

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

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 48 | Be It Enacted by the Legislature of the State of Florida:

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 50 | Section 1. Paragraph (d) is added to subsection (2) and
 51 | paragraph (q) is added to subsection (3) of section 95.11,
 52 | Florida Statutes, to read:

53 | 95.11 Limitations other than for the recovery of real
 54 | property.--Actions other than for recovery of real property
 55 | shall be commenced as follows:

56 | (2) WITHIN FIVE YEARS.--

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

58 (3) WITHIN FOUR YEARS.--

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

61 Section 2. Section 448.110, Florida Statutes, is created
 62 to read:

63 448.110 State minimum wage; annual wage adjustment;
 64 enforcement.--

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

67 (2) The purpose of this section is to provide measures
 68 appropriate for the implementation of s. 24, Art. X of the State
 69 Constitution, in accordance with authority granted to the
 70 Legislature pursuant to s. 24(f), Art. X of the State
 71 Constitution.

72 (3) Effective May 2, 2005, employers shall pay employees a
 73 minimum wage at an hourly rate of \$6.15 for all hours worked in
 74 Florida. Only those individuals entitled to receive the federal
 75 minimum wage under the federal Fair Labor Standards Act and its
 76 implementing regulations shall be eligible to receive the state
 77 minimum wage pursuant to s. 24, Art. X of the State Constitution
 78 and this section. The provisions of ss. 213 and 214 of the
 79 federal Fair Labor Standards Act, as interpreted by applicable
 80 federal regulations and implemented by the Secretary of Labor,
 81 are incorporated herein.

82 (4)(a) Beginning September 30, and annually on September
 83 30 thereafter, the Agency for Workforce Innovation shall
 84 calculate an adjusted state minimum wage rate by increasing the

85 state minimum wage by the rate of inflation for the 12 months
86 prior to September 1. In calculating the adjusted state minimum
87 wage, the agency shall use the Consumer Price Index for Urban
88 Wage Earners and Clerical Workers, not seasonally adjusted, for
89 the South Region or a successor index as calculated by the
90 United States Department of Labor. Each adjusted state minimum
91 wage rate shall take effect on the following January 1, with the
92 initial adjusted minimum wage rate to take effect on January 1,
93 2006.

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

113 (5) It shall be unlawful for an employer or any other
 114 party to discriminate in any manner or take adverse action
 115 against any person in retaliation for exercising rights
 116 protected pursuant to s. 24, Art. X of the State Constitution.
 117 Rights protected include, but are not limited to, the right to
 118 file a complaint or inform any person of his or her potential
 119 rights pursuant to s. 24, Art. X of the State Constitution and
 120 to assist him or her in asserting such rights.

121 (6)(a) Any person aggrieved by a violation of this section
 122 may bring a civil action in a court of competent jurisdiction
 123 against an employer violating this section or a party violating
 124 subsection (5). However, prior to bringing any claim for unpaid
 125 minimum wages pursuant to this section, the person aggrieved
 126 shall notify the employer alleged to have violated this section,
 127 in writing, of an intent to initiate such an action. The notice
 128 must identify the minimum wage to which the person aggrieved
 129 claims entitlement, the actual or estimated work dates and hours
 130 for which payment is sought, and the total amount of alleged
 131 unpaid wages through the date of the notice.

132 (b) The employer shall have 15 calendar days after receipt
 133 of the notice to pay the total amount of unpaid wages or
 134 otherwise resolve the claim to the satisfaction of the person
 135 aggrieved. The statute of limitations for bringing an action
 136 pursuant to this section shall be tolled during this 15-day
 137 period. If the employer fails to pay the total amount of unpaid
 138 wages or otherwise resolve the claim to the satisfaction of the
 139 person aggrieved, then the person aggrieved may bring a claim
 140 for unpaid minimum wages, the terms of which must be consistent

141 with the contents of the notice.

142 (c)1. Upon prevailing in an action brought pursuant to
 143 this section, aggrieved persons shall recover the full amount of
 144 any unpaid back wages unlawfully withheld plus the same amount
 145 as liquidated damages and shall be awarded reasonable attorney's
 146 fees and costs. As provided under the federal Fair Labor
 147 Standards Act, pursuant to s. 11 of the Portal-to-Portal Act of
 148 1947, 29 U.S.C. s. 260, if the employer proves by a
 149 preponderance of the evidence that the act or omission giving
 150 rise to such action was in good faith and that the employer had
 151 reasonable grounds for believing that his or her act or omission
 152 was not a violation of s. 24, Art. X of the State Constitution,
 153 the court may, in its sound discretion, award no liquidated
 154 damages or award any amount thereof not to exceed an amount
 155 equal to the amount of unpaid minimum wages. The court shall not
 156 award any economic damages on a claim for unpaid minimum wages
 157 not expressly authorized in this section.

158 2. Upon prevailing in an action brought pursuant to this
 159 section, aggrieved persons shall also be entitled to such legal
 160 or equitable relief as may be appropriate to remedy the
 161 violation, including, without limitation, reinstatement in
 162 employment and injunctive relief. However, any entitlement to
 163 legal or equitable relief in an action brought under s. 24, Art.
 164 X of the State Constitution shall not include punitive damages.

165 (d) Any civil action brought under s. 24, Art. X of the
 166 State Constitution and this section shall be subject to s.
 167 768.79.

168 (7) The Attorney General may bring a civil action to

169 enforce this section. The Attorney General may seek injunctive
 170 relief. In addition to injunctive relief, or in lieu thereof,
 171 for any employer or other person found to have willfully
 172 violated this section, the Attorney General may seek to impose a
 173 fine of \$1,000 per violation, payable to the state.

174 (8) The statute of limitations for an action brought
 175 pursuant to this section shall be for the period of time
 176 specified in s. 95.11 beginning on the date the alleged
 177 violation occurred.

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

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

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

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

196 Section 4. If any provision of this act or the application

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

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