



**JIM PETRO**  
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STATE OF OHIO

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September 21, 2005

VIA FAX AND FIRST CLASS MAIL

Fax: 614-263-7078

Donald J. McTigue, Esq.  
3886 North High Street  
Columbus, OH 43214

Re: Proposed Initiated Constitutional Amendment – Art. II, Section 34a,  
Fair Minimum Wage

Dear Mr. McTigue:

In accordance with the provisions of Section 3519.01(A) of the Ohio Revised Code, a written petition bearing a copy of a proposed constitutional amendment was submitted for my examination, together with a summary of that proposed amendment, on August 29, 2005. The initiated amendment is to Art. II, §34a and is titled the "Fair Minimum Wage."

Having considered only the language of the constitutional amendment which you propose to submit to the Secretary of State for submission to the voters, and a summary of that proposed constitutional amendment appearing on the petition you have submitted, I am of the opinion that the summary is a fair and truthful statement of the measure to be proposed. I am therefore submitting to you the following certification, which will also be transmitted to the Secretary of State:

Without passing upon the advisability of the approval or rejection of the measure to be referred, but pursuant to the duties imposed upon the Attorney General's Office under Section 3519.01(A) of the Ohio Revised Code, I hereby certify that the summary is a fair and truthful statement of the proposed constitutional amendment to Article II.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Petro", written over a circular stamp.

**JIM PETRO**  
**ATTORNEY GENERAL**

JMP:ajm

Enclosure

cc: Chief Elections Counsel, Secretary of State



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September 21, 2005

VIA HAND-DELIVERY

Honorable J. Kenneth Blackwell  
Ohio Secretary of State  
180 E. Broad Street, 16<sup>th</sup> Floor  
Columbus, OH 43266

Re: Proposed Initiated Constitutional Amendment – Art. II, Section 34a,  
Fair Minimum Wage

Dear Mr. Blackwell:

In accordance with the provisions of Section 3519.01(A) of the Ohio Revised Code, a written petition proposing an amendment to the Ohio Constitution, Article II, §34a, was submitted for my examination, together with a summary of that initiated proposed amendment. A copy of the proposal and of the summary is enclosed.

Having considered only the language of the proposed constitutional amendment which the petitioners seek to submit to the Secretary of State for submission to the voters, and the summary of the proposed constitutional amendment appearing on the petition as submitted to my office, I conclude that the summary is a fair and truthful statement of the measure to be proposed, and have so certified this finding to the attorney representing the petitioners on this date as follows:

Without passing upon the advisability of the approval or rejection of the measure to be referred, but pursuant to the duties imposed upon the Attorney General's Office under Section 3519.01(A) of the Ohio Revised Code, I hereby certify that the summary is a fair and truthful statement of the proposed constitutional amendment to Article II.

I am hereby filing with you this letter containing the above certification and the attached petition containing the measure to be referred and the petitioners' summary.

Sincerely,

A handwritten signature in black ink that reads "Jim Petro".

**JIM PETRO**  
**ATTORNEY GENERAL**

JMP:ajm  
Enclosure

cc: Chief Elections Counsel, Secretary of State

## FULL TEXT

### The Ohio Fair Minimum Wage Amendment

*Be it Resolved by the People of the State of Ohio that Article II, Section 34a of the Ohio Constitution is hereby enacted as follows:*

