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SENATE BILL DRS15053-LR-39

Short Title: Economic Security Act.

(Public)

Sponsors: Senators Smith, Foushee, and Van Duyn (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ADVANCE ECONOMIC SECURITY IN NORTH CAROLINA BY INCREASING THE STATE MINIMUM WAGE IN PHASES TO FIFTEEN DOLLARS PER HOUR OVER FIVE YEARS, MANDATING EQUAL PAY FOR EQUAL WORK, REQUIRING PAID SICK LEAVE AND FAMILY MEDICAL LEAVE, INCREASING THE TIPPED MINIMUM WAGE, ENDING WAGE THEFT, REQUIRING THE FAIR ASSESSMENT OF PERSONS WITH CRIMINAL HISTORIES BY "BANNING THE BOX," REPEALING PUBLIC EMPLOYEE COLLECTIVE BARGAINING RESTRICTIONS, AND REENACTING THE EARNED INCOME TAX CREDIT AND TAX CREDITS FOR CHILD CARE AND CERTAIN EMPLOYMENT-RELATED EXPENSES.

The General Assembly of North Carolina enacts:

LIVING WAGE

SECTION 1.1. G.S. 95-25.3(a) 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 Labor Day, September 2, 2019, 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 Labor Day, September 7, 2020, nine dollars and fifty cents (\$9.50) 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.
- (3) Effective on Labor Day, September 6, 2021, eleven dollars (\$11.00) 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 Labor Day, September 5, 2022, thirteen dollars (\$13.00) per hour or the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor



1 Standards Act, 29 U.S.C. § 206(a)(1), as that wage may change from time to
2 time, whichever is higher, except as otherwise provided in this section.
3 (5) Effective on Labor Day, September 2, 2024, fifteen dollars (\$15.00) per hour
4 or the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor
5 Standards Act, 29 U.S.C. § 206(a)(1), as that wage may change from time to
6 time, whichever is higher, except as otherwise provided in this section."
7

8 **EQUAL PAY FOR EQUAL WORK**

9 **SECTION 2.1.** Chapter 95 of the General Statutes is amended by adding a new
10 Article to read:

11 "Article 2B.

12 "Equal Pay Act.

13 **"§ 95-25.26. Definitions.**

14 The following definitions apply in this Article:

- 15 (1) Employee. – Every woman or man in receipt of or entitled to compensation
16 for labor performed for another.
17 (2) Employer. – Includes (i) this State and any local political subdivision of the
18 State and (ii) every person having control or direction of any woman or man
19 employed at any labor, or responsible directly or indirectly for the wages of
20 another, who employs more than five employees.
21 (3) Person. – As defined by G.S. 95-25.2(11).
22 (4) Wage or wages. – Any compensation for labor measured by time, piece, or
23 otherwise.

24 **"§ 95-25.27. Equal wage rates.**

25 (a) No employer shall pay any person in the employer's employ at wage rates less than
26 the rates paid to employees of the opposite sex in the same establishment for the same quantity
27 and quality of the same classification of work. Any employer who violates this section is liable
28 to the employee affected in the amount of the wages that the employee is deprived by reason of
29 the violation.

30 (b) Notwithstanding the provisions of subsection (a) of this section, nothing in this
31 section prohibits a variation of rates of pay for male and female employees engaged in the same
32 classification of work based upon seniority, a difference in length of service, ability, skill,
33 difference in duties or services performed, whether regularly or occasionally, difference in the
34 shift or time of day worked, hours of work, or restrictions or prohibitions on lifting or moving
35 objects in excess of specified weight, or other reasonable differentiation, or factor or factors other
36 than sex, when exercised in good faith.

37 (c) An employer that is in violation of this section may not reduce the pay of any
38 employee in order to bring the employer into compliance with this Article.

39 (d) An employer shall not retaliate against any employee who seeks redress pursuant to
40 this Article or who participates in the investigation of a complaint under this Article.

41 **"§ 95-25.28. Complaints; enforcement; civil actions.**

42 (a) An affected employee may file with the Department of Labor a complaint that the
43 wages paid to the employee are less than the wages to which the employee is entitled under this
44 Article. The Department of Labor shall investigate the complaint and notify the employer and
45 employee of the results of the investigation.

46 (b) An employee receiving less than the wage to which the employee is entitled under
47 this section may recover in a civil action the balance of such wages, together with the costs and
48 attorneys' fees, notwithstanding any agreement to work for a lesser wage. The employee is not
49 required to exhaust administrative remedies before filing the civil action.

50 (c) A civil action pursuant to this section shall be instituted within two years after the
51 date that the alleged violation is discovered by the affected employee."

1
2 **PAID SICK AND FAMILY MEDICAL LEAVE**

3 **SECTION 3.1.(a)** Chapter 95 of the General Statutes is amended by adding a new
4 Article to read:

5 "Article 3A.

6 "Healthy Families and Healthy Workplaces Act.

7 **"§ 95-31.1. Short title and legislative purpose.**

8 (a) This Article shall be known and may be cited as the "Healthy Families and Healthy
9 Workplaces Act."

10 (b) The public policy of this State is declared as follows: The health and safety needs of
11 employees and their families and the protection of employees from losing their jobs and pay
12 while they seek medical care for themselves and their family members are subjects of concern
13 requiring legislation to promote the general welfare of the people of the State without
14 jeopardizing the competitive position of North Carolina business and industry. The General
15 Assembly declares that the general welfare of the State requires the enactment of this law under
16 the police power of the State.

