

NORTH CAROLINA GENERAL ASSEMBLY
1979 SESSION

CHAPTER 839
HOUSE BILL 1067

AN ACT TO AMEND AND CONSOLIDATE THE "MAXIMUM HOUR LAW"; "THE MINIMUM WAGE ACT"; THE "UNIFORM WAGE PAYMENT LAW"; AND THE "CHILD LABOR LAW" INTO ONE ARTICLE ENTITLED THE "WAGE AND HOUR ACT".

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 95 of the General Statutes is rewritten to read as follows:

"ARTICLE 2.
"Wage and Hour Act.

"§ 95-15. **Short title and legislative purpose.** — (a) This Article shall be known and may be cited as the 'Wage and Hour Act'.

(b) The public policy of this State is declared as follows: The wage levels of employees, hours of labor, payment of earned wages, and the well-being of minors are subjects of concern requiring legislation to promote the general welfare of the people of the State without jeopardizing the competitive position of North Carolina business and industry. The General Assembly declares that the general welfare of the State requires the enactment of this law under the police power of the State.

"§ 95-16. **Definitions.** — In this Article, unless the context otherwise requires:

- (1) 'Agriculture' includes farming in all its branches performed by a farmer or on a farm as an incident to or in conjunction with farming operations.
- (2) 'Commissioner' means the Commissioner of Labor.
- (3) 'Employ' means to suffer or permit to work.
- (4) 'Employee' includes any individual employed by an employer.
- (5) 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee.
- (6) 'Establishment' means a physical location where business is conducted.
- (7) 'The Fair Labor Standards Act' means the Fair Labor Standards Act of 1938, as amended and as the same may be amended from time to time by the United States Congress.
- (8) 'Hours worked' includes all time an employee is employed.
- (9) 'Payday' means that day designated for payment of wages due by virtue of the employment relationship.
- (10) 'Pay period' means a period of seven or 14 calendar days, or a calendar month.
- (11) 'Person' means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons. For the purposes of G.S. 95-17 it also means the State of North Carolina, a city, town, county, or other municipality or agency or instrumentality of government.
- (12) 'Seasonal food service establishment' means a restaurant, food and drink stand or other establishment generally recognized as a commercial food

- service establishment, preparing and serving food to the public but operating 180 days or less per year.
- (13) "Seasonal religious assembly or a seasonal amusement or recreational establishment" means an establishment which does not operate for more than seven months in any calendar year, or during the preceding calendar year had average receipts for any six months of such year of not more than thirty-three and one-third percent (33 1/3%) of its average receipts for the other six months of that year.
- (14) "Tipped employee" means any employee who customarily receives more than twenty dollars (\$20.00) a month in tips.
- (15) "Tip" shall mean any money or part thereof over and above the actual amount due a business for goods, food, drink, services or articles sold which is paid in cash or by credit card, or is given to or left for an employee by a patron or patrons of the business where the employee is employed.
- (16) "Wage" paid to an employee means compensation for labor or services rendered by an employee whether determined on a time, task, piece, job, day, commission, or other basis of calculation, and the reasonable cost as determined by the Commissioner of furnishing employees with board, lodging, or other facilities. For the purposes of G.S. 95-20 through G.S. 95-20.6, "wage" includes sick pay, vacation pay, severance pay, commissions, bonuses, and other amounts promised when the employer has a policy or a practice of making such payments.
- (17) "Workweek" means any period of 168 consecutive hours.

"§ 95-17. Minimum wage. — (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, and two dollars and ninety cents (\$2.90) per hour effective July 1, 1980, except as authorized below.

(b) In order to prevent curtailment of opportunities for employment, the wage rate for full-time students, learners, apprentices, and messengers, as defined under the Fair Labor Standards Act, shall be two dollars and forty-five cents (\$2.45) per hour, except that the Commissioner may vary the amount after publishing notice, holding a public hearing, and following the other requirements of Chapter 150A (Administrative Procedure Act).

