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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 October 1, 1990, and four dollars and twenty-five cents (\$4.25) per hour effective April 1, 1991, except as otherwise provided in this section.

1 (a1) Every employer in an enterprise whose annual gross volume of sales made or
2 business done is less than two hundred fifty thousand dollars (\$250,000), exclusive of
3 excise taxes at the retail level that are separately stated, shall pay to each employee who
4 in any workweek performs any work, wages of at least three dollars and thirty-five cents
5 (\$3.35) per hour. Employers covered by this subsection are not eligible to pay the
6 training wage provided for in subsections (g) through (q) of this section.

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

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

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

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

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

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

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

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

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

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

8 This training wage shall be a wage:

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

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

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

15 (1) Begins on or after October 1, 1990;

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

19 (3) Ends before April 1, 1993.

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

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

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

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

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

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

1 provide to employers upon request the text of the notice to be provided under this
2 subsection.

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

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

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

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

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

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

20 1. An employee shall initially be eligible to be paid the
21 training wage under subsection (g) of this section until
22 the employee has been employed a cumulative total of
23 90 days at such wage;

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

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

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

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

41 (o) An individual shall provide the requisite proof of previous period or periods
42 of employment with other employers for purposes of establishing whether the employee
43 is an eligible employee pursuant to subsection (n) of this section. An employer's good
44 faith reliance on the proof presented to the employer by an individual shall constitute a

1 complete defense to a charge that the employer has violated subdivision (h)(2) of this
2 section with respect to such individual. The Commissioner shall issue regulations
3 which shall be identical to the regulations issued by the United States Secretary of
4 Labor defining the requisite proof required of an individual.

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

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

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

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

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

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

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

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

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

26 Sec. 2. Nothing in this act shall obligate the General Assembly to appropriate
27 any funds.

28 Sec. 3. This act shall become effective October 1, 1990.