art. X of the State

193 Constitution, pursuant to this section, shall be limited to that
194 authority expressly granted by the Legislature.

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

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

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