

By Senator Alexander

17-1459A-05

1 A bill to be entitled

2 An act relating to the Florida minimum wage;

3 amending s. 95.11, F.S.; providing limitations

4 on actions alleging violations of s. 24, Art. X

5 of the State Constitution; creating s. 448.065,

6 F.S.; creating the Florida Minimum Wage Act;

7 providing that the purpose of the act is to

8 implement s. 24, Art. X of the State

9 Constitution, which establishes a state minimum

10 wage; requiring payment of the minimum wage to

11 certain employees by a specified date;

12 requiring the Agency for Workforce Innovation

13 to annually calculate an adjusted state minimum

14 wage; requiring that the agency and the

15 Department of Revenue notify employers of the

16 amount of the minimum wage; prohibiting an

17 employer or other party from discriminating

18 against a person who exercises rights protected

19 under s. 24, Art. X of the State Constitution;

20 authorizing a person to bring a civil action

21 against an employer or person in violation of

22 the act; requiring prior notice; providing for

23 the recovery of unpaid back wages, liquidated

24 damages, and attorney's fees and costs;

25 providing for legal or equitable relief;

26 authorizing the Attorney General to bring a

27 civil action to enforce the act and seek

28 injunctive relief; authorizing the court to

29 impose a fine; specifying the statute of

30 limitations for actions brought under the act;

31 authorizing class actions; providing that the

1 act is the exclusive remedy available for a
2 violation of s. 24, Art. X of the State
3 Constitution; limiting the authority of the
4 Agency for Workforce Innovation; providing an
5 effective date.
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7 Be It Enacted by the Legislature of the State of Florida:
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9 Section 1. Paragraph (d) is added to subsection (2) of
10 section 95.11, Florida Statutes, present paragraph (p) of
11 subsection (3) of that section is redesignated as paragraph
12 (q), and a new paragraph (p) is added to that subsection, to
13 read:

14 95.11 Limitations other than for the recovery of real
15 property.--Actions other than for recovery of real property
16 shall be commenced as follows:

17 (2) WITHIN FIVE YEARS.--

18 (d) An action alleging a willful violation of s.
19 448.065.

20 (3) WITHIN FOUR YEARS.--

21 (p) An action alleging a violation of s. 448.065,
22 other than a willful violation.

23 Section 2. Section 448.065, Florida Statutes, is
24 created to read:

25 448.065 State minimum wage; annual wage adjustment;
26 enforcement.--

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

29 (2) The purpose of this section is to implement s. 24,
30 Art. X of the State Constitution, in accordance with authority
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1 granted to the Legislature under s. 24(f), Art. X of the State
2 Constitution.

3 (3) Effective May 2, 2005, an employer shall pay to
4 each employee who receives minimum wage an hourly pay rate of
5 \$6.15. Only those individuals who are entitled to receive the
6 federal minimum wage under the federal Fair Labor Standards
7 Act and implementing regulations are eligible to receive the
8 state minimum wage under s. 24, Art. X of the State
9 Constitution and this section.

10 (4)(a) Beginning September 30, 2005, and annually on
11 September 30 thereafter, the Agency for Workforce Innovation
12 shall calculate an adjusted state minimum wage rate by
13 increasing the state minimum wage by the rate of inflation for
14 the 12 months prior to September 1. In calculating the
15 adjusted state minimum wage, the agency shall use the Consumer
16 Price Index for Urban Wage Earners and Clerical Workers,
17 CPI-W, for the south region, or a successor index as
18 calculated by the United States Department of Labor. Each
19 adjusted state minimum wage rate shall take effect on the
20 following January 1, with the initial adjusted minimum wage
21 rate to take effect on January 1, 2006.

22 (b) The Agency for Workforce Innovation and the
23 Department of Revenue shall annually notify employers of the
24 amount of the state minimum wage through the most
25 cost-effective means of publication available. The Agency for
26 Workforce Innovation shall direct its tax services collection
27 provider, by contract, to notify employers annually of the
28 amount of the initial and adjusted state minimum wage, as
29 applicable, and the effective date, either separately, or as
30 part of an annual tax notice or other mailing to employers. In
31 addition, the Agency for Workforce Innovation and the

1 Department of Revenue shall post the applicable state minimum
2 wage rate and the effective date on an Internet website by
3 September 30 of each year. The Agency for Workforce Innovation
4 shall provide the Department of Revenue with the rate
5 information for the state minimum wage and the effective date
6 in a timely manner.

