

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 366

Short Title: Raising Wages for NC Workers. (Public)

Sponsors: Representatives Fisher, Farmer-Butterfield, Black, and Harrison (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Finance, if favorable, Rules, Calendar, and Operations of the House

March 18, 2019

A BILL TO BE ENTITLED

AN ACT INCREASING THE MINIMUM WAGE TO FIFTEEN DOLLARS PER HOUR OVER FIVE YEARS AND THEN ADJUSTING THE MINIMUM WAGE AUTOMATICALLY EACH YEAR BY INCREASES IN THE COST OF LIVING; ENDING THE SUBMINIMUM WAGE FOR PERSONS WITH DISABILITIES; PHASING OUT THE SUBMINIMUM WAGE FOR TIPPED EMPLOYEES OVER EIGHT YEARS; ENDING THE EXEMPTION FOR AGRICULTURAL AND DOMESTIC WORKERS.

The General Assembly of North Carolina enacts:

INCREASE MINIMUM WAGE OVER FIVE YEARS/NO SUBMINIMUM WAGES

SECTION 1.1. 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 on January 1, 2020, eight dollars (\$8.00) 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.
- (2) Effective on January 1, 2021, 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 on January 1, 2022, 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 on January 1, 2023, 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.



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1 (5) Effective on January 1, 2024, fifteen dollars (\$15.00) per hour or the minimum
2 wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act,
3 29 U.S.C. § 206(a)(1), as that wage may change from time to time, whichever
4 is higher, except as otherwise provided in this section. Beginning September
5 30, 2024, and on each September 30 thereafter, the Commissioner of Labor
6 shall calculate an adjusted minimum wage rate using the Consumer Price
7 Index (All 29 Urban Consumers, U.S. City Average for All Items) CPU-I, or
8 its successor index, as calculated by the U.S. Department of Labor for the
9 12-month period preceding the previous September 1. Each adjusted
10 minimum wage rate calculated shall be published on September 30 and take
11 effect on the following January 1.

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

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

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

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

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

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

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

46 (g) Repealed by Session Laws 2006-259, s. 18, effective August 23, 2006."
47

48 **INCREASE TIPPED MINIMUM WAGE**

49 **SECTION 2.1.** Effective January 1, 2020, until December 31, 2010, G.S. 95-25.3(f)
50 reads as rewritten:

1 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount
2 ~~permitted in section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m), if the tipped~~
3 ~~employee is notified in advance, is permitted to retain all tips and the employer maintains~~
4 ~~accurate and complete records of tips received by each employee as such tips are certified by the~~
5 ~~employee monthly or for each pay period. Even if the employee refuses to certify tips accurately,~~
6 ~~tips may still be counted as wages when the employer complies with the other requirements of~~
7 ~~this section and can demonstrate by monitoring tips that the employee regularly receives tips in~~
8 ~~the amount for which the credit is taken. of five dollars (\$5.00) per hour. Tip pooling shall also~~
9 ~~be is permissible among employees who customarily and regularly receive tips; however, no~~
10 ~~employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling~~
11 ~~arrangement."~~

12 **SECTION 2.2.** Effective January 1, 2021, until December 31, 2021, G.S. 95-25.3(f)
13 reads as rewritten:

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

18 **SECTION 2.3.** Effective January 1, 2022, until December 31, 2022, G.S. 95-25.3(f)
19 reads as rewritten:

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

24 **SECTION 2.4.** Effective January 1, 2023, until December 31, 2023, G.S. 95-25.3(f)
25 reads as rewritten:

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

30 **SECTION 2.5.** Effective January 1, 2024, until December 31, 2024, G.S. 95-25.3(f)
31 reads as rewritten:

32 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount of
33 ~~nine dollars fifty cents (\$9.50)~~ eleven dollars (\$11.00) per hour. Tip pooling is permissible among
34 employees who customarily and regularly receive tips; however, no employee's tips may be
35 reduced by more than fifteen percent (15%) under a tip pooling arrangement."

