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15

16 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
17 IN AND FOR THE COUNTY OF MARICOPA
18

19 JANE ANN RIDDLE, an individual;
WILLIAM L. RIDDLE, III, an individual;
20 VALLE LUNA, an Arizona corporation;
CHARLOTTE CHESTER, an individual;
21 IAN MCCARTHY, an individual; the
ARIZONA CHAMBER OF COMMERCE
22 & INDUSTRY, an Arizona non-profit
corporation; the GREATER PHOENIX
23 CHAMBER OF COMMERCE, an Arizona
non-profit corporation; the TUCSON
24 HISPANIC CHAMBER OF COMMERCE,
an Arizona non-profit corporation; ; the
25 GREATER FLAGSTAFF CHAMBER OF
COMMERCE, an Arizona non-profit
26 corporation; and the ARIZONA
LICENSED BEVERAGE ASSOCIATION,
27 an Arizona non-profit organization
28

No.

**JOINT APPLICATION FOR
ORDER TO SHOW CAUSE**

AND

**JOINT MOTION FOR
TEMPORARY RESTRAINING
ORDER (WITH NOTICE) AND
PRELIMINARY INJUNCTIVE
RELIEF**

EXPEDITED RULING REQUESTED

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Plaintiffs,

v.

STATE OF ARIZONA; INDUSTRIAL COMMISSION OF ARIZONA, a public entity; DALE L. SCHULTZ, in his official capacity as a Commissioner for the Industrial Commission of Arizona; JOSEPH M. HENNELLY, JR., in his official capacity as a Commissioner for the Industrial Commission of Arizona; SCOTT P. LeMARR, in his official capacity as a Commissioner for the Industrial Commission of Arizona; ROBIN S. ORCHARD, in her official capacity as a Commissioner for the Industrial Commission of Arizona; ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM, a public entity; THOMAS J. BETLACH, in his official capacity as Director of the Arizona Health Care Cost Containment System; ARIZONA DEPARTMENT OF ADMINISTRATION; CRAIG C. BROWN, in his official capacity as the Director of the Arizona Department of Administration; ARIZONA STATE PROCUREMENT OFFICE; and ASHOKE SETH, in his official capacity as the State Procurement Administrator,

Defendants.

Pursuant to Rules 6(d) and 65 of the Arizona Rules of Civil Procedure, Plaintiffs Jane Ann Riddle, William L. Riddle III, Valle Luna, Inc., Charlotte Chester, Ian McCarthy, the Arizona Chamber of Commerce & Industry, the Greater Phoenix Chamber of Commerce, and the Tucson Hispanic Chamber of Commerce (“Plaintiffs”) hereby jointly move this Court for issuance of:

1. An Order directing the Defendants to show cause why Plaintiffs should not be granted the relief sought in their Verified Complaint for Special Action and this Application and Joint Motion for a Temporary Restraining Order (with notice), Preliminary, and Permanent Injunctive Relief.

2. A Temporary Restraining Order (“TRO”) prohibiting Defendants and their elected officials, appointed officials, directors, administrators, officers, managers, agents,

1 servants, affiliates, employees, and attorneys, and those persons in active concert or
2 participation with them from taking any action to enforce Proposition 206, codified as
3 A.R.S. §§ 23-363 and 23-371 through 23-381 (collectively, the “Proposition”), modify
4 existing state contracts to provide for an increase of costs associated with government
5 contractor compliance with the Proposition, or appropriate public monies originating from
6 the General Fund to reimburse costs associated with the Proposition.

7 3. An Order to Set Hearing on Preliminary Injunction providing Defendants
8 with notice of the date and time of the hearing on Plaintiffs’ Joint Motion for Preliminary
9 Injunctive Relief as to why a preliminary injunction should not be issued in the same force
10 and effect as the TRO.

11 This Application and Motion is supported by the following Memorandum of Points
12 and Authorities and the Verified Complaint. **Plaintiffs request that the hearing be set as**
13 **soon as possible in order to resolve these matters timely before the laws at issue take**
14 **effect on January 1, 2017.**

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 At the November 8, 2016, General Election in Arizona, Arizona’s electorate
18 approved an initiative measure titled “The Fair Wages and Healthy Families Act” (the
19 “Proposition”) with the serial number I-24-2016, the application for which was filed on
20 March 30, 2016, and which was approved as “Proposition 206.” A copy of the Proposition
21 is enclosed as Exhibit A to Plaintiffs’ Complaint.

