

By the Committee on Commerce and Consumer Services; and
Senator Alexander

577-2149-05

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

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

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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Paragraph (d) is added to subsection (2)
2 and paragraph (q) is added to subsection (3) of section 95.11,
3 Florida Statutes, to read:

4 95.11 Limitations other than for the recovery of real
5 property.--Actions other than for recovery of real property
6 shall be commenced as follows:

7 (2) WITHIN FIVE YEARS.--

8 (d) An action alleging a willful violation of s.
9 448.110.

10 (3) WITHIN FOUR YEARS.--

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

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

15 448.110 State minimum wage; annual wage adjustment;
16 enforcement.--

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

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

24 (3) Effective May 2, 2005, employers shall pay
25 employees a minimum wage at an hourly rate of \$6.15 for all
26 hours worked in Florida. Only those individuals entitled to
27 receive the federal minimum wage under the federal Fair Labor
28 Standards Act and its implementing regulations shall be
29 eligible to receive the state minimum wage pursuant to s. 24,
30 Art. X of the State Constitution and this section. The
31 provisions of ss. 213 and 214 of the federal Fair Labor

1 Standards Act, as interpreted by applicable federal
2 regulations and implemented by the Secretary of Labor, are
3 incorporated herein.

4 (4)(a) Beginning September 30, 2005, and annually on
5 September 30 thereafter, the Agency for Workforce Innovation
6 shall calculate an adjusted state minimum wage rate by
7 increasing the state minimum wage by the rate of inflation for
8 the 12 months prior to September 1. In calculating the
9 adjusted state minimum wage, the agency shall use the Consumer
10 Price Index for Urban Wage Earners and Clerical Workers, not
11 seasonally adjusted, for the South Region, or a successor
12 index as calculated by the United States Department of Labor.
13 Each adjusted state minimum wage rate shall take effect on the
14 following January 1, with the initial adjusted minimum wage
15 rate to take effect on January 1, 2006.

16 (b) The Agency for Workforce Innovation and the
17 Department of Revenue shall annually publish the amount of the
18 initial and adjusted state minimum wage, as applicable, and
19 the effective date. Publication shall occur by posting the
20 adjusted state minimum wage rate and the effective date on the
21 Internet home pages of the agency and the department by
22 October 15 of each year. In addition, to the extent funded in
23 the General Appropriations Act, the agency shall provide
24 written notice of the rate and the effective date of the
25 adjusted state minimum wage to all employers registered in the
26 most current unemployment compensation database. Such notice
27 shall be mailed by November 15 of each year using the
28 addresses included in the database. Employers are responsible
29 for maintaining current address information in the
30 unemployment compensation database. The agency shall not be
31 responsible for failure to provide notice due to incorrect or

1 incomplete address information in the database. The agency
2 shall provide the Department of Revenue with the state minimum
3 wage rate information and effective date in a timely manner.

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

12 (6)(a) Any person aggrieved by a violation of this
13 section may bring a civil action in a court of competent
14 jurisdiction against an employer violating this section or a
15 party violating subsection (5). However, prior to bringing any
16 claim for unpaid minimum wages pursuant to this section, the
17 person aggrieved shall notify the employer alleged to have
18 violated this section, in writing, of an intent to initiate
19 such an action. The notice must identify the minimum wage to
20 which the person aggrieved claims entitlement, the actual or
21 estimated work dates and hours for which payment is sought,
22 and the total amount of alleged unpaid wages through the date
23 of the notice.

24 (b) The employer shall have 15 calendar days after
25 receipt of the notice to pay the total amount of unpaid wages
26 or otherwise resolve the claim to the satisfaction of the
27 person aggrieved. The statute of limitations for bringing an
28 action pursuant to this section shall be tolled during this
29 15-day period. If the employer fails to pay the total amount
30 of unpaid wages or otherwise resolve the claim to the
31 satisfaction of the person aggrieved, then the person

1 aggrieved may bring a claim for unpaid minimum wages, the
2 terms of which must be consistent with the contents of the
3 notice.

