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SENATE BILL DRS55102-LRy-140A

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

Sponsors: Senators Waddell, Smith, and Lowe (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:

5
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 the
16 meanings established under the federal Fair Labor Standards Act (FLSA) and its implementing
17 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 30 of that
21 year and on each following September 30, the North Carolina Department of Labor shall
22 calculate an adjusted minimum wage rate reflecting any increase in the consumer price index (all
23 urban consumers, U.S. city average for all items), CPI-U, or its successor index, as calculated by
24 the U.S. Department of Labor. Each adjusted minimum wage rate calculated shall be published
25 and take effect on the following January 1. For tipped employees meeting eligibility requirements
26 for the tip credit under the FLSA, employers may credit toward satisfaction of the minimum wage
27 tips up to the amount of the allowable FLSA tip credit in 2003.

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

34 (5) Persons aggrieved by a violation of this amendment may bring a civil action in a court
35 of competent jurisdiction against an employer or person violating this amendment and, upon
36 prevailing, shall recover the full amount of any back wages unlawfully withheld plus the same



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

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

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

27 **SECTION 1.2.** The amendment set out in Section 1.1 of this act shall be submitted
 28 to the qualified voters of the State at a statewide general election to be held on November 6, 2018,
 29 which election shall be conducted under the laws then governing elections in the State. Ballots,
 30 voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The
 31 question to be used in the voting systems and ballots shall be:

32 "[] FOR [] AGAINST

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

37 **SECTION 1.3.** If a majority of votes cast on the question are in favor of the
 38 amendment set out in Section 1.1 of this act, the State Board of Elections shall certify the
 39 amendment to the Secretary of State. The Secretary of State shall enroll the amendment so
 40 certified among the permanent records of that office. The amendment becomes effective
 41 December 1, 2018.

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

44 **PART II. CONFORMING STATUTORY CHANGE**

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

47 "**§ 95-25.3. Minimum wage.**

48 (a) ~~Every~~ Subject to the provisions of subsection (a1) of this section, every employer
 49 shall pay to each employee who in any workweek performs any work, wages of at least ~~six dollars~~
 50 ~~and fifteen cents (\$6.15)~~ eight dollars and eighty cents (\$8.80) per hour or the minimum wage
 51

1 set forth in paragraph 1 of section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as
2 that wage may change from time to time, whichever is higher, except as otherwise provided in
3 this section.

4 (a1) The minimum wage required by subsection (a) of this section shall be increased on
5 January 1, 2019, and on January 1 of successive years by the increase in the cost of living. The
6 increase in the cost of living shall be measured by the percentage increase of the consumer price
7 index (all urban consumers, U.S. city average for all items), CPI-U, or its successor index, as
8 calculated by the U.S. Department of Labor for the 12 months preceding the previous September
9 1. The Commissioner shall calculate the indexed minimum wage rate. The indexed minimum
10 wage rate shall be calculated to the nearest cent (\$0.01).

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

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

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

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

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

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

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

45 (g) Repealed by Session Laws 2006-259, s. 18, effective August 23, 2006."
46

47 PART III. EFFECTIVE DATE

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