22 The Proposition mandates an increase of the Arizona minimum wage under A.R.S.
23 § 23-363, incrementally raising the hourly minimum wage to \$12 per hour by January 1,
24 2020, for non-tipped hourly employees and \$9 per hour for tipped employees. The initial
25 minimum wage increase takes effect on January 1, 2017. *See* Amended A.R.S. § 23-363.
26 After 2020, the minimum wage is indexed to the rate of inflation. *Id.*

27 The Proposition also created a new article in Title 23—Article 8.1 (A.R.S. §§ 23-
28 371 through 23-381). Article 8.1 mandates a new employee benefit that all employers

1 must bear—“Earned Paid Sick Time.” *See* A.R.S. § 23-363. Although the minimum wage
2 rates are the same for all employers, the Proposition mandates two unequal amounts of
3 earned paid sick time, based on the number of employees employed by an employer. *See*
4 A.R.S. § 23-372. The earned paid sick time provisions also differ from the minimum wage
5 law as they do not apply to employees covered by existing union collective bargaining
6 agreements. *See* A.R.S. § 23-381. The paid sick leave provisions go into effect on July 1,
7 2017. *See* A.R.S. § 23-372.

8 While the Proposition exempts the State of Arizona from paying its employees at
9 the new minimum wage and providing paid sick time (*see* A.R.S. § 23-371(G)), it does
10 not create a similar exemption for State contracts, compliance with federal regulations, or
11 compliance with an Arizona Supreme Court order, when the State is required to reimburse
12 or pay its vendors for the wages and benefits the vendors must pay their employees. As a
13 result, the Proposition will require numerous state agencies to immediately modify state
14 contracts to comply with the “mandatory” Proposition and make increased payments to
15 such contractors from the State’s General Fund. *See* Complaint, at Exhibits C and D; *see*
16 *also* Exhibit A, Arizona Joint Legislative Budget Committee, Ballot Proposition 206
17 Fiscal Analysis, at 4. Or, in regard to cost-reimbursement type government contracts,
18 increased payments from the state agency to the contractor will occur automatically. *Id.*
19 Further, agencies will request increased financial allocations from the Legislature,
20 resulting in the expenditure of revenues from the State’s General Fund. As the Proposition
21 did not provide a funding mechanism to address these additional expenditures from the
22 General Fund, it violates the Constitution’s Revenue Source Rule.

23 The Proposition also combined two unrelated topics – minimum wage and paid
24 sick leave – into one ballot measure. The Proposition treats each topic as separate
25 regulatory schemes. The same minimum wage rates apply to all employers, whereas there
26 are various paid sick leave payment requirements depending upon employer size and
27 ongoing collective bargaining agreements. As the Proposition “log-rolled” divergent ideas
28 together, it also violates the Arizona Constitution’s Separate Amendment Rule.

1 **II. ARGUMENT**

2 An injunction prevents “future wrongs that are likely to occur.” *TP Racing,*
3 *L.L.L.P. v. Simms*, 232 Ariz. 489, 495, 307 P.3d 56, 62 (App. 2013). Plaintiffs are entitled
4 to a preliminary injunction by showing “a strong likelihood of success on the merits, a
5 possibility of irreparable injury if the injunction is not granted, a balance of hardships
6 weighing in [their] favor, and public policy favoring the requested relief.” *Id.* Courts apply
7 a sliding scale to assess these factors. *See Smith v. Ariz. Citizens Clean Elections Comm’n*,
8 212 Ariz. 407, 410–11, 132 P.3d 1187, 1190-91 (2006). Plaintiffs must show “either 1)
9 probable success on the merits and the possibility of irreparable injury; or 2) the presence
10 of serious questions and the balance of hardships tips sharply in [their] favor.” *Simms*, 232
11 Ariz. at 495, 307 P.3d at 62 (internal quotation marks omitted). Plaintiffs must also show
12 that the Defendants’ official actions likely will engage in the harmful conduct. *Id.* Here,
13 the four factors all weigh in Plaintiffs’ favor, particularly when assessed using the “sliding
14 scale.”

15 **A. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS**

16 **1. THE PROPOSITION’S FAILURE TO IDENTIFY AN**
17 **APPROPRIATE FUNDING SOURCE REQUIRES AN**
18 **UNCONSTITUTIONAL EXPENDITURE OF STATE**
19 **GENERAL FUND RESOURCES.**

20 The Proposition does not include the necessary self-funding measures required of
21 initiative measures under the Arizona Constitution’s Revenue Source Rule. Article 9, §
22 23(A) of the Constitution states:

23 An initiative or referendum measure that proposes a mandatory expenditure
24 of state revenues for any purpose, establishes a fund for any specific
25 purpose or allocates funding for any specific purpose must also provide for
26 an increased source of revenues sufficient to cover the entire immediate and
27 future costs of the proposal. The increased revenues may not be derived
28 from the state general fund or reduce or cause a reduction in general fund
revenues.

