

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE DRH70588-LR-173 (04/27)

Short Title: Up Minimum Wage/Automatic Adjustment.

(Public)

Sponsors: Representative Moore.

Referred to:

A BILL TO BE ENTITLED

AN ACT AMENDING THE NORTH CAROLINA WAGE AND HOUR ACT TO ADJUST THE STATE MINIMUM WAGE AUTOMATICALLY WHEN THREE OF THE FOUR STATES ADJOINING THIS STATE INCREASE THEIR MINIMUM WAGE AMOUNTS; APPROPRIATING FUNDS TO IMPLEMENT NOTICE REQUIREMENTS RELATED TO THE INCREASE; AND MAKING CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-25.3 reads as rewritten:

"§ 95-25.3. **Minimum wage.**

(a) ~~Every~~ Subject to the provisions of subsection (a1) of this section, every employer shall pay to each employee who in any workweek performs any work, wages of at least the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to time, except as otherwise provided in this section.

(a1) When three of the four states adjoining this State increase the amount of their respective minimum wages, then:

(1) The minimum wage in effect for this State shall increase automatically, on the ninetieth day after the effective date of the third state's increase, to six dollars and fifty cents (\$6.50) per hour or to the average amount of the minimum wages set by those three states, whichever is less.

(2) The Commissioner shall issue immediately a certification of the minimum wage adjustment. The certification shall include the effective date of the increase as set by subdivision (1) of this subsection.

- 1 (3) The Commissioner shall provide statewide public notice of the
2 certification and automatic adjustment by all of the following methods:
3 a. By publication in at least two newspapers of statewide
4 circulation.
5 b. By publication in at least five newspapers of regional
6 circulation.
7 c. By posting the certification on the Department of Labor Web
8 site.
9 d. By mailed notice, and other appropriate means, as determined
10 solely by the Commissioner.

11 Subsection (a) of this section shall no longer apply as of the expiration date set in the
12 Commissioner's certification. The State minimum wage established by this subsection
13 shall be effective until the General Assembly enacts the next increase or unless the
14 General Assembly enacts legislation that repeals this subsection.

15 (b) In order to prevent curtailment of opportunities for employment, the wage
16 rate for full-time students, learners, apprentices, and messengers, as defined under the
17 Fair Labor Standards Act, shall be ninety percent (90%) of the rate in effect under
18 subsection (a) ~~above,~~ or (a1) of this section, rounded to the lowest nickel.

19 (c) The Commissioner, in order to prevent curtailment of opportunities for
20 employment, may, by regulation, establish a wage rate less than the wage rate in effect
21 under ~~section (a)~~ subsection (a) or (a1) of this section, which may apply to persons
22 whose earning or productive capacity is impaired by age or physical or mental
23 deficiency or injury, as such persons are defined under the Fair Labor Standards Act.

24 (d) The Commissioner, in order to prevent curtailment of opportunities for
25 employment of the economically disadvantaged and the unemployed, may, by
26 regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise
27 applicable wage rate in effect under subsection (a) or (a1) of this section, which shall
28 apply to all persons (i) who have been unemployed for at least 15 weeks and who are
29 economically disadvantaged, or (ii) who are, or whose families are, receiving Work
30 First Family Assistance or who are receiving supplemental security benefits under Title
31 XVI of the Social Security Act.

32 Pursuant to regulations issued by the Commissioner, certificates establishing
33 eligibility for such subminimum wage shall be issued by the Employment Security
34 Commission.

35 The regulation issued by the Commissioner shall not permit employment at the
36 subminimum rate for a period in excess of 52 weeks.

37 (e) The Commissioner, in order to prevent curtailment of opportunities for
38 employment, and to not adversely affect the viability of seasonal establishments, may,
39 by regulation, establish a wage rate not less than eighty-five percent (85%) of the
40 otherwise applicable wage rate in effect under subsection (a) or (a1) of this section,
41 which shall apply to any employee employed by an establishment which is a seasonal
42 amusement or recreational establishment, or a seasonal food service establishment.

43 (f) Tips earned by a tipped employee may be counted as wages only up to the
44 amount permitted in section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m), if

1 the tipped employee is notified in advance, is permitted to retain all tips and the
2 employer maintains accurate and complete records of tips received by each employee as
3 such tips are certified by the employee monthly or for each pay period. Even if the
4 employee refuses to certify tips accurately, tips may still be counted as wages when the
5 employer complies with the other requirements of this section and can demonstrate by
6 monitoring tips that the employee regularly receives tips in the amount for which the
7 credit is taken. Tip pooling shall also be permissible among employees who customarily
8 and regularly receive tips; however, no employee's tips may be reduced by more than
9 fifteen percent (15%) under a tip pooling arrangement.

10 (g) In order to prevent curtailment of opportunities for employment, an employer
11 may, in lieu of the minimum wage prescribed by this section, pay a training wage to
12 eligible persons in accordance with G.S. 95-25.3A."

