

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 892

INTRODUCER: Senator Martin

SUBJECT: State Minimum Wage

DATE: March 3, 2023

REVISED: 3/6/23

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Baird</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u></u>	<u></u>	<u>GO</u>	<u></u>
3.	<u></u>	<u></u>	<u>RC</u>	<u></u>

I. Summary:

SB 892 amends the Florida Minimum Wage Act to incorporate amendments to the federal Fair Labor Standards Act. Two classes of employees have been exempted from the FLSA minimum wage requirements since the 2005 passing of the Florida Minimum Wage Act: border patrol agents and salaried baseball players.

The bill provides that it is intended to clarify existing law.

The bill takes effect upon becoming law.

II. Present Situation:

Federal Minimum Wage

In 1938, the United States Congress enacted the federal Fair Labor Standards Act (FLSA) which prescribes standards for minimum wages, overtime pay, recordkeeping, and child labor.¹ The minimum wage for all covered, nonexempt employees has remained at \$7.25 per hour since 2009.²

The Wage and Hour Division of the United States Department of Labor enforces the federal Fair Labor Standards Act, including the federal minimum wage. It is a violation of FLSA to fire or in

¹ 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 March 3, 2023).

² U.S. Department of Labor, Minimum Wage, available at: <https://www.dol.gov/general/topic/wages/minimumwage> (last visited March 1, 2023).

any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under the FLSA.³

The FLSA includes several exemptions from the federal minimum hourly wage, that are not legally required to be paid at the minimum hourly wage rate, including:⁴

- Executive, administrative and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations;
- Employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
- Farm workers employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding calendar year;
- Casual babysitters and persons employed as companions for the elderly or infirm;
- Border patrol agents; and
- Baseball players who are compensated pursuant to a contract that provides for a weekly salary for services performed during the league’s championship season at a rate that is not less than a weekly salary equal to the minimum wage.

The United States Congress intended for all employees in America to be protected by the FLSA unless they are expressly exempted.

Since its initial passing in 1938, the United States Congress has subsequently amended the FLSA over 20 times, including most recently in 2018.⁵

Florida Minimum Wage

Florida Constitution

On November 2, 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision that established the state minimum wage.⁶

Under the State Constitution, all working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer funded public services in order to avoid economic hardship.⁷ The amount of the minimum wage and the procedure for calculating increases in the minimum wage are established in the State Constitution.⁸ The State Constitution references the FLSA and its implementing regulations to

³ U.S. Department of Labor, Wage and Hour Division, *Fact Sheet #77A: Prohibiting Retaliation Under the Fair Labor Standards Act (FLSA)*, available at: <http://www.dol.gov/whd/regs/compliance/whdfs77a.pdf> (last visited March 1, 2023).

⁴ 29 U.S.C. § 213.

⁵ U.S. Department of Labor, *History of Changes to the Minimum Wage Law*, available at <https://www.dol.gov/agencies/whd/minimum-wage/history> (last visited March 3, 2023).

⁶ FLA. CONST. art. X, s. 24.

⁷ FLA. CONST. art. X, s. 24(a).

⁸ FLA. CONST. art. X, s. 24(c).

determine the meaning⁹ of the terms “Employer,” “Employee” and “Wage,”¹⁰ and states that “[i]t is intended that case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment and any implementing statutes or regulations.”¹¹

On November 3, 2020, Florida voters approved Amendment 2, which amended the State Constitution to gradually increase the state’s minimum wage to \$15.00 an hour by the year 2026.¹² Pursuant to the passage of Amendment 2, on September 30, 2021, Florida’s minimum wage increased to \$10.00 per hour. Each year, thereafter, Florida’s minimum wage will increase by \$1.00 until the minimum wage reaches \$15.00 per hour on September 30, 2026.¹³ Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it has been since 2005.

Florida Statute

The Florida Minimum Wage Act (Act) was enacted in 2005 to implement the constitutional provisions that were approved by voters in 2004.¹⁴ The Act establishes procedures with respect to civil actions alleging violations of its provisions. The Florida minimum wage provisions may be enforced by the bringing of a civil suit by an aggrieved person¹⁵ or by the Attorney General.¹⁶

Section 448.110(3), F.S., provides that the Act is limited to “[o]nly those individuals entitled to receive the federal minimum wage under the federal Fair Labor Standards Act and its implementing regulations.” In addition, the Act provides that “[t]he provisions of ss. 213 and ss. 214 of the Federal Fair Labor Standards Act...are incorporated herein.”¹⁷

Post 2005 FLSA Exemption Amendments

In 2005, the FLSA included 17 subsections within subsection (a) of ss. 213-Exemptions.