Despite this constitutional requirement, the Proposition does not include any
mechanism to pay for the necessary increased costs for the State. First, the Proposition

1 mandates that the Industrial Commission “promulgate appropriate guidelines or
2 regulations” for the implementation and enforcement of the new paid sick leave
3 provisions, yet it does not provide any funding to cover the costs of the development of
4 these guidelines or enforcement of the new requirements. A.R.S. § 23-376.

5 Additionally, the Proposition does not provide a funding mechanism to cover the
6 costs associated with the payment of private government contractors who are mandated to
7 (1) pay their employees the increased minimum wage and (2) provide the mandated paid
8 sick leave. Many of the State’s contracts require the State to either directly pay or
9 reimburse private government contractors for the wages and benefits paid to the
10 contractor’s employees. For any cost-reimbursable contract, A.A.C. § R2-7-C317
11 automatically authorizes any costs that are allowable and reasonable, based on federal
12 regulations. These federal regulations, in turn, provide that any cost-reimbursement of any
13 minimum wages and costs associated with the new paid sick leave provisions for state
14 government contractors are automatically allowable costs. *See* 48 Code of Federal
15 Regulations (C.F.R.) § 31.205-6. As a result, this means state contractors operating under
16 cost-reimbursable contracts will be able to either seek modifications of their existing
17 government contracts to receive payment for these increased mandatory costs or just
18 submit an increase in related minimum wage and paid sick leave costs on their January
19 2017 invoice to the applicable State agency. As the State agencies continue to reimburse
20 these additional costs to the contractors from the General Fund, they will need to ask for
21 additional procurement funding from the Legislature. These immediate and future funds
22 will need to be appropriated and paid from the State General Fund.

23 The Arizona Health Care Cost Containment System (AHCCCS) in particularly will
24 face significantly increased costs resulting from its contracts. By law, AHCCCS must
25 comply with all applicable federal regulations and grant requirements to ensure continued
26 federal funding for AHCCCS programs. *See* A.R.S. § 36-2903(M). 42 C.F.R. § 447.200,
27 *et seq.*, are the federal regulations that require AHCCCS to ensure that any service
28 provider payment is economical and that AHCCCS maintain a service provider network to

1 meet the needs of those eligible to receive medical benefits under AHCCCS. In addition,
2 the State of Arizona and AHCCCS have entered into a contract with the United States
3 Government in regard to the administration of the federal Medicaid grant program in
4 Arizona. This contract (also called the “State Plan”) mandates that AHCCCS guarantee
5 that the payments to providers and caretakers are sufficient enough to ensure enough
6 providers to meet the needs of those eligible to receive medical benefits – meaning that
7 AHCCCS must reimburse costs of at least minimum wage for services rendered and for
8 costs associated with the paid sick leave provisions of the Proposition. *See* Complaint, at
9 Exhibit B.

10 AHCCCS also has similar requirements under Arizona law. Pursuant to *Arnold v.*
11 *Ariz. Dep’t of Health Servs.*, 160 Ariz. 593 (1989), AHCCCS and the State of Arizona
12 must provide a treatment system that coordinates with all available treatment services and
13 resources, which includes the requirement to maintain a medical network provider system
14 pursuant to government contract to meet the needs of such treatment, including care takers
15 and employment opportunities for the developmentally disabled. This means AHCCCS is
16 required to pay network providers, caretakers, and developmentally disabled qualified
17 participants the applicable minimum wage.

18 In fact, on December 14, 2016, AHCCCS published a notice of public information
19 describing the proposed changes for its fee for service rates and related capitation rate
20 adjustments resulting from the implementation of the Proposition. *See* Complaint, at
21 Exhibit C. The Arizona Department of Economic Security announced similar mandatory
22 contract adjustments to comply with the Proposition. *See* Complaint, at Exhibit D.