17 **"§ 95-31.2. Definitions.**

18 (a) The following definitions apply in this Article:

19 (1) Child. – A biological, adopted, or foster child, stepchild, legal ward, or child
20 of a parent standing in loco parentis who is under 18 years of age, or 18 years
21 of age or older but incapable of earning wages because of a mental or physical
22 incapacity.

23 (2) Domestic violence. – As defined in G.S. 50B-1.

24 (3) Employ. – As defined by G.S. 95-25.2(3).

25 (4) Employee. – As defined by G.S. 95-25.2(4).

26 (5) Employer. – As defined by G.S. 95-25.2(5).

27 (6) Federal act. – The Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601
28 to 2654 inclusive, as it may be amended.

29 (7) Health care provider. –

30 a. A doctor of medicine or osteopathy licensed to practice medicine in
31 this State.

32 b. A physician assistant licensed in this State.

33 c. A family nurse practitioner licensed in this State.

34 (8) Immediate family member. – An employee's spouse, mother, father, brother,
35 sister, son, daughter, grandmother, grandfather, grandson, or granddaughter,
36 whether the relationship is a biological, foster, adoptive, step, half, or in-law
37 relationship.

38 (9) Paid sick time or paid sick days. – Time that is (i) compensated at the same
39 hourly rate and with the same benefits, including health care benefits, as the
40 employee normally earns during hours worked and (ii) provided by an
41 employer to an employee for the purposes described in G.S. 95-31.4(b) of this
42 Article.

43 (10) Parent. – A biological, foster, step, or adoptive parent of an employee or an
44 employee's spouse, or other person who stood in loco parentis during the
45 childhood of an employee or employee's spouse.

46 (11) Sexual assault. – As defined in Chapter 14 of the General Statutes.

47 (12) Small business. – An employer who employs 10 or fewer employees during
48 20 or more calendar workweeks in the current or preceding calendar year.

49 (13) Stalking. – As defined in Chapter 14 of the General Statutes.

50 **"§ 95-31.3. Exemptions.**

1 (a) The provisions of this section do not apply to any bona fide volunteers in any
2 organization where an employer-employee relationship does not exist.

3 (b) The provisions of this section do not apply to any person exempted from the Wage
4 and Hour Act under G.S. 95-25.14(a)(2) through (8), G.S. 95-25.14(b), 95-25.14(b1),
5 95-25.14(c), and 95-25.14(e), except that domestic workers are exempted only if they are
6 employed in the place of residence of their employer.

7 **"§ 95-31.4. Accrual of paid sick time.**

8 (a) Except as provided by G.S. 95-31.3, any employee who works in this State and who
9 must be absent from work for the reasons set forth in G.S. 95-31.5(a) shall be entitled to paid
10 sick time.

11 (b) Paid sick time as provided in this section shall begin to accrue at the commencement
12 of employment. Paid sick time shall accrue at the rate of one hour of pay for every 30 hours
13 worked. Paid sick time may be used as accrued, or be loaned by the employer at its discretion, to
14 the employee in advance of accrual. Unless the employer and employee agree to designate
15 otherwise, for periods of paid sick time that are less than a normal workday, the time shall be
16 counted on an hourly basis or the smallest increment that the employer's payroll system uses to
17 account for absences or use of leave.

18 (c) For employees of small businesses, there shall be a limit of 32 hours of accrued paid
19 time in a calendar year. For employees of other employers, there shall be a limit of 56 hours of
20 accrued paid sick time in a calendar year. Accrued paid sick time for employees carries over from
21 year to year but is limited to the aforementioned limits.

22 (d) When there is separation from employment and the employee is rehired within 90
23 days of separation by the same employer, previously accrued paid sick time that had not been
24 used shall be reinstated. The employee shall be entitled to use accrued paid sick time and accrue
25 additional sick time at the recommencement of employment.

26 **"§ 95-31.5. Use of paid sick time.**

27 (a) Paid sick time shall be provided to an employee by an employer for any of the
28 following reasons:

29 (1) To care for the employee's immediate family member who is suffering from a
30 physical or mental illness, injury, or medical condition that requires home
31 care, professional medical diagnosis or care, preventative medical care, or a
32 routine medical appointment, unless the care is covered under federal law.

33 (2) To care for the employee's own physical or mental illness, injury, or medical
34 condition that requires home care, professional medical diagnosis or care,
35 preventative medical care, or a routine medical appointment, unless the care
36 is covered under federal law.

37 (3) To allow an employee to address the psychological, physical, or legal effects
38 on himself or herself or an immediate family member, of domestic violence,
39 sexual assault, or stalking.

40 (b) An employer may require certification of the qualifying illness, injury, health
41 condition, or violence when a paid sick time period covers more than three consecutive workdays.
42 Any reasonable documentation signed by a health care provider involved in following or treating
43 the illness, injury, or health condition, and indicating the need for the amount of sick days taken,
44 shall be deemed acceptable certification. Acceptable certification of domestic violence, sexual
45 assault, or stalking may include (i) law enforcement, court, or federal agency records or files; (ii)
46 documentation from a domestic violence or sexual assault program; or (iii) documentation from
47 a religious, medical, or other professional from whom assistance was sought in dealing with the
48 alleged domestic violence, sexual offense, or stalking.