36 **SECTION 2.6.** Effective January 1, 2025, until December 31, 2025, G.S. 95-25.3(f)
37 reads as rewritten:

38 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount of
39 ~~eleven dollars (\$11.00)~~ twelve dollars and fifty cents (\$12.50) per hour. Tip pooling is
40 permissible among employees who customarily and regularly receive tips; however, no
41 employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling
42 arrangement."

43 **SECTION 2.7.** Effective January 1, 2026, until December 31, 2026, G.S. 95-25.3(f)
44 reads as rewritten:

45 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount of
46 ~~twelve dollars and fifty cents (\$12.50)~~ fourteen dollars (\$14.00) per hour. Tip pooling is
47 permissible among employees who customarily and regularly receive tips; however, no
48 employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling
49 arrangement."

50 **SECTION 2.8.** Effective January 1, 2027, until December 31, 2027, G.S. 95-25.3(f)
51 reads as rewritten:

1 (f) Tips earned by a tipped employee may be counted as wages only up to the amount of
 2 ~~fourteen dollars (\$14.00)~~ fifteen dollars (\$15.00) per hour. Tip pooling is permissible among
 3 employees who customarily and regularly receive tips; however, no employee's tips may be
 4 reduced by more than fifteen percent (15%) under a tip pooling arrangement."

5 **SECTION 2.9.** Effective January 1, 2028, G.S. 95-23.5(f) reads as rewritten:

6 (f) ~~Tips earned by a tipped employee may be counted as wages only up to the amount of~~
 7 ~~fifteen dollars (\$15.00) per hour. After January 1, 2028, the minimum wage rate of a tipped~~
 8 ~~employee is the amount set under subdivision (5) of subsection (a) of this section, and tips shall~~
 9 ~~not be counted as wages. Tip pooling is permissible among employees who customarily and~~
 10 ~~regularly receive tips; however, no employee's tips wages may be reduced by more than fifteen~~
 11 ~~percent (15%) under a tip pooling arrangement."~~

13 **REPEAL EXEMPTIONS FOR AGRICULTURAL AND DOMESTIC WORKERS**

14 **SECTION 3.1.** G.S. 95-25.14(a) reads as rewritten:

15 "**§ 95-25.14. Exemptions.**

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

- 19 (1) Any person employed in an enterprise engaged in commerce or in the
 20 production of goods for commerce as defined in the Fair Labor Standards Act:
 21 a. Except as otherwise specifically provided in G.S. 95-25.5;
 22 b. Notwithstanding the above, any employee other than a learner,
 23 apprentice, student, or handicapped worker as defined in the Fair
 24 Labor Standards Act who is not otherwise exempt under the other
 25 provisions of this section, and for whom the applicable minimum wage
 26 under the Fair Labor Standards Act is less than the minimum wage
 27 provided in G.S. 95-25.3, is not exempt from the provisions of
 28 G.S. 95-25.3 or G.S. 95-25.4;
 29 c. Notwithstanding the above, any employer or employee exempt from
 30 the minimum wage, overtime, or child labor requirements of the Fair
 31 Labor Standards Act for whom there is no comparable exemption
 32 under this Article shall not be exempt under this subsection except that
 33 where an exemption in the Fair Labor Standards Act provides a
 34 method of computing overtime which is an alternative to the method
 35 required in 29 U.S.C.S. § 207(a), the employer or employee subject to
 36 that alternate method shall be exempt from the provisions of
 37 G.S. 95-25.4(a); provided that, persons not employed at an enterprise
 38 described in subdivision (1) of this subsection shall also be subject to
 39 the same alternative methods of overtime calculation in the
 40 circumstances described in the Fair Labor Standards Act exemptions
 41 providing those alternative ~~methods;~~ methods.
- 42 (2) ~~Any person employed in agriculture, as defined under the Fair Labor~~
 43 ~~Standards Act;~~
- 44 (3) ~~Any person employed as a domestic, including baby sitters and companions,~~
 45 ~~as defined under the Fair Labor Standards Act;~~
- 46 (4) Any person employed as a page in the North Carolina General Assembly or
 47 in the Governor's ~~Office;~~ Office.
- 48 (5) Bona fide volunteers in medical, educational, religious, or nonprofit
 49 organizations where an employer-employee relationship does not ~~exist;~~ exist.
- 50 (6) Persons confined in and working for any penal, correctional or mental
 51 institution of the State or local ~~government;~~ government.