#### ARTICLE II, Section 34a

Except as provided in this section, every employer shall pay their employees a wage rate of not less than six dollars and eighty-five cents per hour beginning January 1, 2007. On the thirtieth day of each September, beginning in 2007, this state minimum wage rate shall be increased effective the first day of the following January by the rate of inflation for the twelve month period prior to that September according to the consumer price index or its successor index for all urban wage earners and clerical workers for all items as calculated by the federal government rounded to the nearest five cents. Employees under the age of sixteen and employees of businesses with annual gross receipts of two hundred fifty thousand dollars or less for the preceding calendar year shall be paid a wage rate of not less than that established under the federal Fair Labor Standards Act or its successor law. This gross revenue figure shall be increased each year beginning January 1, 2008 by the change in the consumer price index or its successor index in the same manner as the required annual adjustment in the minimum wage rate set forth above rounded to the nearest one thousand dollars. An employer may pay an employee less than, but not less than half, the minimum wage rate required by this section if the employer is able to demonstrate that the employee receives tips that combined with the wages paid by the employer are equal to or greater than the minimum wage rate for all hours worked. The provisions of this section shall not apply to employees of a solely family owned and operated business who are family members of an owner. The state may issue licenses to employers authorizing payment of a wage rate below that required by this section to individuals with mental or physical disabilities that may otherwise adversely affect their opportunity for employment.

As used in this section: "employer," "employee," "employ," "person" and "independent contractor" have the same meanings as under the federal Fair Labor Standards Act or its successor law, except that "employer" shall also include the state and every political subdivision and "employee" shall not include an individual employed in or about the property of the employer or individual's residence on a casual basis. Only the exemptions set forth in this section shall apply to this section.

An employer shall at the time of hire provide an employee the employer's name, address, telephone number, and other contact information and update such information when it changes. An employer shall maintain a record of the name, address, occupation, pay rate, hours worked for each day worked and each amount paid an employee for a period of not less than three years following the last date the employee was employed. Such information shall be provided without charge to an employee or person acting on behalf of an employee upon request. An employee, person acting on behalf of one or more employees and/or any other interested party may file a complaint with the state for a violation of any provision of this section or any law or regulation implementing its provisions. Such complaint shall be promptly investigated and resolved by the

state. The employee's name shall be kept confidential unless disclosure is necessary to resolution of a complaint and the employee consents to disclosure. The state may on its own initiative investigate an employer's compliance with this section and any law or regulation implementing its provisions. The employer shall make available to the state any records related to such investigation and other information required for enforcement of this section or any law or regulation implementing its provisions. No employer shall discharge or in any other manner discriminate or retaliate against an employee for exercising any right under this section or any law or regulation implementing its provisions or against any person for providing assistance to an employee or information regarding the same.

An action for equitable and monetary relief may be brought against an employer by the attorney general and/or an employee or person acting on behalf of an employee or all similarly situated employees in any court of competent jurisdiction, including the common pleas court of an employee's county of residence, for any violation of this section or any law or regulation implementing its provisions within three years of the violation or of when the violation ceased if it was of a continuing nature, or within one year after notification to the employee of final disposition by the state of a complaint for the same violation, whichever is later. There shall be no exhaustion requirement, no procedural, pleading or burden of proof requirements beyond those that apply generally to civil suits in order to maintain such action and no liability for costs or attorney's fees on an employee except upon a finding that such action was frivolous in accordance with the same standards that apply generally in civil suits. Where an employer is found by the state or a court to have violated any provision of this section, the employer shall within thirty days of the finding pay the employee back wages, damages, and the employee's costs and reasonable attorney's fees. Damages shall be calculated as an additional two times the amount of the back wages and in the case of a violation of an anti-retaliation provision an amount set by the state or court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued. Payment under this paragraph shall not be stayed pending any appeal.

This section shall be liberally construed in favor of its purposes. Laws may be passed to implement its provisions and create additional remedies, increase the minimum wage rate and extend the coverage of the section, but in no manner restricting any provision of the section or the power of municipalities under Article XVIII of this constitution with respect to the same.

If any part of this section is held invalid, the remainder of the section shall not be affected by such holding and shall continue in full force and effect.