49 (1) The employer shall not require certification from a health care provider
50 employed by the employer. The employer shall not delay the commencement
51 of time taken for purposes of subsection (a) of this section or pay for this

1 period on the basis that the employer has not yet received the certification.
2 Nothing in this section shall be construed to require an employee to provide
3 as certification any information from a health care provider that would be in
4 violation of section 1177 of the Social Security Act or the regulations
5 promulgated pursuant to section 264(c) of the Health Insurance Portability and
6 Accountability Act, 42 U.S.C. § 1320d-2.

7 (2) An employer may not require disclosure of details relating to domestic
8 violence, sexual assault, or stalking or the details of an employee's medical
9 condition as a condition of providing paid sick time under this Article. If an
10 employer possesses health information or information pertaining to domestic
11 violence, sexual assault, or stalking about an employee or employee's
12 immediate family member, such information shall be treated as confidential
13 and not disclosed except to the affected employee or with the permission of
14 the affected employee.

15 (c) When the use of sick time is foreseeable, the employee shall make a good-faith effort
16 to provide notice of the need for such time to the employer in advance of the use of the sick time
17 and shall make a reasonable effort to schedule the use of sick time in a manner that does not
18 unduly disrupt the operations of the employer.

19 (d) An employer may not require, as a condition of providing sick time under this act,
20 that the employee search for or find a replacement worker to cover the hours during which the
21 employee is on paid sick time.

22 (e) Nothing in this section shall be construed as requiring financial or other
23 reimbursement to an employee from an employer upon the employee's termination, resignation,
24 retirement, or other separation from employment for accrued paid sick days that have not been
25 used.

26 (f) Nothing in this section shall be construed to discourage employers from adopting or
27 retaining paid sick time policies more generous than policies that comply with the requirements
28 of this section, and nothing in this section shall be construed to diminish the obligation of an
29 employer to comply with any contract, collective bargaining agreement, or any employment
30 benefit program or plan that provides greater sick time leave rights to employees than the rights
31 established under this section.

32 (g) This act provides minimum requirements pertaining to paid sick time and shall not be
33 construed to preempt, limit, or otherwise affect the applicability of any other law, regulation,
34 requirement, policy, agreement, or standard that provides for greater accrual or use by employees
35 of sick time, whether paid or unpaid, or that extends other protections to employees.

36 (h) Employers who have a paid time-off leave policy shall not be required to modify that
37 policy, if that policy offers an employee the option, at the employee's discretion, to take paid sick
38 time that is at least equivalent to the amounts and for the same purposes and under the same
39 conditions as provided under this section.

40 **"§ 95-31.6. Notification, posting, and records.**

41 Employers shall give notice that employees are entitled to paid sick time, the amount of paid
42 sick time and the terms of its use guaranteed under this section, that retaliation against employees
43 who request or use paid sick time is prohibited, and that each employee has the right to file a
44 complaint with the Commissioner of Labor or in the General Court of Justice if sick time as
45 required by this Article is denied by the employer or the employee is retaliated against for
46 requesting or taking paid sick time. Employers may comply with this section by supplying each
47 of their employees with a notice in English and Spanish that contains the information required
48 by this section or by displaying a poster in a conspicuous and accessible place in each
49 establishment where the employees are employed, which contains in English and Spanish all
50 information required by this section.

51 **"§ 95-31.7. Enforcement.**

1 (a) The Commissioner shall enforce and administer the provisions of this Article, and the
2 Commissioner or his or her authorized representative is empowered to hold hearings and to
3 institute civil proceedings hereunder.

4 (b) The Commissioner or the Commissioner's authorized representative shall have the
5 power to administer oaths and examine witnesses, issue subpoenas, compel the attendance of
6 witnesses and the production of papers, books, accounts, records, payrolls, and documents, and
7 take depositions and affidavits in any proceeding hereunder.

8 (c) Any employer who violates the provisions of this Article shall be liable to the
9 employee or employees affected in the amount of their unpaid sick time as the case may be, plus
10 interest at the legal rate set forth in G.S. 24-1 from the date each amount first came due.

11 (d) In addition to the amounts awarded pursuant to subsection (c) of this section, the court
12 shall award liquidated damages in an amount equal to the amount found to be due as provided in
13 subsection (c) of this section, provided that if the employer shows to the satisfaction of the court
14 that the act or omission constituting the violation was in good faith and that the employer had
15 reasonable grounds for believing that the act or omission was not a violation of this Article, the
16 court may, in its discretion, award no liquidated damages or may award any amount of liquidated
17 damages not exceeding the amount found due as provided in subsection (c) of this section.

18 (e) Action to recover such liability may be maintained in the General Court of Justice by
19 any one or more employees.

20 (f) The court, in any action brought under this Article, may, in addition to any judgment
21 awarded to the plaintiff, order costs and fees of the action and reasonable attorneys' fees to be
22 paid by the defendant. The court may order costs and fees of the action and reasonable attorneys'
23 fees to be paid by the plaintiff if the court determines that the action was frivolous.

24 (g) The Commissioner is authorized to determine and supervise the payment of the
25 amounts due under this section, including interest at the legal rate set forth in G.S. 24-1 from the
26 date each amount first came due, and the agreement to accept such amounts by the employee
27 shall constitute a waiver of the employee's right to bring an action under subsection (e) of this
28 section.