7 (5) An employer or any other party may not
8 discriminate in any manner or take adverse action against any
9 person in retaliation for exercising rights protected under s.
10 24, Art. X of the State Constitution. Protected rights
11 include, but are not limited to, the right to file a complaint
12 or inform any person of his or her potential rights under s.
13 24, Art. X of the State Constitution and the right to assist
14 another in asserting such rights.

15 (6)(a) A person aggrieved by a violation of this
16 section may bring a civil action in a court of competent
17 jurisdiction against an employer or person in violation of
18 this section. However, before instituting a civil action under
19 this section, a person aggrieved must notify the employee or
20 person alleged to have violated this section, in writing, of
21 an intent to initiate such an action. The notice must identify
22 the minimum wage to which the employee or person claims
23 entitlement, the specific work dates and hours for which
24 payment is sought, and the total amount of alleged unpaid
25 wages through the date of the notice.

26 (b) The employer or person alleged to have violated
27 this section has 15 calendar days following the receipt of the
28 notice to pay the total amount of unpaid wages or, if not paid
29 in full, otherwise resolve the claim to the satisfaction of
30 the person aggrieved. If the employer or person alleged to
31 have violated this section fails to pay the total amount of

1 unpaid wages or, if not paid in full, otherwise resolve the
2 claim to the satisfaction of the person aggrieved, the person
3 aggrieved may bring a civil action pursuant to this section.

4 (c)1. Upon prevailing in an action brought under this
5 section, an aggrieved person shall recover the full amount of
6 any unpaid back wages unlawfully withheld plus the same amount
7 as liquidated damages, and shall be awarded reasonable
8 attorney's fees and costs. As provided under the Fair Labor
9 Standards Act through the Portal-to-Portal Act of 1947, 29
10 C.F.R. s. 790.5, if the employer shows to the satisfaction of
11 the court that the act or omission giving rise to such action
12 was in good faith and that the employer had reasonable grounds
13 for believing that his or her act or omission was not a
14 violation of s. 24, Art. X of the State Constitution, the
15 court may not award liquidated damages or may award an amount
16 thereof that does not exceed the amount of unpaid minimum
17 wages. The court may not award any economic damages that are
18 not expressly authorized in this section.

19 2. Upon prevailing in an action brought under this
20 section, an aggrieved person is also entitled to the legal or
21 equitable relief that is appropriate to remedy the violation,
22 including, without limitation, reinstatement in employment and
23 injunctive relief. However, any entitlement to legal or
24 equitable relief in an action brought under s. 24, Art. X of
25 the State Constitution does not include noneconomic damages,
26 such as damages for pain and suffering or punitive damages.

27 (7) The Attorney General may bring a civil action to
28 enforce this section. The Attorney General may seek injunctive
29 relief. In addition to injunctive relief, or in lieu thereof,
30 the court may impose a fine of \$1,000 per violation, payable
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1 to the state, against any employer or other person found to
2 have willfully violated this section.

3 (8) The statute of limitations for an action brought
4 under this section is 4 years following the date the alleged
5 violation occurred, except that the statute of limitations for
6 an action alleging a willful violation of this section is 5
7 years following the date the alleged violation occurred.

8 (9) Actions brought under this section may be brought
9 as a class action. In any class action brought under this
10 section, the plaintiffs must identify each class member and
11 include proof of individual damages for each class member.

12 (10) This section constitutes the exclusive remedy
13 under state law for a violation of s. 24, Art. X of the State
14 Constitution.

15 (11) Except for calculating the adjusted state minimum
16 wage and publishing the initial state minimum wage and any
17 annual adjustment thereto, the authority of the Agency for
18 Workforce Innovation in implementing s. 24, Art. X of the
19 State Constitution is limited to that authority expressly
20 granted by the Legislature.

21 Section 3. This act shall take effect July 1, 2005.
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SENATE SUMMARY

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3 Creates the Florida Minimum Wage Act to implement s. 24,
4 Art. X of the State Constitution. Provides for the Agency
5 for Workforce Innovation to annually calculate the
6 adjusted state minimum wage. Provides for a person
7 aggrieved by a violation of the minimum-wage law to bring
8 an action for unpaid back wages, liquidated damages, and
9 attorney's fees and costs. Authorizes the Attorney
10 General to bring a civil action to enforce the act.
11 Authorizes the court to impose a fine for a violation of
12 the act. Provides a 4-year statute of limitations for
13 bringing an action for an alleged violation and a 5-year
14 statute of limitations for bringing an action for an
15 alleged willful violation. Authorizes class actions for
16 violations of the minimum-wage law. (See bill for
17 details.)
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