

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 447

Short Title: Living Wage for NC Workers. (Public)

Sponsors: Senators Mohammed, Murdock, and Mayfield (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 1, 2021

A BILL TO BE ENTITLED

AN ACT INCREASING THE STATE'S MINIMUM WAGE TO FIFTEEN DOLLARS PER HOUR OVER FIVE YEARS, THEN ANNUALLY ADJUSTING THE MINIMUM WAGE AUTOMATICALLY BY INCREASES IN THE COST OF LIVING; ENDING THE SUBMINIMUM WAGE FOR INDIVIDUALS WITH DISABILITIES; AMENDING THE SUBMINIMUM WAGE FOR TIPPED WORKERS; AND ENDING THE EXEMPTION FOR DOMESTIC WORKERS.

The General Assembly of North Carolina enacts:

INCREASE STATE MINIMUM WAGE OVER FIVE YEARS/REPEAL SUBMINIMUM WAGE PROVISIONS

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

"§ 95-25.3. Minimum wage.

(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least ~~six dollars and fifteen cents (\$6.15) per hour or 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, whichever is higher, except as otherwise provided in this section.~~ the following amounts:

- (1) Effective January 1, 2022, eight dollars and eighty cents (\$8.80) per hour or 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, whichever is higher, except as otherwise provided in this section.
- (2) Effective January 1, 2023, ten dollars and thirty-five cents (\$10.35) per hour or 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, whichever is higher, except as otherwise provided in this section.
- (3) Effective January 1, 2024, twelve dollars (\$12.00) per hour or 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, whichever is higher, except as otherwise provided in this section.
- (4) Effective January 1, 2025, thirteen dollars and fifty cents (\$13.50) per hour or 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, whichever is higher, except as otherwise provided in this section.
- (5) Effective January 1, 2026, fifteen dollars (\$15.00) per hour or the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act,



1 29 U.S.C. § 206(a)(1), as that wage may change from time to time, whichever
2 is higher, except as otherwise provided in this section. Beginning September
3 30, 2022, and on each September 30 thereafter, the Commissioner of Labor
4 shall calculate an adjusted minimum wage rate using the Consumer Price
5 Index (All 29 Urban Consumers, U.S. City Average for All Items), CPI-U, or
6 its successor index, as calculated by the U.S. Department of Labor for the
7 12-month period preceding the previous September 1. Each adjusted
8 minimum wage rate calculated shall be published on September 30 and take
9 effect on the following January 1.

10 ~~(b) In order to prevent curtailment of opportunities for employment, the wage rate for~~
11 ~~full time students, learners, apprentices, and messengers, as defined under the Fair Labor~~
12 ~~Standards Act, shall be ninety percent (90%) of the rate in effect under subsection (a) above,~~
13 ~~rounded to the lowest nickel.~~

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

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

25 ~~Pursuant to regulations issued by the Commissioner, certificates establishing eligibility for~~
26 ~~such subminimum wage shall be issued by the Division of Employment Security.~~

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

29 ~~(e) The Commissioner, in order to prevent curtailment of opportunities for employment,~~
30 ~~and to not adversely affect the viability of seasonal establishments, may, by regulation, establish~~
31 ~~a wage rate not less than eighty five percent (85%) of the otherwise applicable wage rate in effect~~
32 ~~under subsection (a) that shall apply to any employee employed by an establishment that is a~~
33 ~~seasonal food service establishment.~~

34 ~~(f) Tips earned by a tipped employee may be counted as wages only up to the amount~~
35 ~~permitted in section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m), if the tipped~~
36 ~~employee is notified in advance, is permitted to retain all tips and the employer maintains~~
37 ~~accurate and complete records of tips received by each employee as such tips are certified by the~~
38 ~~employee monthly or for each pay period. Even if the employee refuses to certify tips accurately,~~
39 ~~tips may still be counted as wages when the employer complies with the other requirements of~~
40 ~~this section and can demonstrate by monitoring tips that the employee regularly receives tips in~~
41 ~~the amount for which the credit is taken. Tip pooling shall also be permissible among employees~~
42 ~~who customarily and regularly receive tips; however, no employee's tips may be reduced by more~~
43 ~~than fifteen percent (15%) under a tip pooling arrangement.~~

44 ~~(g) Repealed by Session Laws 2006-259, s. 18, effective August 23, 2006."~~

45 **INCREASE TIPPED EMPLOYEE MINIMUM WAGE**

46 **SECTION 2.(a)** Effective January 1, 2022, until December 31, 2022, G.S. 95-25.3(f)
47 reads as rewritten:

48
49 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount
50 ~~permitted in section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m), if the tipped~~
51 ~~employee is notified in advance, is permitted to retain all tips and the employer maintains~~

1 accurate and complete records of tips received by each employee as such tips are certified by the
2 employee monthly or for each pay period. Even if the employee refuses to certify tips accurately,
3 tips may still be counted as wages when the employer complies with the other requirements of
4 this section and can demonstrate by monitoring tips that the employee regularly receives tips in
5 the amount for which the credit is taken. of five dollars (\$5.00) per hour. Tip pooling shall also
6 be ~~is~~ permissible among employees who customarily and regularly receive tips; however, no
7 employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling
8 arrangement."

