

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1318

INTRODUCER: Senator Latvala

SUBJECT: State Minimum Wage

DATE: March 20, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	McKay	CM	Pre-meeting
2.			ACJ	
3.			FP	

I. Summary:

SB 1318 makes it unlawful to knowingly procure labor with the intent to defraud or deceive the laborer. The bill provides that a violation of the minimum wage rights provided in the Florida Statutes is punishable as a third degree felony.

II. Present Situation:

Florida's Minimum Wage

The state minimum wage was established by an amendment to Florida's Constitution, which took effect on May 2, 2005.¹ The Legislature enacted the Florida Minimum Wage Act in 2005 to implement the constitutional provisions.²

The Department of Economic Opportunity (DEO) is required to annually calculate and publish the state minimum wage.³ The minimum wage is calculated by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1.⁴ Each state-adjusted minimum wage rate shall take effect on the following January 1.⁵ Current law requires employers to pay employees a minimum wage at an hourly rate published by the DEO for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage

¹ Section 24, Art. X, of the State Constitution.

² Chapter 2005-353, L.O.F.

³ "To implement s. 24, Art. X of the State Constitution, the Department of Economic Opportunity is designated as the state Agency for Workforce Innovation." s. 448.110(2), F.S.

⁴ Section 448.110(4)(a), F.S.. In calculating the minimum wage, the DEO is required to use the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for the South Region or a successor index as calculated by the United States Department of Labor.

⁵ Section 448.110(4)(a), F.S.

under the federal Fair Labor Standards Act⁶ and its implementing regulations are eligible to receive the state minimum wage. Currently, the state minimum wage is \$8.05 per hour, which is higher than the federal minimum wage of \$7.25 per hour.⁷ Federal law requires the payment of the higher of the federal or state minimum wage.⁸

Compliance with Florida Minimum Wage Act

Employees who are not paid the minimum wage may bring a civil action against the employer or any person violating Florida's minimum wage law. "Rights protected include, but are not limited to, the right to file a complaint or inform any person of his or her potential rights pursuant to s. 24, Art. X of the State Constitution and to assist him or her in asserting such rights."⁹ However, prior to bringing any claim for unpaid minimum wages, the person aggrieved must notify the employer, in writing, of his or her intent to initiate such an action. An employer may ultimately be liable for unpaid wages, liquidated damages, and reasonable attorney's fees and costs to the employee.¹⁰ Such actions may also be brought as class actions.¹¹

The Attorney General may also bring an enforcement action to enforce the minimum wage, and may seek to impose a fine of \$1,000 per violation, payable to the state.¹² Actions must be brought within 5 years of the date the alleged violation occurred.¹³ Chapter 448, F.S., also prohibits an employer from retaliating against the employee for enforcing his or her rights, and it preserves the rights that an employee has under any collective bargaining agreement or employee contract.¹⁴

Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) prescribes standards for minimum wages, overtime pay, recordkeeping, and child labor.¹⁵ It is administered by the U.S. Department of Labor, Wage and Hour Division. The FLSA allows states to set a minimum wage higher than the federal rate, which is currently \$7.25 per hour;¹⁶ however, it may not be lower than the federal rate.¹⁷ The FLSA also requires employers to pay one and one-half times regular wages for any time worked in excess of 40 hours during a workweek.¹⁸ The FLSA applies to most classes of workers, but a

⁶ The U.S. Department of Labor provides an extensive list of types of employees covered under the FLSA at <http://www.dol.gov/compliance/guide/minwage.htm#who> (last visited Mar. 13, 2015).

⁷ The Department of Economic Opportunity, *Florida Minimum Wage History 2000 to 2015*, (Oct. 2014), available at <http://sitefinity.floridajobs.org/docs/default-source/2015-minimum-wage-increases/florida-minimum-wage-history-2000-2015.pdf> (last visited Mar. 13, 2015).

⁸ 29 U.S.C. §218(a).

⁹ Section 448.110(5), F.S.

¹⁰ Section 448.110(6), F.S.

¹¹ Section 448.110(9), F.S.

¹² Section 448.110(7), F.S.

¹³ Section 448.110(8), F.S.

¹⁴ Section 448.105, F.S.

¹⁵ 29 U.S.C. 201, et seq. See generally U.S. Department of Labor, Wage and Hour Division, "Compliance Assistance – Fair Labor Standards Act (FLSA)," available at <http://www.dol.gov/whd/flsa/index.htm> (last visited Mar. 12, 2015).

¹⁶ The FLSA also prescribes a minimum wage for tipped employees, which is currently \$2.13. See 29 C.F.R. 531.50.