23 These increased contractual costs will result in a massive increased expenditure of
24 state revenues. *Id.* The Constitution’s Revenue Source Rule explicitly requires that any
25 initiative proposing a mandatory expenditure of state revenues also provide a method to
26 increase sources of revenue sufficient to cover these costs, and this method cannot simply
27 be using money in the State General Fund. The Proposition, however, does not provide
28 any such funding mechanism – leaving the state agencies and Legislature dependent upon

1 the General Fund to cover these increased costs. The Proposition drafters were well aware
2 that the Proposition could not impact General Fund by excluding increased payments to
3 state employees. A.R.S. § 23-371(G). The increased state payments to state contractors,
4 especially as mandated by law or contract, are no different. *See* Exhibit A, at 4. Therefore,
5 the Proposition violates the Revenue Source Rule.

6 2. **THE PROPOSITION EMBRACES MULTIPLE SUBJECTS,
7 VIOLATING ARTICLE 21, § 1 OF THE ARIZONA
8 CONSTITUTION.**

9 The Arizona Constitution also provides that when constitutional amendments are
10 presented to Arizona voters, they be submitted as separate measures. “If more than one
11 proposed amendment shall be submitted ... [they] shall be submitted in such manner that
12 the electors may vote for or against such proposed amendments separately.” Ariz. Const.
13 art. 21, § 1. This Separate Amendment Rule is designed to ensure Arizona voters can
14 express their separate opinions regarding each constitutional amendment, rather than
15 being forced to approve or deny multiple changes in one vote. *See McLaughlin v. Bennett*,
16 225 Ariz. 351, 353-54, 238 P.3d 619, 621-22 (2010).¹

17 The Separate Amendment Rule, in truth, has only been applied to date to proposed
18 constitutional amendments. There is good reason, however, to treat the Proposition
19 similarly to a constitutional amendment, given the serious protections afforded voter-
20 enacted legislation. In 1998, Arizona voters passed Proposition 105, now codified as Ariz.
21 Const. art. 4, pt. 1, § 1(6)(C). This provision prevents the Legislature from amending a
22 voter-approved initiative measure unless the modification “furthers the purposes of such

23 ¹ Plaintiffs note that the Constitution also contains a separate “Single Subject Rule,”
24 which requires that every act address only one subject. *See* Ariz. Const. art. 4 pt. 2, § 13.
25 Precedent dictates that that rule only applies to legislative enactments. *See Citizens Clean*
26 *Elections Comm’n v. Myers*, 196 Ariz. 516, 524 ¶ 35 (2000)); *Iman v. Bolin*, 98 Ariz. 358,
27 365 (1965). While the term “Single Subject Rule” has been used “loosely” to describe up
28 to three different provisions of the Arizona Constitution, *see Clean Elections Inst. v.*
Brewer, 209 Ariz. 241, 243 ¶ 3 (2004), *abrogated in part on other grounds by Save Our*
Vote, Opposing C-03-2012 v. Bennett, 231 Ariz. 145, 151 (2013), including the Separate
Amendment Rule, the case law analyzing each of those constitutional provisions may
“provide guidance” on the others. *See Bentley v. Building Our Future*, 217 Ariz. 265, 271-
72 (App. 2007).

1 measure” and is approved by at least three-fourths of the members of each house,
2 essentially “constitutionalizing” statutory measures passed by the voters. Proposition 105
3 has put statutory initiatives on par with constitutional amendments – both really can only
4 be changed through the vote of the people. As such, a statutory ballot measure should be
5 subjected to the same rigors as proposed constitutional amendments.

6 In evaluating a separate amendment challenge, a court should examine whether the
7 provisions of the proposed amendment are (1) topically related and (2) sufficiently
8 interrelated so as to form a consistent and workable proposition. *McLaughlin*, 225 Ariz. at
9 354, 238 P.3d at 622. Plaintiffs concede that the two provisions of the Proposition,
10 minimum wage and paid sick leave, are topically related, as both address employee
11 benefits. However, these provisions are not “sufficiently interrelated.”

12 The Arizona Supreme Court has specified four separate factors to assess whether a
13 constitutional amendment’s provisions are sufficiently interrelated: (1) whether the
14 provisions are facially related, (2) whether all the provisions concern a single
15 constitutional section, (3) whether the voters or Legislature have historically treated the
16 matters as one subject, and (4) whether the various provisions are qualitatively similar in
17 their effect. *Korte v. Bayless*, 199 Ariz. 173, 177, 16 P.3d 200, 204 (2001). The
18 Proposition fails on all of these factors. First, the two provisions are not facially related, as
19 one deals with minimum wage and the other addresses paid sick time. Second, the
20 sponsors themselves determined that the two provisions do not belong in the same section,
21 creating an entirely new article separate from minimum wage for paid sick time.

