

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: CS/SB 676

INTRODUCER: Commerce and Tourism Committee and Senator Martin

SUBJECT: Minimum Wage Requirements

DATE: March 10, 2025

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dike	McKay	CM	Fav/CS
2.			GO	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 676 amends the Florida Minimum Wage Act to allow employees to opt out of receiving the minimum wage for work-study, internship, preapprenticeship, apprenticeship program, or other similar work-based learning opportunities by signing a waiver acknowledging that the employee is knowingly and voluntarily choosing to receive a lesser amount. Parents or guardians must sign the waiver for employees under 18 years of age.

The bill takes effect July 1, 2025.

**II. Present Situation:**

**Federal Minimum Wage**

In 1938, the Fair Labor Standards Act (FLSA) was enacted to prescribe federal standards for minimum wage, overtime, recordkeeping, and child labor.<sup>1</sup> As of 2009, the minimum wage that all covered, nonexempt employees must earn is \$7.25.<sup>2</sup> No state may enforce a minimum wage

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<sup>1</sup> 29 U.S.C. § 206; U.S. DEPT. OF LABOR, *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)*, available at <https://www.dol.gov/agencies/whd/fact-sheets/14-flsa-coverage> (last visited Mar. 10, 2025).

<sup>2</sup> 29 U.S.C. § 206.

that is below the federal minimum.<sup>3</sup> As of 2021, around 85% of all wage and salary workers in the U.S. were covered by the FLSA.<sup>4</sup>

The FLSA applies to employees in two categories:

- Enterprise coverage—employees who work for enterprises, businesses or organizations doing at least \$500,000 of business per year, and hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies; or
- Individual coverage—Employees whose work involves the production of goods for commerce or engagement in interstate commerce and domestic workers.<sup>5</sup>

The FLSA includes several exemptions from the federal minimum hourly wage, that are not legally required to be paid at the minimum hourly wage rate, including:

- Executive, administrative and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations;
- Employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
- Farm workers employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding calendar year;
- Causal babysitters and persons employed as companions for the elderly or infirm;
- Border patrol agents; and
- Baseball players who are compensated pursuant to a contract that provides for a weekly salary for services performed during the league’s championship season at a rate that is not less than a weekly salary equal to the minimum wage.<sup>6</sup>

Under the FLSA, employers may pay subminimum wages for certain classes of workers, including:

- Youth employees under 20 years old for their first 90 days of employment.
- Student employees who receive a special certificate from the Department of Labor to work part-time in a vocational training program.
- Full time students who receive a special certificate from the Department of Labor, who are employed in retail/service establishments, agricultural occupation, or an institution of higher education.
- Individuals with disabilities who receive a special certificate from the Department of Labor, whose earning capacity is impaired by a disability.
- Employees who customarily receive tips as part of their job.<sup>7</sup>

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<sup>3</sup> See U.S. Const. art. VI (the Supremacy Clause of the U.S. Constitution); U.S. DEPT. OF LABOR, *Minimum Wage*, available at <https://www.dol.gov/general/topic/wages/minimumwage> (last visited Mar. 10, 2025).

<sup>4</sup> Sarah A. Donovan, CONG. RSCH. SERV., *The Federal Minimum Wage: In Brief*, available at <https://crsreports.congress.gov/product/pdf/R/R43089> (last visited Mar. 10, 2025).

<sup>5</sup> U.S. DEPT. OF LABOR, *supra* note 1.

<sup>6</sup> 29 U.S.C. § 213.

<sup>7</sup> Donovan, *supra* note 4.

## Florida Minimum Wage

### *Constitutional Amendment*

On November 2, 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision that established the state minimum wage.<sup>8</sup> Under Fla. Const. art. X, § 24, “all working Floridians 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.”

