

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 871

Short Title: Wage & Hour Act Amendments.

(Public)

Sponsors: Representatives Berry; Adams, Alexander, Arnold, Baddour, Buchanan, Cansler, Easterling, Goodwin, Hensley, Howard, Insko, Jeffus, Luebke, McCrary, Moore, Mosley, Owens, Ramsey, Saunders, Smith, and G. Wilson.

Referred to: Commerce.

April 7, 1997

A BILL TO BE ENTITLED

1 AN ACT AMENDING THE WAGE AND HOUR ACT TO RAISE THE STATE
2 MINIMUM WAGE, TO PERMIT EMPLOYERS SUBJECT TO THE STATE
3 MINIMUM WAGE TO TAKE THE SAME TIP CREDIT AS FEDERALLY
4 COVERED EMPLOYERS, AND TO EXEMPT COMPUTER PROFESSIONALS
5 FROM MINIMUM WAGE AND OVERTIME PROVISIONS.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 95-25.3 reads as rewritten:

9 "**§ 95-25.3. Minimum wage.**

10 (a) Every employer shall pay to each employee who in any workweek
11 performs any work, wages of at least ~~three dollars and eighty cents (\$3.80) per hour~~
12 ~~effective January 1, 1992, and four dollars and twenty five cents (\$4.25) per hour~~
13 ~~effective January 1, 1993, the minimum wage set forth in paragraph 1 of section 6(a) of~~
14 the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from time to
15 time, except as otherwise provided in this section.

16 (b) In order to prevent curtailment of opportunities for employment, the wage rate
17 for full-time students, learners, apprentices, and messengers, as defined under the Fair

1 Labor Standards Act, shall be ninety percent (90%) of the rate in effect under subsection
2 (a) above, rounded to the lowest nickel.

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

8 (d) The Commissioner, in order to prevent curtailment of opportunities for
9 employment of the economically disadvantaged and the unemployed, may, by regulation,
10 establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable
11 wage rate in effect under subsection (a) which shall apply to all persons (i) who have
12 been unemployed for at least 15 weeks and who are economically disadvantaged, or (ii)
13 who are, or whose families are, receiving ~~aid to families with dependent children provided~~
14 ~~under Part A of Title IV of the Social Security Act, Work First Family Assistance, or who are~~
15 receiving supplemental security benefits under Title XVI of the Social Security Act.

16 Pursuant to regulations issued by the Commissioner, certificates establishing
17 eligibility for such subminimum wage shall be issued by the Employment Security
18 Commission.

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

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

27 (f) Tips earned by a tipped employee may be counted as wages only up to ~~fifty~~
28 ~~percent (50%) of the applicable minimum wage for each hour worked~~ the amount permitted in
29 section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m), if the tipped employee is
30 notified in advance, is permitted to retain all tips and the employer maintains accurate
31 and complete records of tips received by each employee as such tips are certified by the
32 employee monthly or for each pay period. Even if the employee refuses to certify tips
33 accurately, tips may still be counted as wages when the employer complies with the other
34 requirements of this section and can demonstrate by monitoring tips that the employee
35 regularly receives tips in the amount for which the credit is taken. Tip pooling shall also
36 be permissible among employees who customarily and regularly receive tips; however,
37 no employee's tips may be reduced by more than fifteen percent (15%) under a tip
38 pooling arrangement.

39 (g) In order to prevent curtailment of opportunities for employment, an employer
40 may, in lieu of the minimum wage prescribed by this section, pay a training wage to
41 eligible persons in accordance with G.S. 95-25.3A."

42 Section 2. G.S. 95-25.14(b) reads as rewritten:

1 "(b) The provisions of G.S. 95-25.3 (Minimum Wage) and G.S. 95-25.4
2 (Overtime), and the provisions of G.S. 95-25.15(b) (Record Keeping) as they relate to
3 these exemptions, do not apply to:

- 4 (1) Any employee of a boys' or girls' summer camp or of a seasonal
5 religious or nonprofit educational conference center;
- 6 (2) Any person employed in the catching, processing or first sale of
7 seafood, as defined under the Fair Labor Standards Act;
- 8 (3) The spouse, child, or parent of the employer or any person qualifying as
9 a dependent of the employer under the income tax laws of North
10 Carolina;
- 11 (4) Any person employed in a bona fide executive, administrative,
12 professional or outside sales capacity, as defined under the Fair Labor
13 Standards Act;
- 14 (5) Repealed by Session Laws 1989, c. 687, s. 2.
- 15 (6) Any person while participating in a ridesharing arrangement as defined
16 in ~~G.S. 136-44.21~~. G.S. 136-44.21;
- 17 (7) Any person who is employed as a computer systems analyst, computer
18 programmer, software engineer, or other similarly skilled worker, as
19 defined in the Fair Labor Standards Act."

20 Section 3. This act becomes effective August 1, 1997.