9 **SECTION 2.(b)** Effective January 1, 2023, until December 31, 2023, G.S. 95-25.3(f)
10 reads as rewritten:

11 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount of
12 ~~five dollars (\$5.00)~~ six dollars and fifty cents (\$6.50) per hour. Tip pooling is permissible among
13 employees who customarily and regularly receive tips; however, no employee's tips may be
14 reduced by more than fifteen percent (15%) under a tip pooling arrangement."

15 **SECTION 2.(c)** Effective January 1, 2024, until December 31, 2024, G.S. 95-25.3(f)
16 reads as rewritten:

17 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount of
18 ~~six dollars and fifty cents (\$6.50)~~ eight dollars (\$8.00) per hour. Tip pooling is permissible among
19 employees who customarily and regularly receive tips; however, no employee's tips may be
20 reduced by more than fifteen percent (15%) under a tip pooling arrangement."

21 **SECTION 2.(d)** Effective January 1, 2025, G.S. 95-25.3(f) reads as rewritten:

22 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount of
23 ~~eight dollars (\$8.00)~~ nine dollars and fifty cents (\$9.50) per hour. Tip pooling is permissible
24 among employees who customarily and regularly receive tips; however, no employee's tips may
25 be reduced by more than fifteen percent (15%) under a tip pooling arrangement."
26

27 **REPEAL EXEMPTIONS FOR DOMESTIC WORKERS**

28 **SECTION 3.** G.S. 95-25.14(a) reads as rewritten:

29 "(a) The provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), and
30 G.S. 95-25.5 (Youth Employment), and the provisions of G.S. 95-25.15(b) (Record Keeping) as
31 they relate to these exemptions, do not apply ~~to~~ to any of the following:

- 32 (1) Any person employed in an enterprise engaged in commerce or in the
33 production of goods for commerce as defined in the Fair Labor Standards Act:
34 a. Except as otherwise specifically provided in
35 ~~G.S. 95-25.5;~~ G.S. 95-25.5.
36 b. Notwithstanding the above, any employee other than a learner,
37 apprentice, student, or handicapped worker as defined in the Fair
38 Labor Standards Act who is not otherwise exempt under the other
39 provisions of this section, and for whom the applicable minimum wage
40 under the Fair Labor Standards Act is less than the minimum wage
41 provided in G.S. 95-25.3, is not exempt from the provisions of
42 G.S. 95-25.3 or ~~G.S. 95-25.4;~~ G.S. 95-25.4.
43 c. Notwithstanding the above, any employer or employee exempt from
44 the minimum wage, overtime, or child labor requirements of the Fair
45 Labor Standards Act for whom there is no comparable exemption
46 under this Article shall not be exempt under this subsection except that
47 where an exemption in the Fair Labor Standards Act provides a
48 method of computing overtime which is an alternative to the method
49 required in 29 U.S.C.S. § 207(a), the employer or employee subject to
50 that alternate method shall be exempt from the provisions of
51 G.S. 95-25.4(a); provided that, persons not employed at an enterprise

1 described in subdivision (1) of this subsection shall also be subject to
2 the same alternative methods of overtime calculation in the
3 circumstances described in the Fair Labor Standards Act exemptions
4 providing those alternative ~~methods;~~methods.

5 (2) Any person employed in agriculture, as defined under the Fair Labor
6 Standards Act;Act.

7 ~~(3) Any person employed as a domestic, including baby sitters and companions,
8 as defined under the Fair Labor Standards Act;~~

9 (4) Any person employed as a page in the North Carolina General Assembly or
10 in the Governor's ~~Office;~~Office.

11 (5) Bona fide volunteers in medical, educational, religious, or nonprofit
12 organizations where an employer-employee relationship does not ~~exist;~~exist.

13 (6) Persons confined in and working for any penal, correctional or mental
14 institution of the State or local ~~government;~~government.

15 (7) Any person employed as a model, or as an actor or performer in motion
16 pictures or theatrical, radio or television productions, as defined under the Fair
17 Labor Standards Act, except as otherwise specifically provided in
18 ~~G.S. 95-25.5;~~G.S. 95-25.5.

19 (8) Any person employed by an outdoor drama in a production role, including
20 lighting, costumes, properties and special effects, except as otherwise
21 specifically provided in G.S. 95-25.5; but this exemption does not include
22 such positions as office workers, ticket takers, ushers and parking lot
23 attendants."

24 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes

25 law.