4 (c)1. Upon prevailing in an action brought pursuant to
5 this section, aggrieved persons shall recover the full amount
6 of any unpaid back wages unlawfully withheld plus the same
7 amount as liquidated damages and shall be awarded reasonable
8 attorney's fees and costs. As provided under the Fair Labor
9 Standards Act, pursuant to s. 11 of the Portal-to-Portal Act
10 of 1947, 29 U.S.C. s. 260, if the employer proves by a
11 preponderance of the evidence that the act or omission giving
12 rise to such action was in good faith and that the employer
13 had reasonable grounds for believing that his or her act or
14 omission was not a violation of s. 24, Art. X of the State
15 Constitution, the court may, in its sound discretion, award no
16 liquidated damages or award any amount thereof not to exceed
17 an amount equal to the amount of unpaid minimum wages. The
18 court shall not award any economic damages on a claim for
19 unpaid minimum wages not expressly authorized in this section.

20 2. Upon prevailing in an action brought pursuant to
21 this section, aggrieved persons shall also be entitled to such
22 legal or equitable relief as may be appropriate to remedy the
23 violation including, without limitation, reinstatement in
24 employment and injunctive relief. However, any entitlement to
25 legal or equitable relief in an action brought under s. 24,
26 Art. X of the State Constitution shall not include punitive
27 damages.

28 (d) Any civil action brought under s. 24, Art. X of
29 the State Constitution and this section shall be subject to s.
30 768.79.

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

7 (8) The statute of limitations for an action brought
8 pursuant to this section shall be 4 years from the date the
9 alleged violation occurred, except that in an action alleging
10 a willful violation the statute of limitations shall be 5
11 years from the date the alleged violation occurred.

12 (9) Actions brought pursuant to this section may be
13 brought as a class action pursuant to Rule 1.220, Florida
14 Rules of Civil Procedure. In any class action brought pursuant
15 to this section, the plaintiffs shall prove, by a
16 preponderance of the evidence, the individual identity of each
17 class member and the individual damages of each class member.

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

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

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

30 Section 4. If any provision of this act or its
31 application to any person or circumstance is held invalid, the

1 invalidity shall not affect the other provisions or
2 applications of the act which can be given effect without the
3 invalid provision or application, and to this end the
4 provisions of this act are severable.

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

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 2638

4 This committee substitute differs from the bill in the
5 following manner:

- 6 - Incorporates by reference the current exemptions in ss.
7 213 and 214 of the federal Fair Labor Standards Act,
8 including one for employers who hire the disabled, into
9 the Florida Minimum Wage Act;
- 10 - Specifies that the CPI used to determine the annual
11 adjusted minimum wage is not seasonally adjusted;
- 12 - Deletes the required annual written notice to employers
13 of the adjusted minimum wage; instead, the notice
14 requirement is contingent upon funding provided in the
15 General Appropriations Act;
- 16 - In lieu of the written notification, AWI must publish the
17 annually adjusted minimum wage on the agency and DOR
18 website;
- 19 - When providing notice to the employer of an intent to
20 file suit, the employee must provide an estimate, rather
21 than the actual work dates and hours for which payment is
22 sought;
- 23 - As to the employer good faith exemption from damages
24 beyond the actual unpaid wages, the employer must prove
25 by a preponderance of the evidence, rather than simply
26 show to the satisfaction of the court, that the omission
27 was in good faith; and authorizes rather than restricts
28 the court to limit damages awarded to the actual unpaid
29 wages;
- 30 - Prohibits the court from providing punitive damages
31 rather than prohibiting non-economic damages, such as
damages for pain and suffering;
- Subjects civil actions under this section to s. 768.79,
F.S., regarding offers of judgments;
- In class action suits, subjects the suit to Rule 1.220,
Florida Rules of Civil Procedure, and requires the
plaintiffs to prove, by a preponderance of the evidence,
the individual identity of each class member and the
individual damages of each class member; and
- Includes a severability clause.