

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 270
HOUSE BILL 5

AN ACT TO RAISE THE MINIMUM WAGE AND TO AUTHORIZE A TRAINING
WAGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.3(a) reads as rewritten:

"(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least ~~two dollars and seventy five cents (\$2.75) per hour effective July 1, 1979, two dollars and ninety cents (\$2.90) per hour effective July 1, 1980, three dollars and ten cents (\$3.10) per hour effective January 1, 1982 and three dollars and thirty five cents (\$3.35) per hour effective January 1, 1983~~ except as authorized below. If before June 1, 1989, the minimum wage set forth in the Fair Labor Standards Act is increased above three dollars and thirty five cents (\$3.35) per hour, the minimum wage required under this section shall increase by the same amount, but shall not increase above four dollars (\$4.00) per hour, effective the same date the increase under the Fair Labor Standards Act is effective. three dollars and eighty cents (\$3.80) per hour effective January 1, 1992, and four dollars and twenty-five cents (\$4.25) per hour effective January 1, 1993, except as otherwise provided in this section."

Sec. 2. G.S. 95-25.3 is amended by adding the following new subsection to read:

"(g) In order to prevent curtailment of opportunities for employment, an employer may, in lieu of the minimum wage prescribed by this section, pay a training wage to eligible persons in accordance with G.S. 95-25.3A."

Sec. 3. Chapter 95 of the General Statutes is amended by adding the following new section to read:

"§ 95-25.3A. Training wage.

(a) Any employer may, in lieu of the minimum wage prescribed by subsections (a) through (e) of G.S. 95-25.3, pay an eligible employee a training wage while such employee is:

- (1) Employed for the period authorized in paragraph (h)(1)c.1. of this section, or
- (2) Engaged in on-the-job training for the period authorized by paragraph (h)(1)c.2. of this section.

This training wage shall be a wage:

- a. Of not less than three dollars and thirty-five cents (\$3.35) per hour beginning January 1, 1992; and

b. Beginning January 1, 1993, eighty-five percent (85%) of the wage prescribed by G.S. 95-25.3(a).

(b) An employer may pay an eligible employee the training wage under subsection (a) of this section for a period that:

- (1) Begins on or after January 1, 1992;
- (2) Does not exceed the maximum period during which an employee may be paid such wage as determined under sub-subdivision (h)(1)c. of this section; and
- (3) Ends before April 1, 1993.

(c) No eligible employee may be paid the training wage under subsection (a) of this section by an employer if:

- (1) Any other individual has been laid off by such employer from the position to be filled by such eligible employee or from any substantially equivalent position; or
- (2) Such employer has terminated the employment of any regular employee or otherwise reduced the number of employees with the intention of filling the vacancy so created by hiring an employee to be paid such training wage.

(d) During any month in which employees are to be employed in an establishment and are to be paid a training wage under subsection (a) of this section, the proportion of these employee hours of employment to the total hours of employment of all employees in such establishment may not exceed a proportion equal to one-fourth of the total hours of employment of all employees in such establishment.

(e) No employer may take any action to displace employees, including partial displacements such as reduction in hours, wages, or employment benefits, for purposes of hiring individuals at the training wage under subsection (a) of this section. If the Commissioner determines that an employer has taken an action to displace employees, the Commissioner shall issue an order disqualifying such employer from employing any individual at such training wage.

(f) Each employer shall provide to any eligible employee who is to be paid the training wage under subsection (a) of this section a written notice before the employee begins employment stating the requirements of subsections (a) through (e) and subsections (h) through (k) of this section and the remedies provided by subsection (g) of this section for violations of any of these requirements. The Commissioner shall provide to employers upon request the text of the notice to be provided under this subsection.

(g) Any employer who takes an action to displace employees in violation of subsection (e) of this section shall be considered to have violated G.S. 95-25.20 and the remedies provided in that section shall apply to any such violation.

(h) For purposes of subsections (a) through (g) and subsection (i) of this section:

- (1) 'Eligible employee' means, with respect to an employer, an individual who:
 - a. Is not a migrant agricultural worker or a seasonal agricultural worker, as defined in paragraphs (8) and (10) of section 3 of the

Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1802(8) and (10), without regard to subparagraph (B) of such paragraphs; and is not a nonimmigrant described in section 1101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a);

b. Has not attained the age of 20 years; and
c. Is eligible to be paid the training wage under subsection (a) of this section by virtue of the duration of employment as follows:

1. An employee shall initially be eligible to be paid the training wage under subsection (a) of this section until the employee has been employed a cumulative total of 90 days at such wage.

2. An employee who has been employed by an employer at the training wage under subsection (a) of this section pursuant to paragraph c.1. of this subdivision may be employed by any other employer for an additional 90 days, if the employer meets the requirements of subsection (j) of this section.

3. The total period pursuant to paragraphs c.1. and c.2. of this subdivision that an employee may be paid the training wage under subsection (a) of this section may not exceed 180 days.

4. For purposes of this subdivision, the term 'employer' means, with respect to an employee, an employer who is required to withhold payroll taxes for such employee.

(2) 'On-the-job training' means training that is offered to an individual while employed in productive work that provides training, technical, and other related skills, and personal skills that are essential to the full and adequate performance of such employment.

(i) An individual shall provide the requisite proof of previous period or periods of employment with other employers for purposes of establishing whether the employee is an eligible employee pursuant to subsection (h) of this section. An employer's good faith reliance on the proof presented to the employer by an individual shall constitute a complete defense to a charge that the employer has violated subdivision (b)(2) of this section with respect to such individual. The Commissioner shall issue regulations which shall be identical to the regulations issued by the United States Secretary of Labor defining the requisite proof required of an individual.

(j) An employer who wants to employ employees at the wage authorized by subsection (a) of this section for the period authorized by paragraph (h)(1)c.2. of this section shall:

(1) Notify the Commissioner annually of the positions at which such employees are to be employed at such wage;

(2) Provide on-the-job training to such employees which meets general criteria of the Commissioner issued by regulations which shall be

identical to the regulations issued by the United States Secretary of Labor;

- (3) Keep on file a copy of the training program which the employer will provide such employees;
- (4) Provide a copy of the training program to the employees;
- (5) Post in a conspicuous place in places of employment a notice of the types of jobs for which the employer is providing on-the-job training; and
- (6) Send to the Commissioner on an annual basis a copy of such notice.

The Commissioner shall make available to the public upon request notices provided to the Commissioner by employers in accordance with subdivision (6) of this subsection.

(k) An employer who has complied with the requirements of the Fair Labor Standards Act for paying a training wage to a particular employee shall be deemed to have complied with the requirements of subsections (a) through (j) of this section."

Sec. 4. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives