

Bill No. SB 2638

Barcode 722146

CHAMBER ACTION

Senate

House

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The Committee on Commerce and Consumer Services (Crist) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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:

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1 448.110 State minimum wage; annual wage adjustment;
2 enforcement.--

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

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

10 (3) Effective May 2, 2005, employers shall pay
11 employees a minimum wage at an hourly rate of \$6.15 for all
12 hours worked in Florida. Only those individuals entitled to
13 receive the federal minimum wage under the federal Fair Labor
14 Standards Act and its implementing regulations shall be
15 eligible to receive the state minimum wage pursuant to s. 24,
16 Art. X of the State Constitution and this section. The
17 provisions of ss. 213 and 214 of the federal Fair Labor
18 Standards Act, as interpreted by applicable federal
19 regulations and implemented by the Secretary of Labor, are
20 incorporated herein.

21 (4)(a) Beginning September 30, 2005, and annually on
22 September 30 thereafter, the Agency for Workforce Innovation
23 shall calculate an adjusted state minimum wage rate by
24 increasing the state minimum wage by the rate of inflation for
25 the 12 months prior to September 1. In calculating the
26 adjusted state minimum wage, the agency shall use the Consumer
27 Price Index for Urban Wage Earners and Clerical Workers, not
28 seasonally adjusted, for the South Region, or a successor
29 index as calculated by the United States Department of Labor.
30 Each adjusted state minimum wage rate shall take effect on the
31 following January 1, with the initial adjusted minimum wage

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1 rate to take effect on January 1, 2006.

2 (b) The Agency for Workforce Innovation and the
3 Department of Revenue shall annually publish the amount of the
4 initial and adjusted state minimum wage, as applicable, and
5 the effective date. Publication shall occur by posting the
6 adjusted state minimum wage rate and the effective date on the
7 Internet home pages of the agency and the department by
8 October 15 of each year. In addition, to the extent funded in
9 the General Appropriations Act, the agency shall provide
10 written notice of the rate and the effective date of the
11 adjusted state minimum wage to all employers registered in the
12 most current unemployment compensation database. Such notice
13 shall be mailed by November 15 of each year using the
14 addresses included in the database. Employers are responsible
15 for maintaining current address information in the
16 unemployment compensation database. The agency shall not be
17 responsible for failure to provide notice due to incorrect or
18 incomplete address information in the database. The agency
19 shall provide the Department of Revenue with the state minimum
20 wage rate information and effective date in a timely manner.

21 (5) It shall be unlawful for an employer or any other
22 party to discriminate in any manner or take adverse action
23 against any person in retaliation for exercising rights
24 protected pursuant to s. 24, Art. X of the State Constitution.
25 Rights protected include, but are not limited to, the right to
26 file a complaint or inform any person of his or her potential
27 rights pursuant to s. 24, Art. X of the State Constitution and
28 to assist him or her in asserting such rights.

29 (6)(a) Any person aggrieved by a violation of this
30 section may bring a civil action in a court of competent
31 jurisdiction against an employer violating this section or a

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1 party violating subsection (5). However, prior to bringing any
 2 claim for unpaid minimum wages pursuant to this section, the
 3 person aggrieved shall notify the employer alleged to have
 4 violated this section, in writing, of an intent to initiate
 5 such an action. The notice must identify the minimum wage to
 6 which the person aggrieved claims entitlement, the actual or
 7 estimated work dates and hours for which payment is sought,
 8 and the total amount of alleged unpaid wages through the date
 9 of the notice.

10 (b) The employer shall have 15 calendar days after
 11 receipt of the notice to pay the total amount of unpaid wages
 12 or otherwise resolve the claim to the satisfaction of the
 13 person aggrieved. The statute of limitations for bringing an
 14 action pursuant to this section shall be tolled during this
 15 15-day period. If the employer fails to pay the total amount
 16 of unpaid wages or otherwise resolve the claim to the
 17 satisfaction of the person aggrieved, then the person
 18 aggrieved may bring a claim for unpaid minimum wages, the
 19 terms of which must be consistent with the contents of the
 20 notice.

