

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE BILL 347

Short Title: Up Minimum Wage With COLA/Const. Amendment. (Public)

Sponsors: Senators Bryant, Waddell, Smith-Ingram (Primary Sponsors); Lowe and Robinson.

Referred to: Commerce.

March 23, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT AMENDING THE NORTH CAROLINA CONSTITUTION TO SET THE STATE  
3 MINIMUM WAGE.

4 The General Assembly of North Carolina enacts:

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6 **PART I. SET MINIMUM WAGE/PROVIDE FOR AUTOMATIC COST OF LIVING**  
7 **ADJUSTMENT**

8 **SECTION 1.1.** Article I of the North Carolina Constitution is amended by adding a  
9 new section to read:

10 **"Sec. 38. North Carolina Minimum Wage.**

11 (1) All working North Carolinians are entitled to be paid a minimum wage that is  
12 sufficient to provide a decent and healthy life for them and their families, that protects their  
13 employers from unfair low-wage competition, and that does not force them to rely on  
14 taxpayer-funded public services in order to avoid economic hardship.

15 (2) The terms "employer", "employee", and "wage" as used in this section shall have  
16 the meanings established under the federal Fair Labor Standards Act (FLSA) and its  
17 implementing regulations.

18 (3) Employers shall pay employees wages no less than the minimum wage for all hours  
19 worked in North Carolina. Six months after enactment, the State minimum wage shall be  
20 established at an hourly rate of eight dollars and eighty cents (\$8.80). On September 30th of  
21 that year and on each following September 30th, the North Carolina Department of Labor shall  
22 calculate an adjusted minimum wage rate reflecting any increase in the consumer price index  
23 (all urban consumers, U.S. city average for all items), CPI-U, or its successor index, as  
24 calculated by the U.S. Department of Labor. Each adjusted minimum wage rate calculated shall  
25 be published and take effect on the following January 1st. For tipped employees meeting  
26 eligibility requirements for the tip credit under the FLSA, employers may credit toward  
27 satisfaction of the minimum wage tips up to the amount of the allowable FLSA tip credit in  
28 2003.

29 (4) It shall be unlawful for an employer or any other party to discriminate in any  
30 manner or take adverse action against any person in retaliation for exercising rights protected  
31 under this amendment. Rights protected under this amendment include, but are not limited to,  
32 the right to file a complaint or inform any person about any party's alleged noncompliance with  
33 this amendment, and the right to inform any person of his or her potential rights under this  
34 amendment and to assist him or her in asserting such rights.





1 **"§ 95-25.3. Minimum wage.**

2 (a) ~~Every Subject to the provisions of subsection (a1) of this section, every~~ employer  
3 shall pay to each employee who in any workweek performs any work, wages of at least ~~six~~  
4 ~~dollars and fifteen cents (\$6.15)~~ eight dollars and eighty cents (\$8.80) per hour or the minimum  
5 wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C.  
6 206(a)(1), as that wage may change from time to time, whichever is higher, except as otherwise  
7 provided in this section.

8 (a1) The minimum wage required by subsection (a) of this section shall be increased on  
9 January 1, 2017, and on January 1 of successive years by the increase in the cost of living. The  
10 increase in the cost of living shall be measured by the percentage increase of the consumer  
11 price index (all urban consumers, U.S. city average for all items), CPI-U, or its successor index,  
12 as calculated by the U.S. Department of Labor for the 12 months preceding the previous  
13 September 1. The Commissioner shall calculate the indexed minimum wage rate. The indexed  
14 minimum wage rate shall be calculated to the nearest cent (\$0.01).

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

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

24 (d) The Commissioner, in order to prevent curtailment of opportunities for employment  
25 of the economically disadvantaged and the unemployed, may, by regulation, establish a wage  
26 rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect  
27 under subsection (a) which shall apply to all persons (i) who have been unemployed for at least  
28 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are,  
29 receiving Work First Family Assistance or who are receiving supplemental security benefits  
30 under Title XVI of the Social Security Act.

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

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

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

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

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

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3 **PART III. EFFECTIVE DATE**

4 **SECTION 3.** This act is effective when it becomes law.