29 (h) Actions under this Article must be brought within two years pursuant to G.S. 1-53.

30 (i) The rights and remedies created by this Article are supplementary to all existing
31 common law and statutory rights and remedies.

32 **"§ 95-31.8. Rules.**

33 The Commissioner of Labor shall adopt rules to implement this Article.

34 **"§ 95-31.9. Severability.**

35 The provisions of this Article shall be severable, and if any phrase, clause, sentence, or
36 provision is declared to be invalid or is preempted by federal law or regulation, the validity of
37 the remainder of this Article shall not be affected thereby."

38 **SECTION 3.1.(b)** G.S. 95-241(a) reads as rewritten:

39 "(a) No person shall discriminate or take any retaliatory action against an employee
40 because the employee in good faith does or threatens to do any of the following:

- 41 (1) File a claim or complaint, initiate any inquiry, investigation, inspection,
42 proceeding or other action, or testify or provide information to any person
43 with respect to any of the following:
- 44 a. Chapter 97 of the General Statutes.
 - 45 b. ~~Article 2A~~ Article 2A, Article 3A, or Article 16 of this Chapter.
 - 46 c. Article 2A of Chapter 74 of the General Statutes.
 - 47 d. G.S. 95-28.1.
 - 48 e. Article 16 of Chapter 127A of the General Statutes.
 - 49 f. G.S. 95-28.1A.
 - 50 g. Article 52 of Chapter 143 of the General Statutes.
 - 51 h. Article 5F of Chapter 90 of the General Statutes.

- 1 (2) Cause any of the activities listed in subdivision (1) of this subsection to be
 2 initiated on an employee's behalf.
- 3 (3) Exercise any right on behalf of the employee or any other employee afforded
 4 by ~~Article 2A~~ Article 2A, Article 3A, or Article 16 of this Chapter, by Article
 5 2A of Chapter 74 of the General Statutes, or by Article 52 of Chapter 143 of
 6 the General Statutes.
- 7 (4) Comply with the provisions of Article 27 of Chapter 7B of the General
 8 Statutes.
- 9 (5) Exercise rights under Chapter 50B. Actions brought under this subdivision
 10 shall be in accordance with the provisions of G.S. 50B-5.5."

11 **SECTION 3.1.(c)** This section becomes effective July 1, 2019, applies only to
 12 covered employment on or after that date, and does not apply to any collective bargaining
 13 agreement entered into before July 1, 2019, that is still in effect on that date.
 14

15 INCREASE TIPPED MINIMUM WAGE

16 **SECTION 4.1.(a)** Effective January 1, 2020, until December 31, 2020,
 17 G.S. 95-25.3(f) reads as rewritten:

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

29 **SECTION 4.1.(b)** Effective January 1, 2021, G.S. 95-25.3(f), as amended by
 30 subsection (a) of this section, reads as rewritten:

31 "(f) Tips earned by a tipped employee ~~may be counted as wages only up to the amount of~~
 32 ~~five dollars (\$5.00) per hour. shall not be counted as wages.~~ Tip pooling is permissible among
 33 employees who customarily and regularly receive tips; however, no employee's tips may be
 34 reduced by more than fifteen percent (15%) under a tip pooling arrangement."
 35

36 WAGE THEFT

37 **SECTION 5.1.(a)** G.S. 95-25.2 reads as rewritten:

38 "§ 95-25.2. Definitions.

39 ~~In this Article, unless the context otherwise requires:~~ The following definitions apply in this
 40 Article:

- 41 (1) ~~"Agriculture" includes farming~~ Agriculture. – Farming in all its branches
 42 performed by a farmer or on a farm as an incident to or in conjunction with
 43 farming operations.
- 44 (2) ~~"Commissioner" means the Commissioner.~~ – The Commissioner of Labor.
- 45 (3) ~~"Employ" means to Employ.~~ – To suffer or permit to work.
- 46 (4) ~~"Employee" includes any Employee.~~ – Any individual employed by an
 47 employer.
- 48 (5) ~~"Employer" includes any Employer.~~ – Any person acting directly or indirectly
 49 in the interest of an employer in relation to an employee.
- 50 (5a) Employment status. – The status of an individual, under the usual common
 51 law rules applicable in determining the employee-employer relationship, as an