22 Third, voters have not treated these matters as one single subject. In fact, in 2006,
23 the public voted on a straight-up minimum wage increase, which did not include any other
24 employee benefits. *See* Proposition 202, the Arizona Minimum Wage Act. Lastly, the
25 provisions, as enacted, will have completely different effects on existing law. As a result,
26 the Proposition fails the separate amendment test, violating the Arizona Constitution.

27 **B. Plaintiffs Will Suffer Irreparable Harm Unless Defendants Are**
28 **Enjoined.**

1 There is also a high likelihood of irreparable injury if the injunction is denied and
2 Defendants enforce the Proposition. Simply, if Defendants are allowed to violate
3 Plaintiffs' constitutional rights by ignoring the requirements of the Arizona Constitution,
4 Plaintiffs cannot be adequately compensated at law. *See Elrod v. Burns*, 427 U.S. 347, 373
5 (1976) (the deprivation of any constitutional right "unquestionably constitutes irreparable
6 injury."); *See Am. Trucking Ass'n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1059 (9th
7 Cir. 2009) ("[C]onstitutional violations cannot be adequately remedied through damages
8 and therefore generally constitute irreparable harm.").

9 The Proposition will significantly increase the operating costs for the Plaintiffs and
10 their respective members. On January 1, 2017, all private and non-profit employers will
11 be required to raise the hourly minimum wage paid to employees, and soon after, start
12 providing paid sick leave time. Some employers will be required to reduce the number of
13 employees, while others may close their operations altogether. *See Exhibit A.*
14 Additionally, state agencies will begin accruing increased contracting costs, which will
15 necessitate additional, significant expenditures from the State General Fund. *Id.*; *see also*
16 *Complaint*, at Exhibits C and D.

17 **C. The Balance of Hardships Tips Sharply in Plaintiffs' Favor.**

18 The third factor, the balance of hardships, tips sharply in Plaintiffs' favor. As
19 outlined above, Plaintiffs will face significant economic hardships if the injunction is
20 denied. Furthermore, any violation of the Arizona Constitution is a hardship that tips the
21 balance in favor of the harmed plaintiff. *See, e.g., Melendres v. Arpaio*, 695 F.3d 990,
22 1002 (9th Cir. 2012) ("[I]t is always in the public interest to prevent the violation of a
23 party's constitutional rights."). It is unclear what, if any, hardships Defendants may suffer,
24 as an injunction would simply relieve them of their duty to enforce the Proposition
25 pending judicial analysis of the laws and maintain the status quo until full legal review is
26 able to occur.

27 **D. Public policy also favors the requested relief.**

28

1 This is a classic case of not being able to put the genie back in the bottle. Once the
2 Proposition's mandated minimum wage and paid sick time takes effect, employers across
3 the state must begin expending tens of millions of dollars. Furthermore, it is in the interest
4 of public policy to first determine the viability of the Proposition against a constitutional
5 challenge prior to allowing an ill-conceived law to proceed that has such a dramatic
6 impact on immediately decreasing the State's General Fund. In addition, "log-rolling"
7 legislation should always be discouraged as a matter of public policy, which exists here
8 when minimum wage is linked to the unrelated paid sick leave mandates of the
9 Proposition. *See Clean Elections Inst., Inc.*, 209 Ariz. at 243 ¶ 4 ("The purpose of the
10 single subject provision is to prevent surprise and the evils of surreptitious or hodgepodge
11 legislation, including the practice known as logrolling.") Finally, it would create a
12 significant public backlash to thousands of employers if the court later determines that the
13 Proposition is unconstitutional, and employers are allowed to return to the status quo for
14 minimum wage and are not obligated to provide paid sick leave. It may not be feasible to
15 return from these increased payments. Finally, state agencies are actively working toward
16 modifying state contracts to comply with the "mandatory" Proposition requirements. *See*
17 *Complaint*, at Exhibits C and D. Therefore, it is critical that all state agencies and Arizona
18 employers – and their employees – know what the law is on January 1, 2017.

19 **III. ADDITIONAL REQUIREMENTS FOR PRELIMINARY RELIEF**

20 **A. Notification to Opposing Counsel**

21 Pursuant to Ariz. R. Civ. P. 65(d), undersigned counsel certifies that he has
22 provided an electronic copy of the Verified Complaint and this Joint Motion to counsel for
23 the Defendants concomitantly with its filing with the Court.