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

(d) The Commissioner, in order to prevent curtailment of opportunities for employment of the economically disadvantaged and the unemployed, may, by regulation, establish a wage rate not less than eighty-five percent (85%) of the otherwise applicable wage rate in effect under subsection (a) which shall apply to all persons (1) who have been unemployed for at least 15 weeks and who are economically disadvantaged, or (2) who are, or whose families are, receiving aid to families with dependent children provided under Part A of Title IV of the Social Security Act, or who are receiving supplemental security benefits under Title XVI of the Social Security Act.

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

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

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

(f) Tips earned by a tipped employee may be counted as wages only up to fifty percent (50%) of the applicable minimum wage for each hour worked if the tipped employee is notified in advance, is permitted to retain all tips and the employer maintains accurate and complete records of tips received by each employee as such tips are certified by the employee monthly or for each pay period. Tip pooling shall also be permissible among employees who customarily and regularly receive tips; however, no employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling arrangement.

"§ 95-18. Overtime. — (a) Every employer shall pay each employee who works longer than 45 hours in any workweek at a rate of not less than time and one half of the regular rate of pay of the employee for those hours in excess of 45 per week.

(b) Hospital and nursing home employers may elect to pay overtime after eight hours per day or 80 hours in a 14-day work period, if the employee is notified in advance and is paid not less than one and one-half times the regular rate of pay of the employee for those hours in excess of eight per day or 80 in such 14-day work period.

"§ 95-19. Youth employment. — (a) The Commissioner shall require employment certificates for all workers under 18 years of age and shall prescribe regulations for the issuance and revocation of certificates. Such regulations shall prescribe that certificates be issued by county or city directors of social services.

(b) An employer shall not employ minors under age 18 in hazardous occupations, as defined under the Fair Labor Standards Act.

(c) An employer may employ minors 14 and 15 years old:

- (1) no more than three hours on a day when school is in session for the minor, except that the minor may work up to six hours on the last day of the school week;
- (2) no more than eight hours on a day when school is not in session for the minor;
- (3) only between 7 a.m. and 7 p.m., except to 9 p.m. when there is no school for the minor the next day; and
- (4) no more hours per week than the following:

Days school in session for the minor	Weekly hours
5	18
4	26
3	34
2 or less	40

(d) An employer may employ minors 12 and 13 years of age outside school hours in the distribution of newspapers to the consumer but not more than three hours per day. An employment certificate shall not be required for any person under 18 years of age engaged in the distribution of newspapers to the consumer outside of school hours.

(e) No minor under 16 years of age shall be employed for more than five consecutive hours without an interval of at least 30 minutes for rest. No period of less than 30 minutes shall be deemed to interrupt a continuous period of work.

(f) The Commissioner may waive for any minor over 12 years of age any provision of this section and authorize the issuance of an employment certificate when:

- (1) he receives a letter from a social worker, court, probation officer, county department of social services, or school official stating those factors which create a hardship situation when the best interests of a minor 12 years of age or older are served by allowing him to work; and
- (2) he determines that the health or safety of the minor would not be adversely affected; and
- (3) the parent, guardian, or other person standing in loco parentis consents in writing to the proposed employment.

"§ 95-20. Wage payment. — Every employer shall pay every employee all wages and tips accruing to the employee on the regular payday. Pay periods may be daily, weekly, bi-weekly, semi-monthly, or monthly. Wages based upon bonuses, commissions, or other forms of calculation may be paid as infrequently as annually if prescribed in advance.

"§ 95-20.1. Payment to separated employees. — Employees whose employment is discontinued for any reason shall be paid all wages due on or before the next regular payday.

"§ 95-20.2. Withholding of wages. — An employer may withhold or divert any portion of an employee's wages when:

- (1) the employer is required or empowered to do so by State or federal law, or
- (2) the employer has a written authorization from the employee which is signed on or before the payday for the pay period from which the deduction is to be made.

"§ 95-20.3. Certain claims not to be deducted from paycheck covering period when claim arises. — Except as otherwise provided in this Article, cash shortages, inventory shortages, or damage to an employer's property may not be deducted from an employee's wages due on the payday immediately following the occurrence of the shortage or damage.