- 1 employee or as an independent contractor (or other individual who is not an
2 employee).
- 3 (5b) Enterprise. – The related activities performed either through unified
4 operations or common control by any person or persons for a common
5 business purpose and includes all such activities whether performed in one or
6 more establishments or by one or more corporate units but shall not include
7 the related activities performed for such enterprise by an independent
8 contractor or franchisee.
- 9 (6) ~~"Establishment"~~ Establishment. – A physical location where business
10 is conducted.
- 11 (7) ~~"The Fair Labor Standards Act"~~ Fair Labor Standards Act. – The
12 Fair Labor Standards Act of 1938, as amended and as the same may be
13 amended from time to time by the United States Congress.
- 14 (8) ~~"Hours worked"~~ Hours worked. – All time an employee is
15 employed.
- 16 (8a) Intentional. – The employer consciously committed the act which violated the
17 statute.
- 18 (9) ~~"Payday"~~ Payday. – That day designated for payment of wages due
19 by virtue of the employment relationship.
- 20 (10) ~~"Pay periods"~~ Pay periods. – May be daily, weekly, biweekly,
21 semimonthly, or monthly.
- 22 (11) ~~"Person"~~ Person. – An individual, partnership, association,
23 corporation, business trust, legal representative, or any organized group of
24 persons. For the purposes of G.S. 95-25.2, G.S. 95-25.3, G.S. 95-25.14, and
25 G.S. 95-25.20, it also means the State of North Carolina, any city, town,
26 county, or municipality, or any State or local agency or instrumentality of
27 government. The Government of the United States and any agency of the
28 United States (including the United States Postal Service and Postal Rate
29 Commission) are not included as persons for any purpose under this Article.
- 30 (12) ~~"Seasonal food service establishment"~~ Seasonal food service
31 establishment. – A restaurant, food and drink stand or other establishment
32 generally recognized as a commercial food service establishment, preparing
33 and serving food to the public but operating 180 days or less per year.
- 34 (13) ~~"Seasonal religious or nonprofit educational conference center or a seasonal~~
35 ~~amusement or recreational establishment"~~ Seasonal religious or
36 nonprofit educational conference center or a seasonal amusement or
37 recreational establishment. – An establishment which does not operate for
38 more than seven months in any calendar year, or during the preceding calendar
39 year had average receipts for any six months of such year of not more than
40 thirty-three and one-third percent (33 1/3%) of its average receipts for the
41 other six months of that year.
- 42 (14) ~~"Tipped employee"~~ Tipped employee. – Any employee who
43 customarily receives more than twenty dollars (\$20.00) a month in tips.
- 44 (15) ~~"Tip"~~ Tip. – Any money or part thereof over and above the
45 actual amount due a business for goods, food, drink, services or articles sold
46 which is paid in cash or by credit card, or is given to or left for an employee
47 by a patron or patrons of the business where the employee is employed.
- 48 (16) ~~"Wage"~~ Wage. – Wage paid to an employee means compensation for labor or
49 services rendered by an employee whether determined on a time, task, piece,
50 job, day, commission, or other basis of calculation, and the reasonable cost as
51 determined by the Commissioner of furnishing employees with board,

lodging, or other facilities. For the purposes of G.S. 95-25.6 through G.S. 95-25.13 "wage" includes sick pay, vacation pay, severance pay, commissions, bonuses, and other amounts promised when the employer has a policy or a practice of making such payments.

(16a) Willful. – The employer knew or showed reckless disregard for the issue of whether the employer's conduct was prohibited by the act.

(17) ~~"Workweek" means any Workweek. – Any period of 168 consecutive hours.~~

(18) ~~"Enterprise" means the related activities performed either through unified operations or common control by any person or persons for a common business purpose and includes all such activities whether performed in one or more establishments or by one or more corporate units but shall not include the related activities performed for such enterprise by an independent contractor or franchisee."~~

SECTION 5.1.(b) G.S. 95-25.13 reads as rewritten:

"§ 95-25.13. Notification, posting, and records.

Every employer shall:

(1) Notify its ~~employees, orally or~~ employees in writing at the time of hiring, and upon any material change, of the following information:

a. ~~The promised wages and the day wages and the basis upon which the promised wages will be calculated (for example, per hour or per piece).~~

b. ~~The method, day, and place for payment;~~ payment.

c. The full name, mailing address, and telephone number of the employer and the federal and State tax identification number of each employer who is not a natural person.

d. The employment status of the employee. Such notification or classification by the employer shall not be determinative of the employee's actual employment status.

(2) Make available to its employees, in writing or through a posted notice maintained in a place accessible to its employees, employment practices and policies with regard to promised wages;

(3) Notify employees, in writing or through a posted notice maintained in a place accessible to its employees, at least 24 hours prior to any changes in promised wages. Wages may be retroactively increased without the prior notice required by this subsection; and

(4) Furnish each employee with an itemized statement of deductions made from that employee's wages under G.S. 95-25.8 and with the information required by 13 NCAC 12 .0801(6) and 13 NCAC 12 .0801(8) through (13) for each pay period such deductions are made. ~~period."~~

SECTION 5.1.(c) G.S. 95-25.22 reads as rewritten:

"§ 95-25.22. Recovery of unpaid wages.

(a) Any employer who violates the provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), or G.S. 95-25.6 through 95-25.12 (Wage Payment) shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, their unpaid overtime compensation, or their unpaid amounts due under G.S. 95-25.6 through G.S. 95-25.12, as the case may be, plus interest at the legal rate set forth in G.S. 24-1, from the date each amount first came due.

(a1) In addition to the amounts awarded pursuant to subsection (a) of this section, the court shall award liquidated damages in an amount equal to twice the amount found to be due as provided in subsection (a) of this section, provided that if the employer shows to the satisfaction of the court that the act or omission constituting the violation was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of

1 this Article, the court may, in its discretion, award no liquidated damages or may award any
2 amount of liquidated damages not exceeding twice the amount found due as provided in
3 subsection (a) of this section.

4 (a2) Any employer who violates the provisions of G.S. 95-25.13 or any rule adopted under
5 that section shall be liable to the employee or employees affected in the amount of their actual
6 damages, including, but not limited to, lost wages and benefits plus interest.