24 **B. A Bond Should Not Be Required**

25 Under Rule 65(e), a plaintiff seeking preliminary relief must generally post a bond
26 "in such sum as the court deems proper." Federal courts applying the federal analogue of
27 this provision, however, have held that the "court has discretion to dispense with the
28 security requirement, or to request a mere nominal security, where requiring security

1 would effectively deny access to judicial review.” *Van de Kamp v. Tahoe Reg. Planning*
2 *Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985); *see also Barahona-Gomez v. Reno*, 167
3 F.3d 1228, 1237 (9th Cir. 1999). In cases in which a plaintiff is acting in the public
4 interest, courts routinely waive the bond requirement or impose a nominal bond. *See Van*
5 *de Kamp*, 766 F.2d at 1325-26. Here, the Plaintiffs are seeking to enjoin a violation of the
6 Arizona Constitution. Anything more than a nominal bond would have a chilling effect on
7 efforts to ensure compliance with the law.

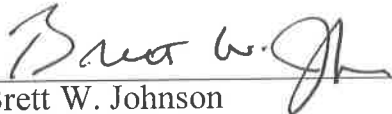
8 **IV. CONCLUSION**

9 For the foregoing reasons, Plaintiffs ask that this Court enter the requested show
10 cause and temporary restraining order, set a preliminary injunction hearing on this matter
11 as promptly as possible, and enjoin the law to prevent its unconstitutional provisions from
12 taking effect.

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RESPECTFULLY SUBMITTED this 15th day of December, 2016.

SNELL & WILMER L.L.P.

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EXHIBIT A

BALLOT PROPOSITION 206

FISCAL ANALYSIS

Estimated Impact

A.R.S. § 19-123D requires the JLBC Staff to prepare a summary of 300 words or less on the fiscal impact of voter-initiated ballot measures. Proposition 206 would increase the state's current hourly minimum wage of \$8.05 in 4 steps to \$12.00 in 2020. The rate would thereafter increase in each subsequent year by the cost of living. Under current law, the state's minimum wage also increases annually by the cost of living. Beginning July 1, 2017, Proposition 206 also requires employers to provide employees a minimum of 1 hour of paid sick leave per 30 hours worked. Under Proposition 206, the State of Arizona and certain small businesses would continue to be exempt from paying the minimum wage. The State of Arizona would also be exempt from paid sick leave provisions of the measure.

Proposition 206's provisions may have an economic impact on state and local revenue collections and state spending. By increasing wages and business costs, Proposition 206 may affect individual income tax, corporate income tax and sales tax collections. In addition, Proposition 206's provisions may affect participation in, and the cost of, public assistance programs. It is difficult to determine the impacts of Proposition 206 on either state revenues or spending in advance.

The state may currently levy civil penalties against violators of the minimum wage laws. Proposition 206 expands these penalties to violators of the paid sick leave requirements. These additional penalties would be retained by the state Industrial Commission to finance enforcement of Proposition 206.

The state Industrial Commission may incur costs to implement a public education program under Proposition 206 to inform individuals about paid sick leave requirements.

Background

Arizona law requires employers to pay a minimum wage of \$8.05 an hour in 2016 instead of the federal minimum wage of \$7.25 an hour. The state rate is adjusted annually for changes in the federal consumer price index (CPI). Proposition 206 would increase the state's minimum wage of \$8.05 in 2016 to \$10.00 in 2017, \$10.50 in 2018, \$11.00 in 2019 and \$12.00 in 2020 and index the rate to the federal CPI in later years.

State and federal law do not mandate a minimum amount of paid sick leave for workers. Beginning July 1, 2017, Proposition 206 would require employers to provide employees a minimum of 1 hour of paid sick leave per 30 hours worked. Employees of establishments with less than 15 workers would be entitled to use a minimum of 24 hours of sick leave yearly while employees of establishments with 15 or more workers would be entitled to use a minimum of 40 hours of sick leave yearly.

The state Industrial Commission currently enforces the state's minimum wage requirements. Proposition 206 expands the agency's authority to include enforcement of the measure's paid sick leave requirements. Employers that violate recordkeeping, posting, and other requirements of minimum wage provisions are currently fined at least \$250 for the first violation and at least \$1,000 for each subsequent violation. Under Proposition 206, these same penalties would apply to violations of the sick leave requirements. The state Industrial Commission is already permitted to retain these fines for enforcement purposes.

Proposition 206 would also allow the state Industrial Commission to implement a public education program to inform individuals about paid sick leave requirements available under the measure.

