

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 891

Short Title: Up Minimum Wages/No Subminimum or Exemptions. (Public)

Sponsors: Representatives Hawkins, Everitt, and K. Smith (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

May 5, 2021

1 A BILL TO BE ENTITLED
2 AN ACT INCREASING THE REGULAR MINIMUM WAGE TO FIFTEEN DOLLARS PER
3 HOUR BY 2023, INCREASING AND PHASING OUT THE TIPPED EMPLOYEE
4 MINIMUM WAGE THROUGH 2025, PROVIDING FOR INFLATIONARY
5 ADJUSTMENTS TO THE MINIMUM WAGE BASED UPON INCREASES IN THE
6 CONSUMER PRICE INDEX, REPEALING THE SUBMINIMUM WAGE FOR
7 SPECIFIED WORKERS, AND REPEALING EXEMPTIONS FROM THE MINIMUM
8 WAGE FOR AGRICULTURAL AND DOMESTIC WORKERS.

9 The General Assembly of North Carolina enacts:

10
11 **INCREASE STATE MINIMUM WAGE/INFLATION ADJUSTMENT/REPEAL**
12 **SUBMINIMUM WAGE PROVISIONS**

13 **SECTION 1.** G.S. 95-25.3 reads as rewritten:

14 **"§ 95-25.3. Minimum wage.**

15 (a) Every employer shall pay to each employee who in any workweek performs any work,
16 wages of at least six dollars and fifteen cents (\$6.15) per hour or the minimum wage set forth in
17 paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage
18 may change from time to time, whichever is higher, except as otherwise provided in this
19 section: the following amounts:

- 20 (1) Effective January 1, 2022, ten dollars and thirty-five cents (\$10.35) per hour
21 or the minimum wage set forth in paragraph 1 of section 6(a) of the Fair Labor
22 Standards Act, 29 U.S.C. § 206(a)(1), as that wage may change from time to
23 time, whichever is higher, except as otherwise provided in this section.
24 (2) Effective January 1, 2023, fifteen dollars (\$15.00) per hour or the minimum
25 wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act,
26 29 U.S.C. § 206(a)(1), as that wage may change from time to time, whichever
27 is higher, except as otherwise provided in this section.
28 (3) Beginning September 30, 2023, and on each September 30 thereafter, the
29 Commissioner of Labor shall calculate an adjusted minimum wage rate using
30 the Consumer Price Index (All 29 Urban Consumers, U.S. City Average for
31 All Items), CPI-I, or its successor index, as calculated by the U.S. Department
32 of Labor for the 12-month period preceding the previous September 1. Each
33 adjusted minimum wage rate calculated shall be published on September 30
34 and take effect on the following January 1.



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

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

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

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

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

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

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

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

36 37 **INCREASE TIPPED EMPLOYEE MINIMUM WAGE**

38 **SECTION 2.(a)** ~~Effective January 1, 2022, until December 31, 2022, G.S. 95-25.3(f)~~
39 ~~reads as rewritten:~~

40 "~~(f) Tips earned by a tipped employee may be counted as wages only up to the amount~~
41 ~~permitted in section 3(m) of the Fair Labor Standards Act, 29 U.S.C. 203(m), if the tipped~~
42 ~~employee is notified in advance, is permitted to retain all tips and the employer maintains~~
43 ~~accurate and complete records of tips received by each employee as such tips are certified by the~~
44 ~~employee monthly or for each pay period. Even if the employee refuses to certify tips accurately,~~
45 ~~tips may still be counted as wages when the employer complies with the other requirements of~~
46 ~~this section and can demonstrate by monitoring tips that the employee regularly receives tips in~~
47 ~~the amount for which the credit is taken. of six dollars and fifty cents (\$6.50) per hour. Tip~~
48 ~~pooling shall also be is permissible among employees who customarily and regularly receive~~
49 ~~tips; however, no employee's tips may be reduced by more than fifteen percent (15%) under a tip~~
50 ~~pooling arrangement."~~

1 **SECTION 2.(b)** Effective January 1, 2023, until December 31, 2023, G.S. 95-25.3(f)
2 reads as rewritten:

3 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount of
4 ~~six dollars and fifty cents (\$6.50)~~ nine dollars and fifty cents (\$9.50) per hour per hour. Tip
5 pooling is permissible among employees who customarily and regularly receive tips; however,
6 no employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling
7 arrangement."

8 **SECTION 2.(c)** Effective January 1, 2024, until December 31, 2024, G.S. 95-25.3(f)
9 reads as rewritten:

10 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount of
11 ~~nine dollars and fifty cents (\$9.50)~~ twelve dollars and fifty cents (\$12.50) per hour. Tip pooling
12 is permissible among employees who customarily and regularly receive tips; however, no
13 employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling
14 arrangement."

15 **SECTION 2.(d)** Effective January 1, 2025, G.S. 95-25.3(f) reads as rewritten:

16 "(f) Tips earned by a tipped employee may be counted as wages only up to the amount of
17 ~~twelve dollars and fifty cents (\$12.50)~~ fifteen dollars (\$15.00) per hour. Tip pooling is
18 permissible among employees who customarily and regularly receive tips; however, no
19 employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling
20 arrangement."