7 (a3) In addition to the amounts awarded pursuant to subsections (a), (a1), and (a2) of this
8 section, if the court finds that the employer has intentionally violated any provision of this Article
9 or any regulation issued pursuant to this Article, the court shall award statutory damages of up to
10 five hundred dollars (\$500.00) per employee per violation. Factors to be considered in setting the
11 amount of statutory damages include the nature and persistence of the violations and the extent
12 of the employer's culpability.

13 (b) Action to recover such liability may be maintained in the General Court of Justice by
14 any one or more employees.

15 (c) Action to recover such liability may also be maintained in the General Court of Justice
16 by the Commissioner at the request of the employees affected. Any sums thus recovered by the
17 Commissioner on behalf of an employee shall be held in a special deposit account and shall be
18 paid directly to the employee or employees affected.

19 (d) The court, in any action brought under this Article ~~may,~~ shall, in addition to any
20 judgment awarded plaintiff, order costs and fees of the action and reasonable attorneys' fees to
21 be paid by the defendant. In an action brought by the Commissioner in which a default judgment
22 is entered, the clerk shall order attorneys' fees of three hundred dollars (\$300.00) to be paid by
23 the defendant.

24 The court may order costs and fees of the action and reasonable attorneys' fees to be paid by
25 the plaintiff if the court determines that the action was frivolous.

26 (e) The Commissioner is authorized to determine and supervise the payment of the
27 amounts due under this section, including interest at the legal rate set forth in G.S. 24-1, from the
28 date each amount first came due, and the agreement to accept such amounts by the employee
29 shall constitute a waiver of the employee's right to bring an action under subsection (b) of this
30 section.

31 (f) Actions under this section must be brought within two years pursuant to
32 ~~G.S. 1-53.~~ G.S. 1-53, except that an action arising out of a willful violation may be brought within
33 three years. Actions may also be brought within one year after notification to the employee of
34 final disposition by the State of a complaint for the same violation.

35 (g) Prior to initiating any action under this section, the Commissioner shall exhaust all
36 administrative remedies, including giving the employer the opportunity to be heard on the matters
37 at issue and giving the employer notice of the pending action."

38 **SECTION 5.1.(d)** G.S. 95-25.23 reads as rewritten:

39 "**§ 95-25.23. Violation of provisions on minimum wage, overtime, wage payment,**
40 **withholding of wages, notification, and youth employment; civil penalty.**

41 (a) Any employer who violates the provisions of G.S. 95-25.3 (Minimum Wage),
42 G.S. 95-25.4 (Overtime), G.S. 95-25.5 (Youth Employment)-Employment), G.S. 95-25.6 (Wage
43 Payment), or G.S. 95-25.13 (Notification), or any regulation issued thereunder, shall be subject
44 to a civil penalty not to exceed five hundred dollars (\$500.00) for the first violation and not to
45 exceed one thousand dollars (\$1,000) for each subsequent violation. In determining the amount
46 of such penalty, the appropriateness of such penalty to the size of the business of the person
47 charged and the gravity of the violation shall be considered. The determination by the
48 Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified
49 mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a
50 designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt,
51 or via hand delivery, the person charged with the violation takes exception to the determination,

1 in which event final determination of the penalty shall be made in an administrative proceeding
2 pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of
3 Chapter 150B.

4 (b) The amount of such penalty when finally determined may be recovered in the manner
5 set forth in G.S. 95-25.23B.

6 (c) The clear proceeds of civil penalties provided for in this section shall be remitted to
7 the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

8 (d) Assessment of penalties under this section shall be subject to a ~~two-year~~ three-year
9 statute of limitations commencing at the time of the occurrence of the violation."

10 **SECTION 5.1.(e)** Article 2A of Chapter 95 of the General Statutes is amended by
11 adding a new section to read:

12 **"§ 95-25.23D. Wage claims; liens; collections.**

13 (a) For the purposes of wage claims and collections under this Article, an employee is
14 entitled to a lien upon:

15 (1) All property of the employer, real or personal, located in this State; and

16 (2) All property upon which the employee has performed work at the instance of
17 the owner or of any person acting by the employer's authority or under him or
18 her as contractor or otherwise, for the full amount of the wages and any
19 statutory penalties owed.

20 (b) Both a wage claim and an action to enforce a lien under this section may be brought
21 by the employee individually or by the Commissioner or any representative of the employee on
22 behalf of the employee, including collective bargaining representatives.

23 (c) If no lien has been recorded at the time the employee files his or her complaint with
24 the Commissioner, the Commissioner shall record and provide notice of the lien on behalf of the
25 employee.

26 (d) Any number of wage claims or wage deficiencies against the same employer may be
27 joined in a single proceeding, but the court may order separate trials or hearings. If the proceeds
28 of the sale of the property subject to a lien are insufficient to pay all the claimants, whether or
29 not such claims have been joined together, the court shall order the claimants to be paid in
30 proportion to the amount due each claimant.

31 (e) An employee's lien upon personal property shall be limited to such property as can be
32 made subject to a security interest under the Commercial Code by the filing of a financing
33 statement.

34 (f) In order to enforce a lien under this section upon real property, a claim of lien must
35 be recorded with the county recorder in the county where the property is located, as follows:

36 (1) The claim shall include all of the applicable information set forth under
37 G.S. 44A-12.

38 (2) The notice of lien shall be served on the property owner in the manner
39 prescribed by G.S. 44A-11.