(Continued)

Analysis

Minimum Wage Provisions

Based on projected inflation estimates from a leading national forecasting company, the state's current law minimum wage of \$8.05 in 2016 is forecast to increase to \$8.80 by 2020. *Table 1* shows that the minimum wage under Proposition 206 would exceed the amounts projected under current law by \$1.85 in 2017 and by \$3.20 once the measure's phase-in period is complete in 2020.

CY	Projected Inflation	Hourly Minimum Wage			
		Current Law ^{1/}	Prop. 206	\$ Difference	% Difference
2016		\$ 8.05	\$ 8.05	\$ -	0.0%
2017	1.12%	\$ 8.15	\$ 10.00	\$ 1.85	22.7%
2018	2.71%	\$ 8.35	\$ 10.50	\$ 2.15	25.7%
2019	2.26%	\$ 8.55	\$ 11.00	\$ 2.45	28.7%
2020	2.68%	\$ 8.80	\$ 12.00	\$ 3.20	36.4%

^{1/} Pursuant to A.R.S. § 23-363, once the minimum wage is adjusted for annual inflation, it is rounded to the nearest multiple of \$0.05.

The potential economic and fiscal impacts of Proposition 206's minimum wage provisions are described below.

Impact on Businesses

An increase of the hourly minimum wage may result in higher labor costs for businesses in Arizona. To compensate for the higher wage costs, businesses may attempt to raise product prices, reduce other labor costs (e.g., non-wage benefits), and/or substitute capital for labor through automation. If they are unable to pass on the higher labor costs to consumers or raise their productivity, businesses may experience reduced profits and possibly reduced operations in the state. This could result in a decline in both employment and business activity.

Impact on Wage Earners

In the absence of negative employment (or "disemployment") effects, Proposition 206 would directly benefit employees that earn less than the measure's \$12.00 phased-in hourly minimum wage. Using Occupational Employment Statistics data from surveys of Arizona businesses, the Arizona Department of Administration (ADOA) estimates that 706,845 workers earned a wage of \$12.00 or less during 2015. *Table 2* provides additional detail of estimated employment by wage groups.

The amount of workers that would directly benefit from the measure's minimum wage increase may be more than or less than the total listed in the table. The figures include workers of employers that are exempt from the minimum wage and therefore may be overestimated. The JLBC Staff does not have data on the number of workers of exempt employers.

Hourly Wages	Number of Employees
\$8.80 and under ^{1/}	182,913
\$8.81 - \$10.00	249,953
\$10.01 - \$10.50	80,392
\$10.51 - \$11.00	67,625
\$11.01 - \$12.00	<u>125,962</u>
Total	706,845

^{1/} Pursuant to A.R.S. § 23-363, employers may pay tipped workers a base wage that is up to \$3.00 less than the minimum wage.

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However, the figures also exclude workers in certain occupations for which detailed hourly wage data is not available and therefore may be underestimated. The estimates also do not reflect the number of workers making above \$12.00 an hour that could indirectly benefit from any adjustments employers may make to pay scales as a result of a minimum wage increase.

There is considerable academic research on the effect of minimum wage increases on employment. As noted by the federal Congressional Research Service in their review of the academic literature, though, the research's "findings are often contradictory." Researchers have attempted to summarize findings of the literature through "meta-studies," which review the estimates from a wide range of academic articles.

Authors of a 2007 meta-study of over 100 articles found that about two-thirds of the papers included estimates that past minimum wage increases lowered employment of low-skilled workers to some degree. Authors of a separate 2009 meta-study analyzed the findings of 64 articles, after making adjustments to remove what they determined were statistical flaws in the initial results. This meta-study found that the impact of increases to the minimum wage on employment in the U.S. has been insignificant.

Furthermore, other studies have found that employment's responsiveness to wages may vary by region, place in the business cycle, the amount of the minimum wage increase, and whether the minimum wage increase is implemented at once or over time through regular adjustments for inflation. Available studies also do not necessarily replicate Proposition 206's specific minimum wage proposal. As a result of all these factors, the impact that Proposition 206's minimum wage increases would have on employment in Arizona is highly uncertain.

Impact on Consumers

Consumers may also be affected by the proposed minimum wage increase if businesses increase their product prices in response to the associated cost increase. In other words, some businesses may be able to partially or fully pass along the wage increase to their customers. However, as noted above, other businesses may absorb the higher labor cost stemming from the minimum wage increase without raising prices.