On November 3, 2020, citizens voted to amend the Florida Constitution to gradually increase the state minimum wage each year, starting at \$10.00 per hour and rising until it reaches \$15.00 per hour on September 30, 2026.<sup>9</sup> Currently, the Florida minimum wage is \$13.00 per hour.<sup>10</sup> Pursuant to the amendment, on September 30, 2027, and each following year on that date, Florida’s Department of Commerce must increase the minimum wage using a specified inflation calculation.<sup>11</sup>

Under Fla. Const. art. X, § 24, the definitions of “employer,” “employee,” and “wage” have the same meaning as those established under the FLSA. This constitutional provision also states that the case law, administrative interpretations, and other guiding standards under the FLSA must guide the construction and implementation of Florida’s constitutional minimum wage.<sup>12</sup> Resultingly, the FLSA and its exceptions and exemptions are incorporated into the Florida minimum wage amendment.<sup>13</sup>

### *Florida Statute*

In 2005, Florida Legislature enacted the Florida Minimum Wage Act (Act), s. 448.110, F.S., to implement the requirements of the constitutional amendment in statute. The Act only applies to individuals entitled to receive federal minimum wage under the FLSA.<sup>14</sup> It is also specified that ss. 213 and 214 of the FLSA, which set forth exceptions and exemptions to the minimum wage, are incorporated into Florida minimum wage law.<sup>15</sup>

Additionally, the Act provides a cause of action for individuals against employers who do not follow minimum wage requirements, retaliate against an employee for exercising their rights, or otherwise violate the Act.<sup>16</sup> The Attorney General is also authorized to bring civil actions against employers violating it, which may result in injunctive relief or fines paid to the state.<sup>17</sup>

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<sup>8</sup> See Fla. Const. art. X, § 24.

<sup>9</sup> *Id.*

<sup>10</sup> U.S. DEPT. OF LABOR, *State Minimum Wage Laws*, available at <https://www.dol.gov/agencies/whd/minimum-wage/state> (last visited Mar. 10, 2025).

<sup>11</sup> Fla. Const. art. X, § 24.

<sup>12</sup> Fla. Const. art. X, § 24(f).

<sup>13</sup> Op. Att’y Gen. Fla. 2005-64 (2005); see also *In re Advisory Opinion to the Atty. Gen. re Fla. Minimum Wage Amend.*, 880 So. 2d 636 (Fla. 2004).

<sup>14</sup> Section 448.110(3), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 448.110(5)-(6), F.S.

<sup>17</sup> Section 448.110(7), F.S.

### Work-Based Learning Opportunities

The federal government provides part-time employment to certain students who are attending institutions of higher education through its federal work-study program.<sup>18</sup> A student is eligible to take part in this program if they meet the eligibility requirements of 34 C.F.R. 668.32, have a demonstrated financial need, and are enrolled at an institution of higher education.<sup>19</sup> The student may work for qualifying employers or the education institution itself.<sup>20</sup> Further, the student participating in a work-study program must be paid at least the minimum wage rate under the FLSA.<sup>21</sup>

Additionally, the federal government sets forth labor standards and governs registration of apprenticeship programs under the National Apprenticeship Act.<sup>22</sup> Each state has a registered apprentice program which must be approved by the Office of Apprenticeship at the U.S. Department of Labor.<sup>23</sup> Florida's apprenticeship program carves out work-based learning opportunities for people who are at least 16 years old to gain trade skills while still in school.<sup>24</sup> The Florida Department of Education has developed standards for apprenticeable trades to establish programs with public schools and the Florida College System.<sup>25</sup> These trades include plumbing, heating and air conditioning technicians, teaching, cybersecurity, and more.<sup>26</sup> Each employer registered with a state apprenticeship program must pay at least the minimum wage under the FLSA, or a higher wage if required by applicable state law.<sup>27</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 448.110, F.S., to provide that an employer is not subject to the minimum wage requirements of this section for certain employees who choose to opt out of the minimum wage. The covered employees are those who are employed in a structured work-study, internship, preapprenticeship program, apprenticeship program, or other similar work-based learning opportunity. Such employees may opt out of receiving the minimum wage by signing a waiver, which must state that the employee is knowingly and voluntarily choosing to work for an amount lower than the minimum wage. If the employee is under 18 years old, a parent or guardian of the employee must sign the waiver on behalf of the employee.

The bill contains a severability clause providing that if any provision is held invalid, that provision is severable and does not affect the validity of other provisions.

See Section IV, Constitutional Issues, for a discussion of the constitutionality of the bill.

