

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 458

Second Edition Engrossed 5/10/89

Manufacturing & Labor Senate Committee Substitute Adopted 7/28/90

Short Title: Raise Minimum Wage.

(Public)

Sponsors:

Referred to:

March 6, 1989

A BILL TO BE ENTITLED

AN ACT TO RAISE THE MINIMUM WAGE IN ENTERPRISES WITH AT LEAST \$250,000 IN ANNUAL SALES OR BUSINESS AND TO AUTHORIZE A TRAINING WAGE.

The General Assembly of North Carolina enacts:

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

"§ 95-25.3. Minimum wage.

(a) Every employer in an enterprise whose annual gross volume of sales made or business done is not less than two hundred fifty thousand dollars (\$250,000), exclusive of excise sales at the retail level that are separately stated, shall pay to each employee who in any workweek performs any work, wages of at least two dollars and seventy-five cents (\$2.75) per hour effective July 1, 1979, two dollars and ninety cents (\$2.90) per hour effective July 1, 1980, three dollars and ten cents (\$3.10) per hour effective January 1, 1982 and three dollars and thirty-five cents (\$3.35) per hour effective January 1, 1983 except as authorized below. If before June 1, 1989, the minimum wage set forth in the Fair Labor Standards Act is increased above three dollars and thirty-five cents (\$3.35) per hour, the minimum wage required under this section shall increase by the same amount, but shall not increase above four dollars (\$4.00) per hour, effective the same date the increase under the Fair Labor Standards Act is effective. three dollars and eighty cents (\$3.80) per hour effective August 1, 1990, and four dollars and twenty-five cents (\$4.25) per hour effective April 1, 1991, except as otherwise provided in this section.

(a1) Every employer in an enterprise whose annual gross volume of sales made or business done is less than two hundred fifty thousand dollars (\$250,000), exclusive of

1 excise taxes at the retail level that are separately stated, shall pay to each employee who  
2 in any workweek performs any work, wages of at least three dollars and thirty-five cents  
3 (\$3.35) per hour. Employers covered by this subsection are not eligible to pay the  
4 training wage provided for in subsections (g) through (q) of this section.

5 (b) In order to prevent curtailment of opportunities for employment, the wage  
6 rate for full-time students, learners, apprentices, and messengers, as defined under the  
7 Fair Labor Standards Act, shall be ninety percent (90%) of the rate in effect under  
8 subsection (a) or (a1) above, whichever is applicable, rounded to the lowest nickel.

9 (c) The Commissioner, in order to prevent curtailment of opportunities for  
10 employment, may, by regulation, establish a wage rate less than the wage rate in effect  
11 under subsection (a) or subsection (a1), whichever is applicable, which may apply to  
12 persons whose earning or productive capacity is impaired by age or physical or mental  
13 deficiency or injury, as such persons are defined under the Fair Labor Standards Act.

14 (d) The Commissioner, in order to prevent curtailment of opportunities for  
15 employment of the economically disadvantaged and the unemployed, may, by  
16 regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise  
17 applicable wage rate in effect under subsection (a) or subsection (a1) which shall apply  
18 to all persons (i) who have been unemployed for at least 15 weeks and who are  
19 economically disadvantaged, or (ii) who are, or whose families are, receiving aid to  
20 families with dependent children provided under Part A of Title IV of the Social  
21 Security Act, or who are receiving supplemental security benefits under Title XVI of the  
22 Social Security Act.

23 Pursuant to regulations issued by the Commissioner, certificates establishing  
24 eligibility for such subminimum wage shall be issued by the Employment Security  
25 Commission.

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

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

34 (f) Tips earned by a tipped employee may be counted as wages only up to fifty  
35 percent (50%) of the applicable minimum wage for each hour worked if the tipped  
36 employee is notified in advance, is permitted to retain all tips and the employer  
37 maintains accurate and complete records of tips received by each employee as such tips  
38 are certified by the employee monthly or for each pay period. Tip pooling shall also be  
39 permissible among employees who customarily and regularly receive tips; however, no  
40 employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling  
41 arrangement.

42 (g) Any employer may, in lieu of the minimum wage prescribed by subsection  
43 (a) or by subsections (b) through (e) of this section, pay an eligible employee a training  
44 wage while such employee is:

1           (1) Employed for the period authorized in paragraph (n)(1)c.1. of this  
2           section, or

3           (2) Engaged in on-the-job training for the period authorized by paragraph  
4           (n)(1)c.2. of this section.

5 This training wage shall be a wage:

6           a. Of not less than three dollars and thirty-five cents (\$3.35) per  
7           hour during the eight months beginning August 1, 1990; and

8           b. Beginning April 1, 1991, eighty-five percent (85%) of the wage  
9           prescribed by subsection (a) of this section.

10          (h) An employer may pay an eligible employee the training wage under  
11 subsection (g) of this section for a period that:

12           (1) Begins on or after August 1, 1990;

13           (2) Does not exceed the maximum period during which an employee may  
14           be paid such wage as determined under sub-subdivision (n)(1)c. of this  
15           section; and

16           (3) Ends before April 1, 1993.