"§ 95-20.4. Combined amounts of certain deductions limited to fifteen percent (15%) of gross pay. — Pursuant to G.S. 95-20.2(2) and subject to G.S. 95-20.3, the following items may be deducted from any paycheck, but their combined amount shall not be in excess of fifteen percent (15%) of gross wages:

- (1) cash shortages,
- (2) inventory shortages,
- (3) damage to an employer's property,
- (4) deposits made by the employee for the use of the employer's property.

"§ 95-20.5. Portion of final paycheck not subject to fifteen percent (15%) limitation; employers remedy. — The fifteen percent (15%) limitation imposed by G.S. 95-20.4 above only applies to that portion of a separated employee's final paycheck which is equal to the minimum wage required by G.S. 95-17. Any amounts in excess of the minimum wage required by G.S. 95-17 and any other amounts due the employee may be deducted in their entirety.

Nothing in this Article shall preclude an employer from bringing an action in the General Court of Justice to collect any amounts due the employer from the employee.

"§ 95-20.6. Vacation pay. — An employer is not required to provide vacations for employees. If the employer provides vacations to employees, the employer shall pay all vacation pay or payment in lieu of time off as required by company policy or past practice.

An accrual policy is not required. If there is an accrual policy, all vacation pay in lieu of time off is due at termination unless the policy or past practice indicates that an employee quitting without notice forfeits accrued time and payment, and the employee fails to notify or is discharged for cause.

For purposes of this section the term 'discharged for cause' shall mean a discharge for willful or habitual tardiness or absence from work or being disorderly or intoxicated while at

work, or destructive of employer's property or shall mean that an employee is discharged for violating specific written company policy of which the employee has been previously warned and for which a discharge is the stated remedy for such violation. An accrual policy containing a forfeiture clause based upon any factor other than failure to notify or discharge for cause is null and void.

"§ 95-20.7. Notification, posting, and records. — Every employer shall:

- (a) notify his employees, orally or in writing at the time of hiring, of the rate of pay, policies on vacation time and pay, sick leave and comparable matters, and the day, and place for payment of wages;
- (b) make available to his employees, in writing or through a posted notice maintained in a place accessible to his employees, employment practices and policies with regard to vacation pay, sick leave, and comparable matters;
- (c) notify his employees, in writing or through a posted notice maintained in a place accessible to his employees, of any changes in the arrangements specified in (b) above prior to the time of such changes except that wages and benefits may be retroactively increased without the prior notice required by this subsection; and
- (d) furnish each employee with an itemized statement of deductions made from his wages under G.S. 95-20.2 for each pay period such deductions are made.

"§ 95-21. Exemptions. — (a) The provisions of G.S. 95-17 (Minimum Wage), G.S. 95-18 (Overtime), G.S. 95-19 (Youth Employment), and G.S. 95-22(b) (Record Keeping) as it relates to these exemptions, do not apply to:

- (1) any person covered by the Fair Labor Standards Act, except for the issuance of employment certificates pursuant to G.S. 95-19;
- (2) any person employed in agriculture;
- (3) any person employed as a baby sitter;
- (4) any person employed as a page in the North Carolina General Assembly or in the Governor's office;
- (5) the spouse, child or parent of the employer, or any other person qualifying as a dependent of the employer under the income tax laws of North Carolina;
- (6) any person employed in an establishment that does not have four or more persons employed in any workweek;
- (7) any employee employed in a bona fide executive, administrative, professional, or outside sales capacity, as defined under the Fair Labor Standards Act.

(b) The provisions of G.S. 95-17 (Minimum Wage), G.S. 95-18 (Overtime), and G.S. 95-22(b) (Record Keeping) as it relates to these exemptions, do not apply to:

- (1) bona fide volunteers in medical, educational, religious, or nonprofit organizations where an employer-employee relationship does not exist;
- (2) persons confined in any penal, correctional, or mental institution of the State or local government;
- (3) any employee of a boys' or girls' summer camp;
- (4) any person employed in the catching, processing, or first sale of seafood.