**Amendment to the Constitution Proposed by Initiative Petition  
To be Submitted Directly to the Electors**

**TITLE**

The Ohio Fair Minimum Wage Amendment

**SUMMARY**

This Amendment would enact provisions for an Ohio minimum wage, including:

- Set the state minimum wage rate at \$6.85 per hour beginning January 1, 2007 and provide that effective the first day of January thereafter the minimum wage rate would be increased based on the rate of inflation according to the Consumer Price Index or its successor index for all urban wage earners and clerical workers rounded to nearest five cents.
- The state minimum wage rate would apply to every employer, except as follows:
  - The federal minimum wage rate, not the state rate, would apply to employees under the age of 16 and to employees of businesses with annual gross receipts of \$250,000.00 or less. This gross revenue figure would be increased each year based on the Consumer Price Index rounded to the nearest one thousand dollars;
  - An employer may pay tipped employees less than, but not less than half, the Ohio minimum wage rate if the employer is able to demonstrate that the employee received tips that combined with wages are equal to or greater than the minimum wage rate for all hours worked;
  - Employees of a solely family owned and operated business who are family members of an owner would be exempt;
  - Individuals employed in or about the property their employer's or their own residence on a casual basis would be exempt; and
  - The state may issue licenses to employers authorizing payment of a wage rate below the Ohio minimum wage to individuals with mental or physical disabilities that may otherwise adversely affect their opportunity for employment.
- The Amendment incorporates the definitions of "employer," "employee," "employ," "person" and "independent contractor" from the federal Fair Labor Standards Act or its successor, except that "employer" shall also include the state and every political subdivision. Only the exemptions in the Amendment would apply.
- An employer would be required to:

- Provide to an employee at the time of hire the employer's name, address, telephone number and other contact information and update such information when it changes;
  - Maintain a record of the name, address, occupation, pay rate, hours worked each workday and each amount paid an employee for a period of not less than three years following the last date of employment and provide a copy of the records without charge to an employee or person acting on behalf of an employee upon request; and
  - Make available to the state any records or information related to an investigation or enforcement of the section or law or regulation implementing it.
- Provide that an employee, person acting on behalf of an employee and/or other interested party may file a complaint with the state for a violation of the section or any law or regulation implementing it and require that the complaint shall be promptly investigated and resolved by the state. An employee's name shall be kept confidential unless disclosure is necessary to resolving a complaint and the employee consents. Also provide that the state may on its own initiative investigate compliance with the section and laws and regulations implementing it.
- Prohibit an employer from discharging, discriminating or retaliating against an employee for exercising a right under the section or any law or regulation implementing it or against any person for providing assistance to an employee or information regarding the same.
- Provide that an action for equitable and monetary relief may be brought against an employer by the Attorney General and/or an employee or a person acting on behalf of an employee or all similarly situated employees in any court of competent jurisdiction, including the Common Pleas Court of an employee's county of residence, for any violation of the section or a law or regulation implementing it. Such action must be brought within three years of the violation or of when the violation ceased or within one year after notification to the employee of final disposition by the state of a complaint for the same violation, whichever is later. There shall be no exhaustion requirement, no procedural, pleading or burden of proof requirements to maintain such action beyond those that apply generally in civil suits and no liability for costs or attorneys fees on an employee except upon a finding that such action was frivolous in accordance with the same standards that apply generally in civil suits.
- Provide that if an employer is found by the state or a court to have violated a provision of the section or law or regulation implementing it the employer shall within thirty days pay the employee back wages, damages, costs and reasonable attorney's fees. Damages would be calculated as an additional two times the amount of the back wages and in the case of a violation of an anti-retaliation provision an amount set by the state or court sufficient to compensate the employee and deter future violations, but not less than \$150.00 for each day the violation continued. Any payment shall not be stayed pending an appeal.

- Provide that the section shall be liberally construed in favor of its purposes and that laws may be passed to implement its provisions and to create additional remedies, increase the minimum wage rate and extend coverage of the section, but in no manner restricting any provision of the section or the power of municipalities under Article XVIII of the constitution with respect to the same.
- Provide that if any section is held invalid, the remainder shall not be affected.