In 2014, Congress amended the FLSA to add subsection 18 which states that “any employee who is a border patrol agent, as defined in section 5550(a) of title 5.” This language was implemented along with the intention that border patrol agents’ wages would instead be governed by the Border Patrol Agent Pay Reform Act of 2014.¹⁸

⁹ *In re Advisory Opinion to the Atty. Gen. re Fla. Minimum Wage Amend.*, 880 So. 2d 636, 641–42 (Fla. 2004) (“the proposed amendment does not state that it is adopting the FLSA’s *definition* of the term “employee,” but provides that it is adopting the *meaning* of the term “employee,” which is a much broader concept.”).

¹⁰ FLA. CONST. art. X, s. 24(b).

¹¹ FLA. CONST. art. X, s. 24(f).

¹² United States Department of State, *Notice of Increase to State of Florida’s Minimum Wage*, available at <https://www.state.gov/wp-content/uploads/2021/01/2021-01-29-Notice-FL-Minimum-Wage-Increase.pdf> (last visited March 3, 2023).

¹³ Department of Economic Opportunity, *Florida’s Minimum Wage*, available at https://floridajobs.org/docs/defaultsource/business-growth-and-partnerships/for-employers/posters-and-required-notices/2021-minimum-wage/september2021/florida-minimum-wage-september-2021-announcement.pdf?sfvrsn=c12151b0_4 (last visited March 3, 2023).

¹⁴ Chapter 2005-353, L.O.F.

¹⁵ Section 448.110(6), F.S.

¹⁶ Section 448.110(7), F.S.

¹⁷ Section 448.110(3), F.S.

¹⁸ S.1691 – 113th Congress (2013-2014): Border Patrol Agent Pay Reform Act of 2014, S.1691, 113th Cong. (2014).

In 2018, Congress again amended the FLSA to include subsection (a)(19), which states:

“any employee employed to play baseball who is compensated pursuant to a contract that provides for a weekly salary for services performed during the league's championship season (but not spring training or the off season) at a rate that is not less than a weekly salary equal to the minimum wage under section 206(a) of this title for a workweek of 40 hours, irrespective of the number of hours the employee devotes to baseball related activities.”

The 2018 amendment exempted minor league baseball players as long as players were paid at least \$290 per week during the 2018 championship season, then they would not be entitled to any additional compensation (overtime or otherwise) even when working more than forty hours in a single week.¹⁹

Currently in Florida, there are 12 minor league baseball teams that are affiliated with Major League Baseball (MLB). There are approximately 500 players currently rostered, employed, and being paid by the 12 Florida Minor League Baseball teams.²⁰ Additionally, 15 MLB teams conduct major and minor league spring training in Florida at thirteen different spring training facilities.

These two amendments were the only amendments made to ss. 213 of the FLSA since Florida passed its minimum wage law in 2005.²¹

III. Effect of Proposed Changes:

The bill amends s. 448.110, F.S., to incorporate subsequent amendments to the FLSA, aligning Florida's minimum wage exemptions with federal exemptions.

The bill takes effect upon becoming law.

¹⁹ See Levi Weaver, *On Minor-League Pay, MLB's Stance Doesn't Line Up with the Facts*, ATHLETIC (Apr. 4, 2018), <https://www.theathletic.com/293189/%202018/04/04/on-minor-league-pay-mlbs-stance-doesnt-line-up-with-the-facts/> (last visited March 1, 2023) (recounting salary scale per level of minor league baseball, while noting that the “federally-recognized poverty line is \$12,140 per year for single-individual households”). A not-insignificant percentage of minor league players are able to subsidize their relatively meager monthly salaries by drawing upon the signing bonuses they received from their MLB clubs when first entering the professional ranks, bonuses that can range anywhere from \$10,000 to several million dollars. See *id.* (reporting that “[t]he top 64 picks [in the MLB draft] last year all received a bonus of over \$1,000,000 before taxes, but roughly 40% of players . . . signed for one-time bonuses of \$10,000 or less”).

²⁰ See Michael Avallone, *Then and now: Florida State League*, MiLB.com, <https://www.milb.com/news/florida-state-league-overview> (last visited March 3, 2023).

²¹ Section 448.110, F.S., expressly references ss. 214 of the FLSA (in addition to ss. 213) however, ss. 214 has not been amended since 1989.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Article VII, section 18 of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature to pass legislation requiring counties and municipalities to spend funds, limiting their ability to raise revenue, or reducing the percentage of a state tax shared with them. This bill does not require counties or municipalities to spend funds, limit their authority to raise revenue, or reduce the percentage of a state tax shared with them as specified in Article VII, section 18 of the Florida Constitution. Therefore, the provisions of Article VII, section 18 of the Florida Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise a state tax or fee. Therefore, the requirements of Art. VII, s. 19 of the Florida Constitution do not apply.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The owners of minor league baseball teams could potentially see a savings in paid salaries to players.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill is intended to clarify 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
