

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

H.B 1046  
May 5, 2016  
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30467-LR-160 (04/27)

Short Title: Constitutional Amendment/Up Minimum Wage. (Public)

Sponsors: Representative Cunningham.

Referred to:

A BILL TO BE ENTITLED

AN ACT AMENDING THE NORTH CAROLINA CONSTITUTION TO SET THE STATE  
MINIMUM WAGE AND PROVIDE FOR AUTOMATIC COST-OF-LIVING  
ADJUSTMENTS.

The General Assembly of North Carolina enacts:

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

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

**"Sec. 38. Minimum Wage.**

(1) All working North Carolinians are entitled to be paid a minimum wage that is  
sufficient to provide a decent and healthy life for them and their families, that protects their  
employers from unfair low-wage competition, and that does not force them to rely on  
taxpayer-funded public services in order to avoid economic hardship. Employers shall pay  
employees wages no less than the minimum wage for all hours worked in North Carolina.

(2) Effective January 1, 2017, the State minimum wage shall be established at an hourly  
rate of nine dollars (\$9.00). On September 30 of that year and on each following September 30,  
the Commissioner of Labor shall calculate an adjusted minimum wage rate using the consumer  
price index (all urban consumers, U.S. city average for all items), CPI-U, or its successor index, as  
calculated by the U.S. Department of Labor for the 12-month period preceding the previous  
September 1. Each adjusted minimum wage rate calculated shall be published on September 30  
and take effect on the following January 1.

(3) It shall be unlawful for an employer or any other party to discriminate in any manner or  
take adverse action against any person in retaliation for exercising rights protected under this  
amendment. Rights protected under this amendment include, but are not limited to, the right to file  
a complaint or inform any person about any party's alleged noncompliance with this amendment  
and the right to inform any person of his or her potential rights under this amendment and to assist  
him or her in asserting such rights. Any person aggrieved by a violation of this amendment may  
bring a civil action in a court of competent jurisdiction against an employer or person violating  
this amendment and, upon prevailing, shall recover the full amount of any back wages unlawfully  
withheld, plus the same amount as liquidated damages, and shall be awarded reasonable attorneys'  
fees and costs. In addition, they shall be entitled to such legal or equitable relief as may be  
appropriate to remedy the violation including, without limitation, reinstatement in employment  
and/or injunctive relief. Any employer or other person found liable for willfully violating this  
amendment shall also be subject to a fine payable to the State in the amount of one thousand



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1 dollars (\$1,000) for each violation. The Attorney General or other official designated by the  
2 General Assembly may also bring a civil action to enforce this amendment. Actions to enforce this  
3 amendment shall be subject to a statute of limitations of four years or, in the case of willful  
4 violations, five years. Such actions may be brought as a class action pursuant to the North  
5 Carolina Rules of Civil Procedure. Implementing legislation is not required in order to enforce this  
6 section. The General Assembly may by statute or the North Carolina Department of Labor may by  
7 rule adopt any measures appropriate for the implementation of this section. The General Assembly  
8 may by statute establish additional remedies or fines for violations of this section, raise the  
9 applicable minimum wage rate, reduce the tip credit, or extend coverage of the minimum wage to  
10 employers or employees not covered by this section.

11 (4) This section provides for payment of a minimum wage and shall not be construed to  
12 preempt or otherwise limit the authority of the General Assembly or any other public body to  
13 adopt or enforce any other law, rule, regulation, requirement, policy, or standard that provides for  
14 payment of higher or supplemental wages or benefits, or that extends such protections to  
15 employers or employees not covered by this section.

16 (5) It is intended that case law, administrative interpretations, and other guiding standards  
17 developed under the federal Fair Labor Standards Act (FLSA) shall guide the construction of this  
18 section and any implementing statutes or regulations.

19 (6) The terms "employer," "employee," and "wage" as used in this section shall have the  
20 meanings established under the federal Fair Labor Standards Act (FLSA) and its implementing  
21 regulations."

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

27 "[ ] FOR [ ] AGAINST

28 Constitutional amendment that employers shall pay employees wages no less than the  
29 minimum wage for all hours worked in North Carolina. Six months after enactment, the minimum  
30 wage shall be established at an hourly rate of nine dollars (\$9.00) and shall be increased on  
31 January 1 of successive years by the increase in cost of living."

32 **SECTION 1.3.** If a majority of votes cast on the question are in favor of the  
33 amendment set out in Section 1.1 of this act, the State Board of Elections shall certify the  
34 amendment to the Secretary of State. The Secretary of State shall enroll the amendment so  
35 certified among the permanent records of that office. The amendment is effective upon  
36 certification.

## 37 38 **PART II. CONFORMING STATUTORY CHANGE**

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

41 "(a) ~~Every~~ Effective January 1, 2017, and subject to the other provisions in this section,  
42 every employer shall pay to each employee who in any workweek performs any work, wages of at  
43 least six dollars and fifteen cents (\$6.15) per hour or the minimum wage set forth in paragraph 1 of  
44 section 6(a) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1), as that wage may change from  
45 time to time, whichever is higher, except as otherwise provided in this section nine dollars (\$9.00)  
46 per hour. On September 30, 2017, and on each following September 30, the Commissioner of  
47 Labor shall calculate an adjusted minimum wage rate using the consumer price index (all urban  
48 consumers, U.S. city average for all items), CPI-U, or its successor index, as calculated by the  
49 U.S. Department of Labor for the 12-month period preceding the previous September 1. Each  
50 adjusted minimum wage rate calculated shall be published on September 30 and take effect on the  
51 following January 1. For tipped employees meeting eligibility requirements for the tip credit under

1 the FLSA, employers may credit toward satisfaction of the minimum wage tips up to the amount  
2 of the allowable FLSA tip credit in 2003."

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4 **PART III. EFFECTIVE DATE**

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