40 A lien under this section is perfected as soon as notice is provided as required by this
41 subsection.

42 (g) In order to enforce a lien under this section upon personal property, the
43 Commissioner, employee representative, or employee shall file the notice of the lien in the office
44 of the Secretary of State and serve a copy of the notice by personal service to the employer in the
45 same manner as a summons, or by mail. The office of the Secretary of State shall place the notice
46 of the lien in the same file as the financing statements pursuant to G.S. 25-9-310. The notice shall
47 specify the nature and amount of the claim, describe the property on which the lien is made, and
48 state that the person filing the notice claims a lien on that property.

49 (h) The lien may be filed at any time prior to the expiration of the statute of limitations
50 for a wage claim on the same wages pursuant to G.S. 95-25.22(f).

1 (i) Mistakes or errors in the claimed amount owed shall not invalidate the lien unless
2 made with the intent to defraud.

3 (j) If a lien is recorded pursuant to subsection (f) of this section and an action to recover
4 unpaid wages has been filed, then that action shall also be deemed an action to foreclose upon
5 any property subject to the recorded lien. In the judgment resulting from such an action, the court
6 may order the sale at sheriff's auction or the transfer to the plaintiff of title or possession of any
7 property subject to the lien. Whether or not the court makes such an order as part of the judgment,
8 a writ of sale may be issued for any property subject to the lien at any point after a judgment for
9 unpaid wages is issued.

10 (k) If judgment is entered in favor of the employer in an action for unpaid wages or if the
11 case is dismissed with prejudice, the lien shall be extinguished upon expiration of the applicable
12 appeals period if no appeal is filed. If an appeal is filed, the lien shall continue in force until all
13 issues on appeal have been decided.

14 (l) If an action to recover the wages is not brought within one year of the filing of the
15 lien, the lien created by this section shall be extinguished.

16 (m) A lien recorded pursuant to subsection (f) of this section takes precedence over all
17 other debts, judgments, decrees, liens, or mortgages against the employer, regardless as to
18 whether these debts, judgments, decrees, liens, or mortgages originate before or after the wage
19 lien, and regardless of whether these debts, judgments, decrees, liens, or mortgages were
20 perfected prior to the wage lien. An employee's lien is effective against the employer, the estate
21 of the employer, or a subsequent bona fide purchaser of the property subject to the employee's
22 lien.

23 (n) The employee, the Commissioner, or the employee's representative, as assignee of the
24 employee, is entitled to court costs and reasonable attorneys' fees for filing a successful action to
25 foreclose a lien pursuant to this section."

26 **SECTION 5.1.(f)** This section is effective when it becomes law and applies to
27 employers and employees on or after that date.

29 "BAN THE BOX"

30 **SECTION 6.1.(a)** Chapter 126 of the General Statutes is amended by adding a new
31 Article to read:

32 "Article 17.

33 "Fair Assessment of Persons with Criminal Histories.

34 "**§ 126-100. Definitions.**

35 The following definitions apply in this Article:

36 (1) Criminal history. – A State or federal history of conviction of a crime, whether
37 a misdemeanor or felony, that bears upon an applicant's fitness for public
38 employment. The term does not include a record of arrest not resulting in
39 conviction.

40 (2) Hiring authority. – The agent responsible by law for the hiring of persons for
41 public employment.

42 (3) Public employment. – Any job, work for pay, or employment, including
43 temporary or seasonal work, where the employer is the State of North Carolina
44 or any local political subdivision of the State.

45 "**§ 126-101. Consideration of applicant criminal history.**

46 A hiring authority may not inquire into or consider the criminal history of an applicant for
47 public employment, or include any such inquiry on any initial employment application form,
48 until the hiring authority has made a conditional offer of employment to the applicant. This
49 Article is not applicable to positions for which a hiring authority is otherwise required by law to
50 consider the criminal record; however, nothing in this Article shall be construed to preclude any
51 hiring authority in its discretion from adopting the provisions of this Article.

"§ 126-102. Criteria for disqualification.

(a) Except as otherwise required by law, no person shall be disqualified from public employment solely or in part because of a prior conviction, unless the conviction is determined to be substantially related to the qualifications, functions, or duties of the position after consideration of all of the following factors:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct and the duties of the position.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
- (7) The subsequent commission of a crime by the person.

(b) A record of arrest not resulting in conviction may not be the basis for disqualification from public employment.

"§ 126-103. Opportunity to provide evidence of inaccuracy.

The hiring authority must inform the individual of the potential adverse employment decision based on the background check report prior to a final decision and must provide an opportunity to demonstrate that he or she was not correctly identified in the background check report or that the report is otherwise inaccurate.

"§ 126-104. Data collection.

The Office of State Personnel shall do the following:

- (1) Record and log the positions that are statutorily required to conduct background checks prior to a conditional offer of employment.
- (2) Conduct quarterly reviews to determine compliance with this Article, and make a report on all such reviews to the General Assembly annually.
- (3) Collect, and make available to the public, data on:
 - a. The number of applicants for public employment with criminal histories given conditional offers of employment.
 - b. The number of applicants for public employment with criminal histories who are subsequently employed.
 - c. The retention rate of public employees with criminal histories.

"§ 126-105. Applicability.

The provisions of this Article apply to all applicants for public employment."

