

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Simmons offered the following:

2
3 **Amendment (with title amendment)**

4 On page 2, before line 1,

5
6 insert:

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

10 95.11 Limitations other than for the recovery of real
11 property.--Actions other than for recovery of real property
12 shall be commenced as follows:

13 (2) WITHIN FIVE YEARS.--

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

15 (3) WITHIN FOUR YEARS.--

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

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

20 448.110 State minimum wage; annual wage adjustment;
21 enforcement.--

22 (1) This section may be cited as the "Florida Minimum Wage
23 Act."

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

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

39 (4)(a) Beginning September 30, 2005, and annually on
40 September 30 thereafter, the Agency for Workforce Innovation
41 shall calculate an adjusted state minimum wage rate by
42 increasing the state minimum wage by the rate of inflation for

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43 | the 12 months prior to September 1. In calculating the adjusted
44 | state minimum wage, the agency shall use the Consumer Price
45 | Index for Urban Wage Earners and Clerical Workers, not
46 | seasonally adjusted, for the South Region, or a successor index
47 | as calculated by the United States Department of Labor. Each
48 | adjusted state minimum wage rate shall take effect on the
49 | following January 1, with the initial adjusted minimum wage rate
50 | to take effect on January 1, 2006.

51 | (b) The Agency for Workforce Innovation and the Department
52 | of Revenue shall annually publish the amount of the initial and
53 | adjusted state minimum wage, as applicable, and the effective
54 | date. Publication shall occur by posting the adjusted state
55 | minimum wage rate and the effective date on the Internet home
56 | pages of the agency and the department by October 15 of each
57 | year. In addition, to the extent funded in the General
58 | Appropriations Act, the agency shall provide written notice of
59 | the rate and the effective date of the adjusted state minimum
60 | wage to all employers registered in the most current
61 | unemployment compensation database. Such notice shall be mailed
62 | by November 15 of each year using the addresses included in the
63 | database. Employers are responsible for maintaining current
64 | address information in the unemployment compensation database.
65 | The agency shall not be responsible for failure to provide
66 | notice due to incorrect or incomplete address information in the
67 | database. The agency shall provide the Department of Revenue
68 | with the state minimum wage rate information and effective date
69 | in a timely manner.

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70 (5) It shall be unlawful for an employer or any other
71 party to discriminate in any manner or take adverse action
72 against any person in retaliation for exercising rights
73 protected pursuant to s. 24, Art. X of the State Constitution.
74 Rights protected include, but are not limited to, the right to
75 file a complaint or inform any person of his or her potential
76 rights pursuant to s. 24, Art. X of the State Constitution and
77 to assist him or her in asserting such rights.

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

89 (b) The employer shall have 15 calendar days after receipt
90 of the notice to pay the total amount of unpaid wages or
91 otherwise resolve the claim to the satisfaction of the person
92 aggrieved. The statute of limitations for bringing an action
93 pursuant to this section shall be tolled during this 15-day
94 period. If the employer fails to pay the total amount of unpaid
95 wages or otherwise resolve the claim to the satisfaction of the
96 person aggrieved, then the person aggrieved may bring a claim

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97 for unpaid minimum wages, the terms of which must be consistent
98 with the contents of the notice.

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

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

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122 (d) Any civil action brought under s. 24, Art. X of the
123 State Constitution and this section shall be subject to s.
124 768.79.

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

131 (8) The statute of limitations for an action brought
132 pursuant to this section shall be 4 years from the date the
133 alleged violation occurred, except that in an action alleging a
134 willful violation the statute of limitations shall be 5 years
135 from the date the alleged violation occurred.

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

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

145 (11) Except for calculating the adjusted state minimum
146 wage and publishing the initial state minimum wage and any
147 annual adjustments thereto, the authority of the Agency for
148 Workforce Innovation in implementing s. 24, Art. X of the State

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149 Constitution, pursuant to this section, shall be limited to that
150 authority expressly granted by the Legislature.

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

154 Section 4. If any provision of sections 1 through 3 of
155 this act or its application to any person or circumstance is
156 held invalid, the invalidity shall not affect the other
157 provisions or applications of sections 1 through 3 of the act
158 which can be given effect without the invalid provision or
159 application, and to this end the provisions of sections 1
160 through 3 of this act are severable.

161
162 ===== T I T L E A M E N D M E N T =====

163 On page 1, remove line 2,

164
165 and insert:

166 An act relating to employment; amending s. 95.11, F.S. ;
167 providing periods of limitations on actions for violations of
168 the Florida Minimum Wage Act; creating s. 448.110, F.S., the
169 Florida Minimum Wage Act; providing legislative intent to
170 implement s. 24, Art. X of the State Constitution in accordance
171 with authority granted to the Legislature therein; requiring
172 employers to pay certain employees a minimum wage for all hours
173 worked in Florida; incorporating provisions of the federal Fair
174 Labor Standards Act; requiring the minimum wage to be adjusted
175 annually; providing a formula for calculating such adjustment;

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176 requiring the Agency for Workforce Innovation and the Department
177 of Revenue to annually publish the amount of the initial and
178 adjusted minimum wage; providing criteria for posting; requiring
179 the agency to provide written notice to certain employers;
180 providing a deadline for the notice to be mailed; providing that
181 employers are responsible for maintaining their current
182 addresses with the agency; requiring the agency to provide the
183 department with certain information; prohibiting discrimination
184 or adverse action against persons exercising constitutional
185 rights under s. 24, Art. X of the State Constitution; providing
186 for civil action by aggrieved persons; requiring aggrieved
187 persons bringing civil actions to provide written notice to
188 their employers alleged to have violated the act; providing
189 information that must be included in the notice; providing a
190 deadline by which an employer alleged to have violated the act
191 must pay the unpaid wages in question or resolve the claim to
192 the aggrieved person's satisfaction; providing a statute of
193 limitations period; providing that aggrieved persons who prevail
194 in their actions may be entitled to liquidated damages and
195 reasonable attorney's fees and costs; authorizing additional
196 legal or equitable relief for aggrieved persons who prevail in
197 such actions; providing that punitive damages may not be
198 awarded; providing that actions brought under the act are
199 subject to s. 768.79, F.S.; authorizing the Attorney General to
200 bring a civil action and seek injunctive relief; providing a
201 fine; providing statutes of limitations; authorizing class
202 actions; declaring the act the exclusive remedy under state law

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(LATE FILED)

HOUSE AMENDMENT

Bill No. CS/CS/SB 1910

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203 | for violations of s. 24, Art. X of the State Constitution;
204 | providing for implementation measures; designating ss. 448.01-
205 | 448.110, F.S., as part I of ch. 448, F.S.; providing a part
206 | title; providing for severability;

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