¹⁷ 29 U.S.C. s. 218(a).

¹⁸ 29 U.S.C. s. 207(a)(1).

major exception is that it does not apply to most employees of businesses that have less than \$500,000 in annual business.¹⁹

The FLSA provides for enforcement in three separate ways:

- Civil actions or lawsuits by the federal government;
- Criminal prosecutions by the United States Department of Justice; or
- Private lawsuits by employees or workers, which includes individual lawsuits and collective actions.

An employer who violates the minimum wage or the maximum hours provisions of the FLSA is liable to the employee for the amount of the unpaid wages and liquidated damages equal to the amount of the unpaid wages. An employer who fails to pay according to law is also responsible for the employee's attorney's fees and costs.²⁰

Wage Theft

Wage theft is a general term used to describe the failure of employers to pay employees wages that they are legally owed.²¹ Wage theft can take a variety of forms, such as paying below the minimum wage, forcing employees to work off the clock, or failing to pay any wages for work performed. Workers who receive lower wages seem to be more likely to have their wages stolen by their employers.²²

Several counties have implemented ordinances or programs to address wage theft, and other counties are considering such ordinances.²³ These programs typically institute quasi-judicial or administrative proceedings to assist employees in the recovery of unpaid or underpaid wages. If an employer fails to pay any ordered back wages, the employee typically has to seek relief in civil court.

¹⁹ See *supra* note 6.

²⁰ 29 U.S.C. s. 216.

²¹ Hernandez, Cynthia S. and Carol Stepick. *Wage Theft: An Economic Drain on Florida: How Millions of Dollars are Stolen from Florida's Workforce*, available at <http://www.afsc.org/sites/afsc.civicaactions.net/files/documents/Wage%20Theft%20How%20Millions%20of%20Dollars%20are%20Stolen%20from%20Florida.pdf> (last visited Mar. 13, 2015).

²² *Id.*

²³ Miami-Dade County's wage theft program can be found at <http://www.miamidade.gov/business/wage-theft.asp> (last visited Mar. 13, 2015); Broward County's wage theft ordinance can be found at <http://www.ordinancewatch.com/files/72011/LocalGovernment78367.pdf> (last visited Mar. 13, 2015); Palm Beach County funds an attorney with the Legal Aid Society of Palm Beach County for a wage recovery program. See http://articles.sun-sentinel.com/2014-01-15/news/sfl-palm-beach-county-renews-compromise-wage-theft-effort-20140115_1_wage-county-commission-low-income-workers (last visited Mar. 13, 2015), and http://www.legalaidpbc.org/press_wagetheft.php (last visited Mar. 13, 2015); and Alachua County's wage theft program can be found at <http://www.alachuacounty.us/Depts/AdminSvcs/EO/WageTheftComplaints/Pages/default.aspx> (last visited Mar. 13, 2015). Hillsborough and Osceola Counties are considering wage theft programs, see <http://tbo.com/news/politics/hillsborough-moves-ahead-with-law-to-get-back-stolen-wages-20150304/> and <http://www.orlandosentinel.com/news/breaking-news/os-osceola-wage-theft-ordinance-20150306-story.html> (last visited Mar. 13, 2015), respectively.

III. Effect of Proposed Changes:

Section 1 amends s. 448.110, F.S., to make it unlawful to knowingly employ a person with the intent to defraud or deceive a person. A violation of s. 448.110(5), F.S., is punishable as a third degree felony.²⁴

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 24, art. X, of the Florida Constitution, sets forth Florida's minimum wage. The section provides for civil enforcement of its provisions. The enforcement has been codified in s. 448.110, F.S., and is discussed above.

Additionally, the section provides that “[t]he state legislature may by statute establish additional remedies or fines for violations of this amendment, ...”

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

To the extent that there are violations of the provisions of this bill, the office of the state attorney in the jurisdiction in which the violation occurred may incur a negative fiscal impact due to the enforcement of the new violation.

²⁴ A felony in the third degree is punishable by a term of imprisonment not to exceed 5 years. (s. 775.082(3)(e), F.S.), or a fine not to exceed \$5,000 (s. 775.083(1)(c), F.S.). The bill also makes the violation subject to sentencing as a habitual felony offender.

The Criminal Justice Impact Conference (CJIC) has considered HB 589, which is substantively similar to SB 1318. The CJIC determined that HB 589 would have a positive insignificant impact on prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill applies the criminal provisions to all of subsection (5), which would also criminalize any retaliatory action undertaken by an employer against an employee seeking to enforce his or her rights under s. 24, Art. X of the Florida constitution.

VIII. Statutes Affected:

This bill substantially amends section 448.110 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.