SECTION 6.1.(b) G.S. 126-5 is amended by adding a new subsection to read:

"(c15) Notwithstanding any other provision of law, the provisions of Article 17 of this Chapter apply as to applicants for employment with the State of North Carolina or any local political subdivision of the State."

SECTION 6.1.(c) This section is effective when it becomes law and applies to applications for employment made on or after that date.

REPEAL OF PUBLIC EMPLOYEE COLLECTIVE BARGAINING RESTRICTION

SECTION 7.1. G.S. 95-98 reads as rewritten:

~~**"§ 95-98. Contracts between units of government and labor unions, trade unions or labor organizations concerning public employees declared to be illegal.**~~

~~Any agreement, or contract, between the governing authority of any city, town, county, or other municipality, or between any agency, unit, or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union, or labor organization, as bargaining agent for any public employees of such city, town, county or other municipality, or agency or instrumentality of government, is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect."~~

EARNED INCOME TAX CREDIT

SECTION 8.1.(a) G.S. 105-151.31 is reenacted as it existed immediately before its expiration and reads as rewritten:

"§ 105-151.31. Earned income tax credit.

(a) Credit. – An individual who claims for the taxable year an earned income tax credit under section 32 of the Code is allowed a credit against the tax imposed by this Part equal to a ~~percentage~~ five percent (5%) of the amount of credit the individual qualified for under section 32 of the Code. A nonresident or part-year resident who claims the credit allowed by this section must reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. ~~The percentage is as follows:~~

(1) ~~For taxable year 2013, four and one half percent (4.5%).~~

(2) ~~For all other taxable years, five percent (5%).~~

(b) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, the Secretary must refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Part. Section 3507 of the Code, Advance Payment of Earned Income Credit, does not apply to the credit allowed by this section. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(c) Sunset. – This section is repealed effective for taxable years beginning on or after January 1, ~~2014, 2023.~~"

SECTION 8.1.(b) This section is effective for taxable years beginning on or after January 1, 2020.

TAX CREDIT FOR CHILD CARE AND CERTAIN EMPLOYMENT-RELATED EXPENSES

SECTION 9.1.(a) G.S. 105-151.11 is reenacted as it existed immediately before its expiration and reads as rewritten:

"§ 105-151.11. Credit for child care and certain employment-related expenses.

(a) Credit. – A person who is allowed a credit against federal income tax for a percentage of employment-related expenses under section 21 of the Code shall be allowed as a credit against the tax imposed by this Part an amount equal to the applicable percentage of the employment-related expenses as defined in section 21(b)(2) of the Code. In order to claim the credit allowed by this section, the taxpayer must provide with the tax return the information required by the Secretary.

(a1) Applicable Percentage. – For employment-related expenses that are incurred only with respect to one or more dependents who are seven years old or older and are not physically or mentally incapable of caring for themselves, the applicable percentage is the appropriate percentage in the column labeled "Percentage A" in the table below, based on the taxpayer's adjusted gross income determined under the Code. For employment-related expenses with respect to any other qualifying individual, the applicable percentage is the appropriate percentage in the column labeled "Percentage B" in the table below, based on the taxpayer's adjusted gross income determined under the Code.

Filing Status	Adjusted Gross Income	Percentage A	Percentage B
Head of Household	Up to \$20,000	9%	13%
	Over \$20,000 up to \$32,000	8%	11.5%

1				
2		Over \$32,000	7%	10%
3				
4	Surviving			
5	Spouse or			
6	Joint Return	Up to \$25,000	9%	13%
7				
8		Over \$25,000		
9		up to \$40,000	8%	11.5%
10				
11		Over \$40,000	7%	10%
12				
13	Single	Up to \$15,000	9%	13%
14				
15		Over \$15,000		
16		up to \$24,000	8%	11.5%
17				
18		Over \$24,000	7%	10%
19				
20	Married			
21	Filing			
22	Separately	Up to \$12,500	9%	13%
23				
24		Over \$12,500		
25		up to \$20,000	8%	11.5%
26				
27		Over \$20,000	7%	10%

28 (b) Employment Related Expenses. – The amount of employment-related expenses for
 29 which a credit may be claimed may not exceed three thousand dollars (\$3,000) if the taxpayer's
 30 household includes one qualifying individual, as defined in section 21(b)(1) of the Code, and
 31 may not exceed six thousand dollars (\$6,000) if the taxpayer's household includes more than one
 32 qualifying individual. The amount of employment-related expenses for which a credit may be
 33 claimed is reduced by the amount of employer-provided dependent care assistance excluded from
 34 gross income.

35 (c) Limitations. – A nonresident or part-year resident who claims the credit allowed by
 36 this section shall reduce the amount of the credit by multiplying it by the fraction calculated under
 37 ~~G.S. 105-134.5(b) or (c)~~, G.S. 105-153.4(b) or (c), as appropriate. No credit shall be allowed
 38 under this section for amounts deducted in calculating North Carolina taxable income. The credit
 39 allowed by this section may not exceed the amount of tax imposed by this Part for the taxable
 40 year reduced by the sum of all credits allowable, except for payments of tax made by or on behalf
 41 of the taxpayer."

42 **SECTION 9.1.(b)** This section is effective for taxable years beginning on or after
 43 January 1, 2019.

44
 45 **EFFECTIVE DATE**

46 **SECTION 10.1.** Except as otherwise provided, this act is effective when it becomes
 47 law.