



# Legislative Research Council

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S.D. SEC. OF STATE

Sen. Ryan Maher, Chair  
Rep. Lance Carson, Vice Chair

James Fry, Director  
Doug Decker, Code Counsel

July 3, 2013

Mark Anderson, President/Financial Secretary  
South Dakota State Federation of Labor – AFL-CIO  
PO Box 1445  
Sioux Falls, SD 57101

Zach Crago, Deputy Executive Director  
South Dakota Democratic Party  
PO Box 1485  
Sioux Falls, SD 57101

Dear Mr. Anderson and Mr. Crago:

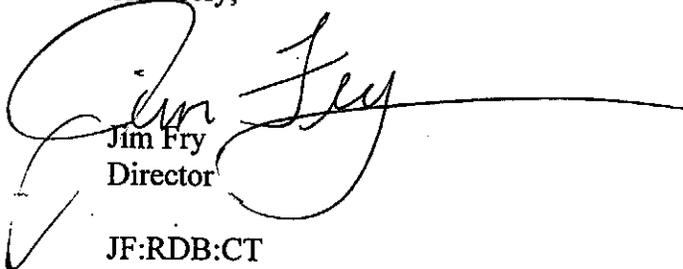
Pursuant to SDCL 12-13-25, this office is required to review each initiated law or initiated amendment to the South Dakota constitution. Further, this office is required by SDCL 12-13-24 to determine if each initiative or initiated amendment is “written in a clear and coherent manner in the style and form of other legislation” and that it is “worded so that the effect of the measure is not misleading or likely to cause confusion among voters.” You are under no obligation to accept any of the suggestions contained in this letter. But please keep in mind the legal standards established in SDCL 12-13-24.

Insofar as the provisions of section 3 are concerned, we would call your attention to two relatively minor points. First, the provision seems to imply that in case the annual CPI is negative that the state minimum wage should stay the same rather than be adjusted downward. It might be prudent to spell this out. Second, the provisions seem to imply that the state Department of Labor, a corporate entity rather than a natural person, is responsible for, in effect, certifying the CPI percentage increase. It might be prudent to require a specific official, such as a constitutional officer, for instance, to be individually responsible for such certification.

On a more substantial note, we find the title deficient and suggest the addition of wording to the effect “and to provide for future increases relative to the consumer price index.”

This letter constitutes neither an endorsement of your initiated amendment nor a guarantee of its statutory sufficiency. It does constitute fulfillment of your responsibility pursuant to SDCL 12-13-25 to submit your draft to this office for review and comment. If you proceed with your initiated amendment, please take care to ensure that your statements or advertising do not imply that this office endorses or approves your proposals.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Fry", with a long horizontal flourish extending to the right. The signature is written over the printed name and title.

Jim Fry  
Director

JF:RDB:CT

cc: The Honorable Jason Gant, Secretary of State

FOR AN ACT ENTITLED, An Act to increase the state minimum wage.

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 or the minimum hourly wage as provided under the federal Fair Labor Standards Act of 1938 (29 U.S.C. § 206(a)(1)), whichever is greater.

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~~ 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~~ 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 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 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 national Consumer Price Index of its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest five cents. The South Dakota Department of Labor 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.