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

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

10 (b) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4 (Overtime), and
11 the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to these exemptions, do not
12 apply ~~to~~ to any of the following:

13 (1) Any employee of a boys' or girls' summer camp or of a seasonal religious or
14 nonprofit educational conference ~~center~~; center.

15 (2) Any person employed in the catching, processing or first sale of seafood, as
16 defined under the Fair Labor Standards ~~Act~~; Act.

17 (3) The spouse, child, or parent of the employer or any person qualifying as a
18 dependent of the employer under the income tax laws of North
19 ~~Carolina~~; Carolina.

20 (4) Any person employed in a bona fide executive, administrative, professional
21 or outside sales capacity, as defined under the Fair Labor Standards ~~Act~~; Act.

22 (5) Repealed by Session Laws 1989, c. 687, s. 2.

23 (6) Any person while participating in a ridesharing arrangement as defined in
24 ~~G.S. 136-44.21~~; G.S. 136-44.21.

25 (7) Any person who is employed as a computer systems analyst, computer
26 programmer, software engineer, or other similarly skilled worker, as defined
27 in the Fair Labor Standards Act.

28 (b1) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4 (Overtime), and
29 the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to the exemptions provided
30 for in this subsection, do not apply to any of the following:

31 (1) Hours worked as a bona fide volunteer firefighter in an incorporated, nonprofit
32 volunteer or community fire department.

33 (2) Hours worked as a bona fide volunteer rescue and emergency medical services
34 personnel in an incorporated, nonprofit volunteer or community fire
35 department, or an incorporated, nonprofit rescue squad.

36 Hours worked in accordance with this subsection shall not be considered hours worked for
37 purposes of G.S. 95-25.3 or G.S. 95-25.4.

38 (c) The provisions of G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b)
39 (Record Keeping) as they relate to this exemption, do not apply ~~to~~ to the following:

40 (1) Drivers, drivers' helpers, loaders and mechanics, as defined under the Fair
41 Labor Standards ~~Act~~; Act.

42 (2) Taxicab ~~drivers~~; drivers.

43 (3) Seamen, employees of railroads, and employees of air carriers, as defined
44 under the Fair Labor Standards ~~Act~~; Act.

45 (4) Salespersons, mechanics and partsmen employed by automotive, truck, and
46 farm implement dealers, as defined under the Fair Labor Standards ~~Act~~; Act.

47 (5) Salespersons employed by trailer, boat, and aircraft dealers, as defined under
48 the Fair Labor Standards ~~Act~~; Act.

49 (6) Live-in child care workers or other live-in employees in homes for dependent
50 ~~children~~; children.

- 1 (7) Radio and television announcers, news editors, and chief engineers, as defined
- 2 under the Fair Labor Standards Act.
- 3 (8) Any employee of a seasonal amusement or recreational establishment.
- 4 (d) The provisions of this Article do not apply to the State of North Carolina, any city,
- 5 town, county, or municipality, or any State or local agency or instrumentality of government,
- 6 except for the following provisions, which do apply:
- 7 (1) The minimum wage provisions of ~~G.S. 95-25.3~~; G.S. 95-25.3.
- 8 (2) The definition provisions of G.S. 95-25.2 necessary to interpret the applicable
- 9 ~~provisions~~; provisions.
- 10 (3) The exemptions of subsections (a) and (b) of this ~~section~~; section.
- 11 (4) The complainant protection provisions of G.S. 95-25.20.
- 12 (e) Employment in a seasonal recreation program by the State of North Carolina, any
- 13 city, town, county, or municipality, or any State or local agency or instrumentality of government,
- 14 is exempt from all provisions of this Article, including G.S. 95-25.3 (Minimum Wage)."
- 15

16 **EFFECTIVE DATE**

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