21 (c)1. Upon prevailing in an action brought pursuant to
 22 this section, aggrieved persons shall recover the full amount
 23 of any unpaid back wages unlawfully withheld plus the same
 24 amount as liquidated damages and shall be awarded reasonable
 25 attorney's fees and costs. As provided under the Fair Labor
 26 Standards Act, pursuant to s. 11 of the Portal-to-Portal Act
 27 of 1947, 29 U.S.C. s. 260, if the employer proves by a
 28 preponderance of the evidence that the act or omission giving
 29 rise to such action was in good faith and that the employer
 30 had reasonable grounds for believing that his or her act or
 31 omission was not a violation of s. 24, Art. X of the State

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1 Constitution, the court may, in its sound discretion, award no
 2 liquidated damages or award any amount thereof not to exceed
 3 an amount equal to the amount of unpaid minimum wages. The
 4 court shall not award any economic damages on a claim for
 5 unpaid minimum wages not expressly authorized in this section.

6 2. Upon prevailing in an action brought pursuant to
 7 this section, aggrieved persons shall also be entitled to such
 8 legal or equitable relief as may be appropriate to remedy the
 9 violation including, without limitation, reinstatement in
 10 employment and injunctive relief. However, any entitlement to
 11 legal or equitable relief in an action brought under s. 24,
 12 Art. X of the State Constitution shall not include punitive
 13 damages.

14 (d) Any civil action brought under s. 24, Art. X of
 15 the State Constitution and this section shall be subject to s.
 16 768.79.

17 (7) The Attorney General may bring a civil action to
 18 enforce this section. The Attorney General may seek injunctive
 19 relief. In addition to injunctive relief, or in lieu thereof,
 20 for any employer or other person found to have willfully
 21 violated this section, the Attorney General may seek to impose
 22 a fine of \$1,000 per violation, payable to the state.

23 (8) The statute of limitations for an action brought
 24 pursuant to this section shall be 4 years from the date the
 25 alleged violation occurred, except that in an action alleging
 26 a willful violation the statute of limitations shall be 5
 27 years from the date the alleged violation occurred.

28 (9) Actions brought pursuant to this section may be
 29 brought as a class action pursuant to Rule 1.220, Florida
 30 Rules of Civil Procedure. In any class action brought pursuant
 31 to this section, the plaintiffs shall prove, by a

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1 preponderance of the evidence, the individual identity of each
2 class member and the individual damages of each class member.

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

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

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

15 Section 4. If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 invalidity shall not affect the other provisions or
18 applications of the act which can be given effect without the
19 invalid provision or application, and to this end the
20 provisions of this act are severable.

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

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25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 Delete everything before the enacting clause

28
29 and insert:

30 A bill to be entitled

31 An act relating to the state minimum wage;

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

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1 information that must be included in the
2 notice; providing a deadline by which an
3 employer alleged to have violated the act must
4 pay the unpaid wages in question or resolve the
5 claim to the aggrieved person's satisfaction;
6 providing a statute of limitations period;
7 providing that aggrieved persons who prevail in
8 their actions may be entitled to liquidated
9 damages and reasonable attorney's fees and
10 costs; authorizing additional legal or
11 equitable relief for aggrieved persons who
12 prevail in such actions; providing that
13 punitive damages may not be awarded; providing
14 that actions brought under the act are subject
15 to s. 768.79, F.S.; authorizing the Attorney
16 General to bring a civil action and seek
17 injunctive relief; providing a fine; providing
18 statutes of limitations; authorizing class
19 actions; declaring the act the exclusive remedy
20 under state law for violations of s. 24, Art. X
21 of the State Constitution; providing for
22 implementation measures; designating ss.
23 448.01-448.110, F.S., as part I of ch. 448,
24 F.S.; providing a part title; providing for
25 severability; providing an effective date.

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