(c) The provisions of G.S. 95-18 (Overtime), and G.S. 95-22(b) (Record Keeping) as it relates to this exemption, do not apply to:

- (1) drivers, drivers' helpers, loaders, and mechanics, as defined under the Fair Labor Standards Act;
- (2) taxicab drivers;
- (3) seamen, employees of railroads, and employees of air carriers, as defined under the Fair Labor Standards Act;

- (4) salespersons and mechanics employed by automotive, truck, and farm implement dealers, as defined under the Fair Labor Standards Act;
- (5) salespersons employed by trailer, boat and aircraft dealers, as defined under the Fair Labor Standards Act;
- (6) child care workers or other live-in employees in homes for dependent children.

(d) The provisions of G.S. 95-17 (Minimum Wage) do not apply to any person employed in a seasonal recreation program by a city, town, county, or other municipality or agency or instrumentality of local government.

(e) The provisions of this Article with the exception of G.S. 95-17 and provisions of G.S. 95-16 necessary to interpret the application of G.S. 95-17 do not apply to the State of North Carolina, a city, town, county, or other municipality or agency or instrumentality of government.

"§ 95-22. Investigations and inspection of records; notice of law. — (a) The Commissioner or his designated representative shall have the power and authority to enter any place of employment and gather such facts as are essential to determine whether or not the employer is covered by any provision of this Article.

With respect to any provision of this Article under which the employer is covered, the Commissioner or his designated representative may inspect such places and such records, make transcriptions of any and all such records, question employees and investigate such facts, conditions, practices, or matters as are necessary to determine whether the employer has violated said provision of this Article.

With respect to the provisions of G.S. 95-20 through G.S. 95-20.6 (Wage Payment) as those provisions apply to persons covered by the Fair Labor Standards Act, the Commissioner or his designated representative shall have no authority under this subsection unless the Commissioner or his designated representative has received a complaint from an employee of the covered establishment, and then shall investigate that specific complaint only.

(b) Except as otherwise provided in this Article, every employer subject to any provision of this Article shall make, keep, and preserve such records of the persons employed by the employer and of the wages, hours, and other conditions and practices of employment which are essential to the enforcement of this Article and are prescribed by regulation of the Commissioner, except that the Commissioner shall have no authority to prescribe records for the State of North Carolina, a city, town, county or other municipality or agency or instrumentality of government.

(c) A poster summarizing the major provisions of this Article shall be displayed in every establishment subject to this Article.

"§ 95-23. Enforcement. — (a) The Commissioner shall enforce and administer the provisions of this Article, and the Commissioner or his authorized representative is empowered to hold hearings and to institute criminal and civil proceedings hereunder.

(b) The Commissioner or his authorized representative shall have power to administer oaths and examine witnesses, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and take depositions and affidavits in any proceeding hereunder.

"§ 95-24. Wage and Hour Division established. — The State Employment Standards Division within the North Carolina Department of Labor is renamed the Wage and Hour Division. The Commissioner shall reappoint the Director of the State Employment Standards Division as the Director of the Wage and Hour Division and shall reappoint such other employees as he deems necessary to assist him in administering the provisions of this Article. The Commissioner shall continue to prescribe the powers, duties, and responsibilities of the director and employees engaged in the administration of this Article.

"§ 95-25. Legal representation. — It shall be the duty of the Attorney General of North Carolina, when requested, to represent the Department of Labor in actions or proceedings in connection with this Article.

"§ 95-26. Rules and regulations. — Subject to the requirements of Article 2 of Chapter 150 A, the Commissioner is authorized to issue such rules and regulations as are necessary for the purpose of carrying out the provisions of this Article.

"§ 95-27. Complainants protected. — No employer shall discharge or in any manner discriminate against any employee because the employee files a complaint or participates in any investigation or proceeding under this Article. Any employee who believes that he has been discharged or otherwise discriminated against in violation of this section may, within 30 days after such violation occurs, file a complaint with the Commissioner alleging such discrimination. If the Commissioner determines that the provisions of this section have been violated, he shall bring an action against the employer in the Superior Court division of the General Court of Justice in the county wherein the discharge or discrimination occurred. In any such action, the Superior Court shall have jurisdiction, for cause shown, to restrain violations of this section and order all appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay.

