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SENATE DRS35123-LR-49C (02/10)

Short Title: Up Minimum Wage With COLA/Const. Amendment. (Public)

Sponsors: Senators Bryant, Waddell, and Smith-Ingram (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT AMENDING THE NORTH CAROLINA CONSTITUTION TO SET THE STATE  
3 MINIMUM WAGE.

4 The General Assembly of North Carolina enacts:

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

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

10 **"Sec. 38. North Carolina Minimum Wage.**

11 (1) All working North Carolinians are entitled to be paid a minimum wage that is  
12 sufficient to provide a decent and healthy life for them and their families, that protects their  
13 employers from unfair low-wage competition, and that does not force them to rely on  
14 taxpayer-funded public services in order to avoid economic hardship.

15 (2) The terms "employer", "employee", and "wage" as used in this section shall have  
16 the meanings established under the federal Fair Labor Standards Act (FLSA) and its  
17 implementing regulations.

18 (3) Employers shall pay employees wages no less than the minimum wage for all hours  
19 worked in North Carolina. Six months after enactment, the State minimum wage shall be  
20 established at an hourly rate of eight dollars and eighty cents (\$8.80). On September 30th of  
21 that year and on each following September 30th, the North Carolina Department of Labor shall  
22 calculate an adjusted minimum wage rate reflecting any increase in the consumer price index  
23 (all urban consumers, U.S. city average for all items), CPI-U, or its successor index, as  
24 calculated by the U.S. Department of Labor. Each adjusted minimum wage rate calculated shall  
25 be published and take effect on the following January 1st. For tipped employees meeting  
26 eligibility requirements for the tip credit under the FLSA, employers may credit toward  
27 satisfaction of the minimum wage tips up to the amount of the allowable FLSA tip credit in  
28 2003.

29 (4) It shall be unlawful for an employer or any other party to discriminate in any  
30 manner or take adverse action against any person in retaliation for exercising rights protected  
31 under this amendment. Rights protected under this amendment include, but are not limited to,  
32 the right to file a complaint or inform any person about any party's alleged noncompliance with  
33 this amendment, and the right to inform any person of his or her potential rights under this  
34 amendment and to assist him or her in asserting such rights.

35 (5) Persons aggrieved by a violation of this amendment may bring a civil action in a  
36 court of competent jurisdiction against an employer or person violating this amendment and,



1 upon prevailing, shall recover the full amount of any back wages unlawfully withheld plus the  
2 same amount as liquidated damages, and shall be awarded reasonable attorney's fees and costs.  
3 In addition, they shall be entitled to such legal or equitable relief as may be appropriate to  
4 remedy the violation including, without limitation, reinstatement in employment and/or  
5 injunctive relief. Any employer or other person found liable for willfully violating this  
6 amendment shall also be subject to a fine payable to the State in the amount of one thousand  
7 dollars (\$1,000) for each violation. The Attorney General or other official designated by the  
8 General Assembly may also bring a civil action to enforce this amendment. Actions to enforce  
9 this amendment shall be subject to a statute of limitations of four years or, in the case of willful  
10 violations, five years. Such actions may be brought as a class action pursuant to the North  
11 Carolina Rules of Civil Procedure.

12 (6) Implementing legislation is not required in order to enforce this amendment. The  
13 General Assembly may by statute establish additional remedies or fines for violations of this  
14 amendment, raise the applicable minimum wage rate, reduce the tip credit, or extend coverage  
15 of the Minimum Wage to employers or employees not covered by this amendment. The  
16 General Assembly may by statute or the North Carolina Department of Labor may by  
17 regulation adopt any measures appropriate for the implementation of this amendment. This  
18 amendment provides for payment of a minimum wage and shall not be construed to preempt or  
19 otherwise limit the authority of the State legislature or any other public body to adopt or  
20 enforce any other law, regulation, requirement, policy, or standard that provides for payment of  
21 higher or supplemental wages or benefits, or that extends such protections to employers or  
22 employees not covered by this amendment. It is intended that case law, administrative  
23 interpretations, and other guiding standards developed under the federal FLSA shall guide the  
24 construction of this amendment and any implementing statutes or regulations.

25 (7) If any part of this amendment, or the application of this amendment to any person or  
26 circumstance, is held invalid, the remainder of this amendment, including the application of  
27 such part to other persons or circumstances, shall not be affected by such a holding and shall  
28 continue in full force and effect. To this end, the parts of this amendment are severable."

29 **SECTION 1.2.** The amendment set out in Section 1.1 of this act shall be submitted  
30 to the qualified voters of the State at a statewide general election to be held on November 8,  
31 2016, which election shall be conducted under the laws then governing elections in the State.  
32 Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General  
33 Statutes. The question to be used in the voting systems and ballots shall be:

34 " [ ] FOR [ ] AGAINST

35 Constitutional amendment that employers shall pay employees wages no less than  
36 the minimum wage for all hours worked in North Carolina. Six months after enactment, the  
37 minimum wage shall be established at an hourly rate of eight dollars and eighty cents (\$8.80)  
38 and shall be increased on January 1 of successive years by the increase in cost of living."

39 **SECTION 1.3.** If a majority of votes cast on the question are in favor of the  
40 amendment set out in Section 1.1 of this act, the State Board of Elections shall certify the  
41 amendment to the Secretary of State. The Secretary of State shall enroll the amendment so  
42 certified among the permanent records of that office. The amendment becomes effective  
43 December 1, 2016.

44 **SECTION 1.4.** The amendment set out in Section 1.1 of this act is effective upon  
45 certification.

## 47 PART II. CONFORMING STATUTORY CHANGE

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

50 "§ 95-25.3. **Minimum wage.**

1 (a) ~~Every Subject to the provisions of subsection (a1) of this section, every~~ employer  
2 shall pay to each employee who in any workweek performs any work, wages of at least ~~six~~  
3 ~~dollars and fifteen cents (\$6.15)~~ eight dollars and eighty cents (\$8.80) per hour or the minimum  
4 wage set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C.  
5 206(a)(1), as that wage may change from time to time, whichever is higher, except as otherwise  
6 provided in this section.

7 (a1) The minimum wage required by subsection (a) of this section shall be increased on  
8 January 1, 2017, and on January 1 of successive years by the increase in the cost of living. The  
9 increase in the cost of living shall be measured by the percentage increase of the consumer  
10 price index (all urban consumers, U.S. city average for all items), CPI-U, or its successor index,  
11 as calculated by the U.S. Department of Labor for the 12 months preceding the previous  
12 September 1. The Commissioner shall calculate the indexed minimum wage rate. The indexed  
13 minimum wage rate shall be calculated to the nearest cent (\$0.01).

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

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

23 (d) The Commissioner, in order to prevent curtailment of opportunities for employment  
24 of the economically disadvantaged and the unemployed, may, by regulation, establish a wage  
25 rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect  
26 under subsection (a) which shall apply to all persons (i) who have been unemployed for at least  
27 15 weeks and who are economically disadvantaged, or (ii) who are, or whose families are,  
28 receiving Work First Family Assistance or who are receiving supplemental security benefits  
29 under Title XVI of the Social Security Act.

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

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

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

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  
44 the employee monthly or for each pay period. Even if the employee refuses to certify tips  
45 accurately, tips may still be counted as wages when the employer complies with the other  
46 requirements of this section and can demonstrate by monitoring tips that the employee  
47 regularly receives tips in the amount for which the credit is taken. Tip pooling shall also be  
48 permissible among employees who customarily and regularly receive tips; however, no  
49 employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling  
50 arrangement.

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

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**PART III. EFFECTIVE DATE**

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