

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H.B 1046
May 5, 2016
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30467-LR-160 (04/27)

Short Title: Constitutional Amendment/Up Minimum Wage. (Public)

Sponsors: Representative Cunningham.

Referred to:

A BILL TO BE ENTITLED

AN ACT AMENDING THE NORTH CAROLINA CONSTITUTION TO SET THE STATE
MINIMUM WAGE AND PROVIDE FOR AUTOMATIC COST-OF-LIVING
ADJUSTMENTS.

The General Assembly of North Carolina enacts:

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

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

"Sec. 38. Minimum Wage.

(1) All working North Carolinians are entitled to be paid a minimum wage that is
sufficient to provide a decent and healthy life for them and their families, that protects their
employers from unfair low-wage competition, and that does not force them to rely on
taxpayer-funded public services in order to avoid economic hardship. Employers shall pay
employees wages no less than the minimum wage for all hours worked in North Carolina.

(2) Effective January 1, 2017, the State minimum wage shall be established at an hourly
rate of nine dollars (\$9.00). On September 30 of that year and on each following September 30,
the Commissioner of Labor shall calculate an adjusted minimum wage rate using the consumer
price index (all urban consumers, U.S. city average for all items), CPI-U, or its successor index, as
calculated by the U.S. Department of Labor for the 12-month period preceding the previous
September 1. Each adjusted minimum wage rate calculated shall be published on September 30
and take effect on the following January 1.

(3) It shall be unlawful for an employer or any other party to discriminate in any manner or
take adverse action against any person in retaliation for exercising rights protected under this
amendment. Rights protected under this amendment include, but are not limited to, the right to file
a complaint or inform any person about any party's alleged noncompliance with this amendment
and the right to inform any person of his or her potential rights under this amendment and to assist
him or her in asserting such rights. Any person aggrieved by a violation of this amendment may
bring a civil action in a court of competent jurisdiction against an employer or person violating
this amendment and, upon prevailing, shall recover the full amount of any back wages unlawfully
withheld, plus the same amount as liquidated damages, and shall be awarded reasonable attorneys'
fees and costs. In addition, they shall be entitled to such legal or equitable relief as may be
appropriate to remedy the violation including, without limitation, reinstatement in employment
and/or injunctive relief. Any employer or other person found liable for willfully violating this
amendment shall also be subject to a fine payable to the State in the amount of one thousand



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1 dollars (\$1,000) for each violation. The Attorney General or other official designated by the
2 General Assembly may also bring a civil action to enforce this amendment. Actions to enforce this
3 amendment shall be subject to a statute of limitations of four years or, in the case of willful
4 violations, five years. Such actions may be brought as a class action pursuant to the North
5 Carolina Rules of Civil Procedure. Implementing legislation is not required in order to enforce this
6 section. The General Assembly may by statute or the North Carolina Department of Labor may by
7 rule adopt any measures appropriate for the implementation of this section. The General Assembly
8 may by statute establish additional remedies or fines for violations of this section, raise the
9 applicable minimum wage rate, reduce the tip credit, or extend coverage of the minimum wage to
10 employers or employees not covered by this section.

11 (4) This section provides for payment of a minimum wage and shall not be construed to
12 preempt or otherwise limit the authority of the General Assembly or any other public body to
13 adopt or enforce any other law, rule, regulation, requirement, policy, or standard that provides for
14 payment of higher or supplemental wages or benefits, or that extends such protections to
15 employers or employees not covered by this section.

16 (5) It is intended that case law, administrative interpretations, and other guiding standards
17 developed under the federal Fair Labor Standards Act (FLSA) shall guide the construction of this
18 section and any implementing statutes or regulations.

19 (6) The terms "employer," "employee," and "wage" as used in this section shall have the
20 meanings established under the federal Fair Labor Standards Act (FLSA) and its implementing
21 regulations."

22 **SECTION 1.2.** The amendment set out in Section 1.1 of this act shall be submitted to
23 the qualified voters of the State at a statewide general election to be held on November 8, 2016,
24 which election shall be conducted under the laws then governing elections in the State. Ballots,
25 voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The
26 question to be used in the voting systems and ballots shall be:

27 "[] FOR [] AGAINST

28 Constitutional amendment that employers shall pay employees wages no less than the
29 minimum wage for all hours worked in North Carolina. Six months after enactment, the minimum
30 wage shall be established at an hourly rate of nine dollars (\$9.00) and shall be increased on
31 January 1 of successive years by the increase in cost of living."

32 **SECTION 1.3.** If a majority of votes cast on the question are in favor of the
33 amendment set out in Section 1.1 of this act, the State Board of Elections shall certify the
34 amendment to the Secretary of State. The Secretary of State shall enroll the amendment so
35 certified among the permanent records of that office. The amendment is effective upon
36 certification.

37 38 **PART II. CONFORMING STATUTORY CHANGE**

39 **SECTION 2.1.** If the qualified voters approve the constitutional amendment set forth
40 in Part I of this act, then G.S. 95-25.3(a) reads as rewritten:

41 "(a) Every Effective January 1, 2017, and subject to the other provisions in this section,
42 every employer shall pay to each employee who in any workweek performs any work, wages of at
43 least six dollars and fifteen cents (\$6.15) per hour or the minimum wage set forth in paragraph 1 of
44 section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from
45 time to time, whichever is higher, except as otherwise provided in this section nine dollars (\$9.00)
46 per hour. On September 30, 2017, and on each following September 30, the Commissioner of
47 Labor shall calculate an adjusted minimum wage rate using the consumer price index (all urban
48 consumers, U.S. city average for all items), CPI-U, or its successor index, as calculated by the
49 U.S. Department of Labor for the 12-month period preceding the previous September 1. Each
50 adjusted minimum wage rate calculated shall be published on September 30 and take effect on the
51 following January 1. For tipped employees meeting eligibility requirements for the tip credit under

1 the FLSA, employers may credit toward satisfaction of the minimum wage tips up to the amount
2 of the allowable FLSA tip credit in 2003."

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4 **PART III. EFFECTIVE DATE**

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