"§ 95-27.1. Illegal acts. — (a) It shall be unlawful for any person to interfere unduly with, hinder, or delay the Commissioner or any authorized representative in the performance of official duties or refuse to give the Commissioner or his authorized representative any information required for the enforcement of this Article.

(b) It shall be unlawful for any person to make any statement or report, or keep or file any record pursuant to this Article or regulations issued thereunder, knowing such statement, report, or record to be false in a material respect.

(c) Any person who violates this section shall be guilty of a misdemeanor, subject to a fine of not more than two hundred fifty dollars (\$250.00) or imprisonment for not more than six months, or both.

"§ 95-27.2. Recovery of unpaid wages. — (a) Any employer who violates the provisions of G.S. 95-17 (Minimum Wage), G.S. 95-18 (Overtime), or G.S. 95-20 through G.S. 95-20.6 (Wage Payment) shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, their unpaid overtime compensation, or their unpaid amounts due under G.S. 95-20 through G.S. 95-20.6, as the case may be.

In its discretion, the court may award exemplary damages in an amount not in excess of the amount found to be due as provided above.

(b) Action to recover such liability may be maintained in the General Court of Justice by any one or more employees.

(c) Action to recover such liability may also be maintained in the General Court of Justice by the Commissioner at the request of the employees affected. Any sums thus recovered by the Commissioner on behalf of an employee shall be held in a special deposit account and shall be paid directly to the employee or employees affected.

(d) The court, in any action brought under this section may, in addition to any judgment awarded plaintiff, order costs and fees of the action and reasonable attorneys' fees to be paid by the defendant.

The court may order costs and fees of the action and reasonable attorneys' fees to be paid by the plaintiff if the court determines that the action was frivolous.

(e) The Commissioner is authorized to determine and supervise the payment of the amounts due under this section, and the agreement to accept such amounts by the employee shall constitute a waiver of the employee's right to bring an action under subsection (b) of this section.

(f) Actions under this section must be brought within two years pursuant to G.S. 1-53.

(g) Prior to initiating any action under this section, the Commissioner shall exhaust all administrative remedies, including giving the employer the opportunity to be heard on the matters at issue and giving the employer notice of the pending action.

"§ 95-27.3. Violation of youth employment; civil penalty. — (a) Any employer who violates the provisions of G.S. 95-19 (Youth Employment) or any regulation issued thereunder, shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150A and in a judicial proceeding pursuant to Article 4 of Chapter 150A.

(b) The amount of such penalty when finally determined may be recovered in a civil action brought by the Commissioner in the General Court of Justice.

(c) Sums collected under this section by the Commissioner shall be paid into the General Fund of the State Treasury.

"§ 95-27.4. Restraint of violations. — The General Court of Justice has jurisdiction and authority upon application of the Commissioner to enjoin or restrain violations of this Article.

"§ 95-27.5. Construction of Article and severability. — This Article shall receive a liberal construction to the end that the welfare of adult and minor workers may be protected. If any provisions of this Article or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect the provisions or application of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable."

Sec. 2. Article 11 of Chapter 95 of the General Statutes are hereby repealed. Article 1 of Chapter 110 of the General Statutes is hereby repealed. Effective January 1, 1980, Article 17 of Chapter 95 of the General Statutes is repealed.

Sec. 3. The provisions of the act shall not obligate the State to an appropriation of funds in the fiscal year 1980-81. In the event that the 1979 General Assembly appropriates funds for a salary increase in 1980-81 for teachers and State employees, those funds shall be used to implement the minimum wages reflected in this act for those State employees covered by this act.

Sec. 4. This act shall become effective July 1, 1979, except that proposed G.S. 95-20 through G.S. 95-20.7 and the last sentence of G.S. 95-16(16) shall become effective January 1, 1980.

In the General Assembly read three times and ratified, this the 8th day of June, 1979. day of June, 1979.