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<sup>18</sup> 20 U.S.C. § 1087-51; 34 C.F.R. § 675.1.

<sup>19</sup> 34 C.F.R. § 675.9.

<sup>20</sup> 34 C.F.R. §§ 675.20-675.21.

<sup>21</sup> 34 C.F.R. § 675.24.

<sup>22</sup> See 29 U.S.C. §§50 et seq; 29 C.F.R. 29.

<sup>23</sup> 29 C.F.R. 29.3.

<sup>24</sup> See ss. 446.011-446.092, F.S.

<sup>25</sup> Section 446.011, F.S.

<sup>26</sup> Florida Dept. of Education, *Florida's Annual Apprenticeship and Preapprenticeship Report 2023-2024*, available at <https://www.fldoe.org/core/fileparse.php/9904/urlt/2024ApprenticeFL-Annual.pdf> (last visited Mar. 10, 2025).

<sup>27</sup> 29 C.F.R. § 29.5.

**Section 2** provides an effective date of July 1, 2025.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

Under Fla. Const. art. X, § 24, “employers shall pay Employee Wages no less than the Minimum Wage for all hours worked in Florida.” When interpreting the meaning of a statute or constitutional provision, courts will abide by the plain language of the text if it is unambiguous.<sup>28</sup> The language of the constitutional mandate is clear that employers must pay the established, hourly minimum wage to employees. If an employee signs a waiver stating that they opt out of minimum wage requirements, the employer is still bound by the minimum wage requirements of the state constitution. There is no exception or exemption from the minimum wage specified in the state constitution, other than those incorporated from the FLSA.<sup>29</sup>

Further, in a Florida appellate decision<sup>30</sup> on an appeal from a denial of unemployment compensation benefits, the court found that since “the Florida Statutes expressly adopt the FLSA, as interpreted and implemented by federal law, ‘[n]o one can doubt but that to allow waiver of statutory [minimum] wages by agreement would nullify the purposes of the [FLSA].’”<sup>31</sup>

<sup>28</sup> *McCloud v. State*, 260 So. 3d 911, 914-15 (Fla. 2018); *Garcia v. Andonie*, 101 So. 3d 339 (Fla. 2012) (“Constitutional analysis must begin with examination of explicit language of provisions in question and, where the language is unambiguous and addresses the matter at issue, the provision should be enforced as written.”).

<sup>29</sup> See Fla. Const. art. X, § 24(f) (“It is intended that case law, administrative interpretations, and other guiding standards developed under the federal FLSA shall guide the construction of this amendment and any implementing statutes or regulations.”).

<sup>30</sup> *Martinez v. Ford Midway Mall, Inc.*, 59 So. 3d 168 (Fla. 3d DCA 2011).

<sup>31</sup> *Id.* at 173, citing *Brooklyn Savings Bank v. O’Neill*, 324 U.S. 697, 707 (1945).

There are some constitutional rights that can be waived, such as the right to remain silent in police interrogation or the right to a homestead exemption.<sup>32</sup> While it is true that “most personal constitutional rights may be waived... an individual cannot waive a right designed to protect both the individual and the public.”<sup>33</sup> Further, an individual may only forego a constitutional right if “it was the product of free and deliberate choice rather than intimidation, coercion, or deception.”<sup>34</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

“Internship” does not appear to have a standardized definition in Florida law, so it may be unclear what types of internships would be eligible for the minimum wage opt-out.

**VIII. Statutes Affected:**

This bill substantially amends s. 448.110, F.S.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Commerce and Tourism Committee on March 10, 2025:**

The committee substitute creates a provision that employees may waive their right to minimum wage by signing a waiver with specified language; provides that parents of minors must sign the waiver for employees under 18 years old; and adds a severability clause to the bill.

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<sup>32</sup> See *Chames v. DeMayo*, 972 So. 2d 850 (Fla. 2007); *Hartwell v. Blasingame*, 564 So. 2d 543 (Fla. 2d DCA 1990), approved, 584 So. 2d 6 (Fla. 1991).

<sup>33</sup> *Chames*, 972 So. 2d at 860.

<sup>34</sup> *Sliney v. State*, 699 So. 2d 662, 668 (Fla. 1997).

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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