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S.D. SEC. OF STATE

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ATTORNEY GENERAL

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HAND-DELIVERED

August 21, 2013

The Honorable Jason Gant
Secretary of State
500 E. Capitol
Pierre, SD 57501

RE: **Minimum Wage Initiated Measure**

Dear Secretary Gant,

This Office received an initiated measure from attorney James Leach on behalf of the measure's sponsors, Zach Crago of the South Dakota Democratic Party, and Mark Anderson of the AFL-CIO South Dakota, pursuant to SDCL 12-13-25.1. In accordance with that statute, enclosed is the Attorney General's Statement prepared with respect to this measure. I also enclose a copy of the initiated measure, in final form, that was submitted to this Office.

By copy of this letter, I am providing Mr. Leach with the same.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty Jackley".

Marty J. Jackley
ATTORNEY GENERAL

MJJ/lde
Enclosures

cc w/ enc. Mr. James Leach

INITIATED MEASURE
ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to increase the state minimum wage.

Explanation:

The initiated measure amends state law to raise South Dakota's hourly minimum wage for non-tipped employees from \$7.25 to \$8.50 per hour, effective January 1, 2015. Thereafter, this minimum wage will be annually adjusted by any increase in the cost of living. The cost of living increase is measured by the change in the Consumer Price Index published by the U.S. Department of Labor. In no case may the minimum wage be decreased.

In addition, the hourly minimum wage for tipped employees will be half the minimum wage for non-tipped employees as adjusted by any cost of living increase described above.

These increases would apply to all employers in South Dakota, with limited exceptions.

FOR AN ACT ENTITLED, "An Act to increase the state minimum wage and to provide for future cost of living increases."

BE IT ENACTED BY THE PEOPLE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 60-11-3 be amended to read as follows:

60-11-3. Every employer shall pay to each employee wages at a rate of not less than ~~seven~~ eight dollars and ~~twenty-five~~ fifty cents an hour. Violation of this section is a Class 2 misdemeanor.

The provisions of this section do not apply to certain employees being paid an opportunity wage pursuant to § 60-11-4.1, babysitters, or outside salespersons. The provisions of this section also do not apply to employees employed by an amusement or recreational establishment, an organized camp, or a religious or nonprofit educational conference center if one of the following apply:

- (1) The establishment, camp, or center does not operate for more than seven months in any calendar year; or
- (2) During the preceding calendar year, the average receipts of the establishment, camp, or center for any six months of the calendar year were not more than thirty-three and one-third percent of its average receipts for the other six months of the year.

Section 2. That § 60-11-3.1 be amended to read as follows:

60-11-3.1. Any employer of a tipped employee shall pay a cash wage of not less than ~~two dollars and thirteen cents an hour~~ fifty percent of the minimum wage provided by § 60-11-3 if the employer claims a tip credit against the employer's minimum wage obligation. If an employee's tips combined with the employer's cash wage of not less than ~~two dollars and thirteen cents an hour~~ fifty percent of the minimum wage provided by § 60-11-3 do not equal the minimum hourly wage, the employer shall make up the difference as additional wages for each regular pay period of the employer.

A tipped employee is one engaged in an occupation in which the employee customarily and regularly receives more than thirty-five dollars a month in tips or other considerations.

This section does not apply to babysitters or outside salespersons. This section also does not apply to employees employed by an amusement or recreational establishment, an organized camp, or a religious or nonprofit educational conference center if one of the following apply:

- (1) The establishment, camp, or center does not operate for more than seven months in any calendar year; or
- (2) During the preceding calendar year, the average receipts of the establishment, camp, or center for any six months of the calendar year were not more than thirty-three and one-third percent of its average receipts for the other six months of the year.

Section 3. That chapter 60-11 be amended by adding thereto a NEW SECTION to read as follows:

Beginning January 1, 2016, and again on January 1 of each year thereafter, the minimum wage provided by § 60-11-3 shall be adjusted by the increase, if any, in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as measured as of August of the previous year of the Consumer Price Index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase, if any, rounded up to the nearest five cents. In no case shall the minimum wage be decreased. The Secretary of the South Dakota Department of Labor and

Regulation or its designee shall publish the adjusted minimum wage rate for the forthcoming year on its internet home page by October 15 of each year, and it shall become effective on January 1 of the forthcoming year.

Section 4. The provisions of Section 1 and Section 2 of this Act are effective January 1, 2015.