Impact on State Revenues

The academic minimum wage studies do not generally attempt to quantify the overall state revenue impact of a minimum wage increase. As noted below, a higher minimum wage could theoretically affect state individual income and corporate income taxes and sales taxes, in opposite directions. As a result, it is difficult to determine the overall impact on state revenue collections in advance.

Individual Income Tax

Those employees receiving a higher wage may also pay a higher state individual income tax than under current law. However, some of these revenue gains may be offset if there is any negative employment effect associated with the minimum wage increase.

Proposition 206 may also affect the number of taxpayers that claim certain income tax credits provided in statutes. These tax credits – the \$25 credit for the 0.6% Proposition 301 sales tax (A.R.S. § 43-1072.01) and the \$40 family income tax credit (A.R.S. § 43-1073) – are both subject to certain income requirements.

Corporate Income Tax

The higher wage costs associated with a minimum wage increase may result in reduced corporate profits, which, in turn, may reduce state corporate income tax payments. The tax revenue impact depends on the extent to which corporations would be able to offset the cost increase by raising product prices, reducing other labor costs (e.g., non-wage benefits), and/or substituting capital for labor through automation.

Sales Tax

Those individuals that would benefit from the proposed state minimum wage may have a higher disposable

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income, which, in turn, may result in increased spending and thus higher sales tax revenues for the state. The opposite scenario would occur for those individuals that may lose their jobs as a result of this proposal. Sales tax revenues could also increase as a result of businesses raising their product prices in response to the minimum wage increase.

Impact on State Expenditures

The wage increase could result in state savings if there is a reduction in the number of citizens who rely on public assistance. A higher minimum wage could potentially affect participation in a number of Arizona Health Care Cost Containment System (AHCCCS) and Department of Economic Security programs in which eligibility is determined by income level. This impact has not been determined.

Under Proposition 206, the state government as an employer would remain exempt from paying the minimum wage. The state may be impacted, though, through its contracts with companies employing non-state workers. If contractors' wages are below \$12.00 an hour, state contracted costs may increase as contractors raise wages. For example, 50% of home health aides in Arizona were paid wages of \$10.70 or less in 2015. These workers would receive wage increases under Proposition 206, which may increase the rates that the state pays for Medicaid home and community based services.

If employers violate the minimum wage requirements, the state Industrial Commission will collect additional civil penalties. The additional amount of civil penalties collected will depend on the level of compliance.

Paid Sick Leave Provisions

There is significantly less academic research on the impacts of paid sick leave requirements than of minimum wage requirements. Many of the economic and fiscal impacts of paid sick leave requirements under Proposition 206, though, are expected to be similar to, but likely smaller than, those described under the *Minimum Wage Provisions* section.

An increase in sick leave use resulting from Proposition 206 may increase business labor costs as additional non-wage compensation is needed for employers to purchase a given amount of labor hours. To offset added labor costs, businesses may attempt to raise product prices, reduce wages of employees that make above the minimum wage, and/or substitute capital for labor through automation. Some of the initial labor costs of increased use of paid sick leave may also be offset by improved employee health from lower transmission of contagious diseases and lower employee turnover. Any changes to wages, employment, prices or profits resulting from Proposition 206's sick leave provisions could indirectly impact state revenue collections of individual and corporate income tax and sales tax.

Under Proposition 206, the state government as an employer would be exempt from paid sick leave requirements. The JLBC Staff currently lacks information as to the extent the state employs contractors which provide levels of sick leave that are below those required under Proposition 206. If contractors offer less than the minimum required benefit, state contracted costs may increase as labor costs of contractors rise.

As with the minimum wage requirements, if employers violate the paid sick leave requirements, the state Industrial Commission will collect additional civil penalties. The additional amount of civil penalties collected will depend on the level of compliance.

Proposition 206 would allow the state Industrial Commission to implement a public education program to inform individuals about paid sick leave requirements available under the measure. The agency does not have an estimate of the costs of implementing such a public education program.

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Local Government Impact

The Urban Revenue Sharing formula distributes 15% of income taxes collected 2 years' prior to incorporated cities and towns. Depending on how wage and paid sick leave provisions impact income tax revenues, these distributions could change starting in FY 2019. State sales tax revenues are also shared with local government. Any change in these collections resulting from Proposition 206 would impact distributions to cities and counties starting in FY 2017.

Unlike the state government, Proposition 206 requires political subdivisions to pay the increased minimum wage rate and provide minimum levels of paid sick leave. Therefore, subdivisions may incur additional employee payroll costs.

If labor costs of contractors increase as a result of Proposition 206, political subdivisions may also incur additional contracting costs.