13 **SECTION 2.(a)** G.S. 127A-105 reads as rewritten:

14 **"§ 127A-105. Rations and pay on State service.**

15 The militia of the State, both officers and enlisted personnel, when called into the
16 service of the State by the Governor shall receive the same pay as when called or
17 ordered into the service of the United States, and shall be rationed or paid the equivalent
18 thereof, provided that no officer or enlisted personnel shall receive less than 18 times
19 the minimum hourly wage per day as provided for in ~~G.S. 95-25.3(a)~~G.S. 95-25.3(a) or
20 (a1)."

21 **SECTION 2.(b)** G.S. 127A-107 reads as rewritten:

22 **"§ 127A-107. Rate of pay for other service.**

23 The Governor may, whenever the public service requires it, order upon special or
24 regular duty any officer or enlisted member of the national guard or naval militia, and
25 the expenses and compensation therefor of such officer and enlisted member shall be
26 paid out of the appropriations made to the Department of Crime Control and Public
27 Safety. Such officers and enlisted members shall receive the same rate of pay as officers
28 and enlisted members of the same grade and like service of the regular service, provided
29 that no such officer or enlisted member shall receive less than 18 times the minimum
30 hourly wage per day as provided for in ~~G.S. 95-25.3(a)~~G.S. 95-25.3(a) or (a1). Officers
31 and enlisted members when on duty in connection with examining boards, efficiency
32 boards, advisory boards, courts of inquiry or similar duty shall be allowed per diem and
33 subsistence prescribed for lawful State boards and commissions generally for such duty.
34 Officers and enlisted members serving on general or special courts-martial shall receive
35 the base pay of their rank. No staff officer or enlisted member who receives a salary
36 from the State as such shall be entitled to any additional compensation other than actual
37 and necessary expenses incurred while traveling upon orders issued by the proper
38 authority."

39 **SECTION 2.(c)** G.S. 163-46 reads as rewritten:

40 **"§ 163-46. Compensation of precinct officials and assistants.**

41 The precinct chief judge shall be paid the state minimum wage for his services on
42 the day of a primary, special or general election. Judges of election shall each be paid
43 the state minimum wage for their services on the day of a primary, special or general
44 election. Assistants, appointed pursuant to G.S. 163-42, shall each be paid the state

1 minimum wage for their services on the day of a primary, special or general election.
2 Ballot counters appointed pursuant to G.S. 163-43 shall be paid a minimum of five
3 dollars (\$5.00) for their services on the day of a primary, general or special election. If
4 an election official is being paid an hourly wage or daily fee on an election day and the
5 official is performing additional election duties away from the assigned precinct voting
6 place, the official shall not be entitled to any additional monies for those services,
7 except for reimbursable expenses in performing the services.

8 If the county board of elections requests the presence of a chief judge or judge at the
9 county canvass, the chief judge shall be paid the sum of twenty dollars (\$20.00) per day
10 and judges shall be paid the sum of fifteen dollars (\$15.00) per day. If the county board
11 of elections requests a precinct official, including chief judge or judge, to personally
12 deliver official ballots or other official materials to the county board of elections, the
13 precinct official shall be paid the sum of twenty dollars (\$20.00) per day and judges
14 shall be paid the sum of fifteen dollars (\$15.00) per day.

15 The chairman of the county board of elections, along with the director of elections,
16 shall conduct an instructional meeting prior to each primary and general election which
17 shall be attended by each chief judge and judge of election, unless excused by the
18 chairman, and such precinct election officials shall be paid the sum of fifteen dollars
19 (\$15.00) for attending the instructional meetings required by this section.

20 In its discretion, the board of county commissioners of any county may provide
21 funds with which the county board of elections may pay chief judges, judges, assistants,
22 and ballot counters in addition to the amounts specified in this section. Observers shall
23 be paid no compensation for their services.

24 A person appointed to serve as chief judge, or judge of election when a previously
25 appointed chief judge or judge fails to appear at the voting place or leaves his post on
26 the day of an election or primary shall be paid the same compensation as the chief judge
27 or judge appointed prior to that date.

28 For the purpose of this section, the phrase "the State minimum wage," means the
29 amount set by ~~G.S. 95-25.3(a)~~. G.S. 95-25.3(a) or (a1). For the purpose of this section,
30 no other provision of Article 2A of Chapter 95 of the General Statutes shall apply."

31 **SECTION 3.** There is appropriated from the General Fund to the
32 Department of Labor the sum of fifty thousand dollars (\$50,000) for the 2006-2007
33 fiscal year to implement the notice requirements of G.S. 95-25.3(a1) as enacted by this
34 act. These funds shall not revert.

35 **SECTION 4.** Section 3 of this act becomes effective July 1, 2006. The
36 remainder of this act is effective when it becomes law.