17          (i) No eligible employee may be paid the training wage under subsection (g) of  
18 this section by an employer if:

19           (1) Any other individual has been laid off by such employer from the  
20           position to be filled by such eligible employee or from any  
21           substantially equivalent position; or

22           (2) Such employer has terminated the employment of any regular  
23           employee or otherwise reduced the number of employees with the  
24           intention of filling the vacancy so created by hiring an employee to be  
25           paid such training wage.

26          (j) During any month in which employees are to be employed in an  
27 establishment and are to be paid a training wage under subsection (g) of this section, the  
28 proportion of these employee hours of employment to the total hours of employment of  
29 all employees in such establishment may not exceed a proportion equal to one-fourth of  
30 the total hours of employment of all employees in such establishment.

31          (k) No employer may take any action to displace employees, including partial  
32 displacements such as reduction in hours, wages, or employment benefits, for purposes  
33 of hiring individuals at the training wage under subsection (g) of this section. If the  
34 Commissioner determines that an employer has taken an action to displace employees,  
35 the Commissioner shall issue an order disqualifying such employer from employing any  
36 individual at such training wage.

37          (l) Each employer shall provide to any eligible employee who is to be paid the  
38 training wage under subsection (g) of this section a written notice before the employee  
39 begins employment stating the requirements of subsections (g) through (k) and  
40 subsection (n) through (q) of this section and the remedies provided by subsection (m)  
41 of this section for violations of any of these requirements. The Commissioner shall  
42 provide to employers upon request the text of the notice to be provided under this  
43 subsection.

1       (m) Any employer who takes an action to displace employers in violation of  
2 subsection (k) of this section shall be considered to have violated G.S. 95-25.20 and the  
3 remedies provided in that section shall apply to any such violation.

4       (n) For purposes of subsections (g) through (m) and subsections (o) through (q)  
5 of this section:

6           (1) 'Eligible employee' means, with respect to an employer, an individual  
7 who:

8           a. Is not a migrant agricultural worker or a seasonal agricultural  
9 worker, as defined in paragraphs (8) and (10) of Section 3 of the  
10 Migrant and Seasonal Agricultural Worker Protection Act, 29  
11 U.S.C. § 1802 (8) and (10), without regard to subparagraph (B)  
12 of such paragraphs; and is not a nonimmigrant described in  
13 Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality  
14 Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a);

15           b. Has not attained the age of 20 years; and

16           c. Is eligible to be paid the training wage under subsection (g) of  
17 this section by virtue of the duration of employment as follows:

18                   1. An employee shall initially be eligible to be paid the  
19 training wage under subsection (g) of this section until  
20 the employee has been employed a cumulative total of  
21 90 days at such wage;

22                   2. An employee who has been employed by an employer at  
23 the training wage under subsection (g) of this section  
24 pursuant to paragraph c.1. of this subdivision may be  
25 employed by any other employer for an additional 90  
26 days, if the employer meets the requirements of  
27 subsection (p) of this section;

28                   3. The total period pursuant to paragraphs c.1. and c.2. of  
29 this subdivision that an employee may be paid the  
30 training wage under subsection (g) of this section may  
31 not exceed 180 days;

32                   4. For purposes of this subdivision, the term 'employer'  
33 means, with respect to an employee, an employer who is  
34 required to withhold payroll taxes for such employee.

35           (2) 'On-the-job training' means training that is offered to an individual  
36 while employed in productive work that provides training, technical,  
37 and other related skills, and personal skills that are essential to the full  
38 and adequate performance of such employment.

39       (o) An individual shall provide the requisite proof of previous period or periods  
40 of employment with other employers for purposes of establishing whether the employee  
41 is an eligible employee pursuant to subsection (n) of this section. An employer's good  
42 faith reliance on the proof presented to the employer by an individual shall constitute a  
43 complete defense to a charge that the employer has violated subdivision (h)(2) of this  
44 section with respect to such individual. The Commissioner shall issue regulations

1 which shall be identical to the regulations issued by the United States Secretary of  
2 Labor defining the requisite proof required of an individual.

3 (p) An employer who wants to employ employees at the wage authorized by  
4 subsection (g) of this section for the period authorized by paragraph (n)(1)c.2. of this  
5 section shall:

6 (1) Notify the Commissioner annually of the positions at which such  
7 employees are to be employed at such wage;

8 (2) Provide on-the-job training to such employees which meets general  
9 criteria of the Commissioner issued by regulations which shall be  
10 identical to the regulations issued by the United States Secretary of  
11 Labor;

12 (3) Keep on file a copy of the training program which the employer will  
13 provide such employees;

14 (4) Provide a copy of the training program to the employees;

15 (5) Post in a conspicuous place in places of employment a notice of the  
16 types of jobs for which the employer is providing on-the-job training;  
17 and

18 (6) Send to the Commissioner on an annual basis a copy of such notice.

19 The Commissioner shall make available to the public upon request notices provided to  
20 the Commissioner by employers in accordance with subdivision (6) of this subsection.

21 (q) An employer who has complied with the requirements of the Fair Labor  
22 Standards Act for paying a training wage to a particular employee shall be deemed to  
23 have complied with the requirements of subsections (g) through (p) of this section."

24 Sec. 2. This act shall become effective August 1, 1990.