

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

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

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

113 effective date 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 federal Fair Labor
 148 Standards Act, pursuant to s. 11 of the Portal-to-Portal Act of
 149 1947, 29 U.S.C. s. 260, if the employer proves by a
 150 preponderance of the evidence that the act or omission giving
 151 rise to such action was in good faith and that the employer had
 152 reasonable grounds for believing that his or her act or omission
 153 was not a violation of s. 24, Art. X of the State Constitution,
 154 the court may, in its sound discretion, award no liquidated
 155 damages or award any amount thereof not to exceed an amount
 156 equal to the amount of unpaid minimum wages. The court shall not
 157 award any economic damages on a claim for unpaid minimum wages
 158 not expressly 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 for the period of time
 177 specified in s. 95.11 beginning on the date the alleged
 178 violation occurred.

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

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

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

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

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

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