

By Senator Alexander

17-760C-06

See HB 7001

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 adjusted minimum wage; providing

19 criteria for posting; requiring the agency to

20 provide written notice to certain employers;

21 providing a deadline for the notice to be

22 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 that a statute of limitations is
9 tolled for a specified period; providing a
10 statute of limitations period; providing that
11 aggrieved persons who prevail in their actions
12 may be entitled to liquidated damages and
13 reasonable attorney's fees and costs;
14 authorizing additional legal or equitable
15 relief for aggrieved persons who prevail in
16 such actions; providing that punitive damages
17 may not be awarded; providing that actions
18 brought under the act are subject to s. 768.79,
19 F.S.; authorizing the Attorney General to bring
20 a civil action and seek injunctive relief;
21 providing a fine; providing statutes of
22 limitations; authorizing class actions;
23 declaring the act the exclusive remedy under
24 state law for violations of s. 24, Art. X of
25 the State Constitution; providing for
26 implementation measures; designating ss.
27 448.01-448.110, F.S., as part I of ch. 448,
28 F.S.; providing a part title; providing for
29 severability; providing an effective date.

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

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 index
12 as calculated by the United States Department of Labor. Each
13 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 adjusted state minimum wage and the effective date.
19 Publication shall occur by posting the adjusted state minimum
20 wage rate and the effective date on the Internet home pages of
21 the agency and the department by October 15 of each year. In
22 addition, to the extent funded in the General Appropriations
23 Act, the agency shall provide written notice of the adjusted
24 rate and the effective date of the adjusted state minimum wage
25 to all employers registered in the most current unemployment
26 compensation database. Such notice shall be mailed by November
27 15 of each year using the addresses included in the database.
28 Employers are responsible for maintaining current address
29 information in the unemployment compensation database. The
30 agency shall not be responsible for failure to provide notice
31 due to incorrect or incomplete address information in the

1 database. The agency shall provide the Department of Revenue
2 with the adjusted state minimum wage rate information and
3 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 federal Fair
9 Labor Standards Act, pursuant to s. 11 of the Portal-to-Portal
10 Act 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 for the period of time
9 specified in s. 95.11 beginning on the date the alleged
10 violation occurred.

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

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

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

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

29 Section 4. If any provision of this act or the
30 application thereof to any person or circumstance is held
31 invalid, the invalidity shall not affect the other provisions

1 or applications of the act which can be given effect without
2 the invalid provision or application, and to this end the
3 provisions of this act are declared severable.

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

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