21 **SECTION 2.(e)** Effective January 1, 2026, G.S. 95-25.3(f) reads as rewritten:

22 "~~(f) Tips earned by a tipped employee may be counted as wages only up to the amount of~~
23 ~~fifteen dollars (\$15.00) per hour. Beginning January 1, 2026, the minimum wage rate of a tipped~~
24 ~~employee is the amount set under subdivision (3) of subsection (a) of this section, and tips shall~~
25 ~~not be counted as wages. Tip pooling is permissible among employees who customarily and~~
26 ~~regularly receive tips; however, no tips. No employee's tips_wages may be reduced by more than~~
27 ~~fifteen percent (15%) under a tip pooling arrangement."~~

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

30 **SECTION 3.** G.S. 95-25.14 reads as rewritten:

31 **"§ 95-25.14. Exemptions.**

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

- 35 (1) Any person employed in an enterprise engaged in commerce or in the
36 production of goods for commerce as defined in the Fair Labor Standards Act:
 - 37 a. Except as otherwise specifically provided in
38 ~~G.S. 95-25.5;G.S. 95-25.5.~~
 - 39 b. Notwithstanding the above, any employee other than a learner,
40 apprentice, student, or handicapped worker as defined in the Fair
41 Labor Standards Act who is not otherwise exempt under the other
42 provisions of this section, and for whom the applicable minimum wage
43 under the Fair Labor Standards Act is less than the minimum wage
44 provided in G.S. 95-25.3, is not exempt from the provisions of
45 G.S. 95-25.3 or ~~G.S. 95-25.4;G.S. 95-25.4.~~
 - 46 c. Notwithstanding the above, any employer or employee exempt from
47 the minimum wage, overtime, or child labor requirements of the Fair
48 Labor Standards Act for whom there is no comparable exemption
49 under this Article shall not be exempt under this subsection except that
50 where an exemption in the Fair Labor Standards Act provides a
51 method of computing overtime which is an alternative to the method

1 required in 29 U.S.C.S. § 207(a), the employer or employee subject to
 2 that alternate method shall be exempt from the provisions of
 3 G.S. 95-25.4(a); provided that, persons not employed at an enterprise
 4 described in subdivision (1) of this subsection shall also be subject to
 5 the same alternative methods of overtime calculation in the
 6 circumstances described in the Fair Labor Standards Act exemptions
 7 providing those alternative ~~methods;~~methods.

8 (2) ~~Any person employed in agriculture, as defined under the Fair Labor~~
 9 ~~Standards Act;~~

10 (3) ~~Any person employed as a domestic, including baby sitters and companions,~~
 11 ~~as defined under the Fair Labor Standards Act;~~

12 (4) Any person employed as a page in the North Carolina General Assembly or
 13 in the Governor's ~~Office;~~Office.

14 (5) Bona fide volunteers in medical, educational, religious, or nonprofit
 15 organizations where an employer-employee relationship does not ~~exist;~~exist.

16 (6) Persons confined in and working for any penal, correctional or mental
 17 institution of the State or local ~~government;~~government.

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

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

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

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

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

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

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

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

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

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

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

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

1 (2) Hours worked as a bona fide volunteer rescue and emergency medical services
 2 personnel in an incorporated, nonprofit volunteer or community fire
 3 department, or an incorporated, nonprofit rescue squad.
 4 Hours worked in accordance with this subsection shall not be considered hours worked for
 5 purposes of G.S. 95-25.3 or G.S. 95-25.4.

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

- 8 (1) Drivers, drivers' helpers, loaders and mechanics, as defined under the Fair
 9 Labor Standards ~~Act~~; Act.
- 10 (2) Taxicab ~~drivers~~; drivers.
- 11 (3) Seamen, employees of railroads, and employees of air carriers, as defined
 12 under the Fair Labor Standards ~~Act~~; Act.
- 13 (4) Salespersons, mechanics and partsmen employed by automotive, truck, and
 14 farm implement dealers, as defined under the Fair Labor Standards ~~Act~~; Act.
- 15 (5) Salespersons employed by trailer, boat, and aircraft dealers, as defined under
 16 the Fair Labor Standards ~~Act~~; Act.
- 17 (6) Live-in child care workers or other live-in employees in homes for dependent
 18 ~~children~~; children.
- 19 (7) Radio and television announcers, news editors, and chief engineers, as defined
 20 under the Fair Labor Standards Act.
- 21 (8) Any employee of a seasonal amusement or recreational establishment.

22 (d) The provisions of this Article do not apply to the State of North Carolina, any city,
 23 town, county, or municipality, or any State or local agency or instrumentality of government,
 24 except for the following provisions, which do apply:

- 25 (1) The minimum wage provisions of ~~G.S. 95-25.3~~; G.S. 95-25.3.
- 26 (2) The definition provisions of G.S. 95-25.2 necessary to interpret the applicable
 27 ~~provisions~~; provisions.
- 28 (3) The exemptions of subsections (a) and (b) of this ~~section~~; section.
- 29 (4) The complainant protection provisions of G.S. 95-25.20.

30 (e) Employment in a seasonal recreation program by the State of North Carolina, any
 31 city, town, county, or municipality, or any State or local agency or instrumentality of government,
 32 is exempt from all provisions of this Article, including G.S. 95-25.3 (Minimum Wage)."
 33

34 **EFFECTIVE DATE**

35 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
 36 law.