

Senate Bill No. 18-B

An act relating to the state minimum wage; amending s. 95.11, F.S.; providing periods of limitations on actions for violations of the Florida Minimum Wage Act; creating s. 448.110, F.S., the Florida Minimum Wage Act; providing legislative intent to implement s. 24, Art. X of the State Constitution in accordance with authority granted to the Legislature therein; requiring employers to pay certain employees a minimum wage for all hours worked in Florida; incorporating provisions of the federal Fair Labor Standards Act; requiring the minimum wage to be adjusted annually; providing a formula for calculating such adjustment; requiring the Agency for Workforce Innovation and the Department of Revenue to annually publish the amount of the adjusted minimum wage; providing criteria for posting; requiring the agency to provide written notice to certain employers; providing a deadline for the notice to be mailed; providing that employers are responsible for maintaining their current addresses with the agency; requiring the agency to provide the department with certain information; prohibiting discrimination or adverse action against persons exercising constitutional rights under s. 24, Art. X of the State Constitution; providing for civil action by aggrieved persons; requiring aggrieved persons bringing civil actions to provide written notice to their employers alleged to have violated the act; providing information that must be included in the notice; providing a deadline by which an employer alleged to have violated the act must pay the unpaid wages in question or resolve the claim to the aggrieved person's satisfaction; providing that a statute of limitations is tolled for a specified period; providing a statute of limitations period; providing that aggrieved persons who prevail in their actions may be entitled to liquidated damages and reasonable attorney's fees and costs; authorizing additional legal or equitable relief for aggrieved persons who prevail in such actions; providing that punitive damages may not be awarded; providing that actions brought under the act are subject to s. 768.79, F.S.; authorizing the Attorney General to bring a civil action and seek injunctive relief; providing a fine; providing statutes of limitations; authorizing class actions; declaring the act the exclusive remedy under state law for violations of s. 24, Art. X of the State Constitution; providing for implementation measures; designating ss. 448.01-448.110, F.S., as part I of ch. 448, F.S.; providing a part title; providing for severability; providing an effective date.

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

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

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(2) WITHIN FIVE YEARS.—

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

(3) WITHIN FOUR YEARS.—

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

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

448.110 State minimum wage; annual wage adjustment; enforcement.—

(1) This section may be cited as the “Florida Minimum Wage Act.”

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

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

(4)(a) Beginning September 30, 2005, and annually on September 30 thereafter, the Agency for Workforce Innovation shall calculate an adjusted state minimum wage rate by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1. In calculating the adjusted state minimum wage, the agency shall 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. Each adjusted state minimum wage rate shall take effect on the following January 1, with the initial adjusted minimum wage rate to take effect on January 1, 2006.

(b) The Agency for Workforce Innovation and the Department of Revenue shall annually publish the amount of the adjusted state minimum wage and the effective date. Publication shall occur by posting the adjusted state minimum wage rate and the effective date on the Internet home pages of the agency and the department by October 15 of each year. In addition, to the extent funded in the General Appropriations Act, the agency shall provide written notice of the adjusted rate and the effective date of the adjusted state minimum wage to all employers registered in the most current unemployment compensation database. Such notice shall be mailed by November 15 of each year using the addresses included in the database. Employers are responsible for maintaining current address information in the unemployment compensation database. The agency shall not be responsible for failure to provide notice due to incorrect or incomplete address information in the

database. The agency shall provide the Department of Revenue with the adjusted state minimum wage rate information and effective date in a timely manner.

(5) It shall be unlawful for an employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected pursuant to s. 24, Art. X of the State Constitution. 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.

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

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

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

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

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

(7) The Attorney General may bring a civil action to enforce this section. The Attorney General may seek injunctive relief. In addition to injunctive relief, or in lieu thereof, for any employer or other person found to have willfully violated this section, the Attorney General may seek to impose a fine of \$1,000 per violation, payable to the state.

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

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

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

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

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

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

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

Approved by the Governor December 12, 2005.

Filed in Office Secretary of State December 12, 2005.