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MARTY J. JACKLEY
ATTORNEY GENERAL

RECEIVED

FEB 07 2023

SD Secretary of State

MARK W. BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

February 7, 2023

Filed this 7th day of

February 2023

Monae L. Johnson

SECRETARY OF STATE

Honorable Monae Johnson
Secretary of State
500 E. Capitol
Pierre, SD 57501

RE: Attorney General's Statement (Initiated Amendment Prohibiting Taxes on Anything Sold for Human Consumption)

Dear Secretary Johnson,

Enclosed is a copy of a proposed constitutional amendment, in final form, that the sponsor submitted to this Office. In accordance with state law, I hereby file the enclosed *draft* Attorney General's Statement for the purposes of receiving public comment on the same.

By copy of this letter, I am providing a copy of the *draft* Statement to the sponsor.

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/dd
Enc.

Cc/encl: Richard P. Weiland
Reed Holwegner – Legislative Research Council

CONSTITUTIONAL AMENDMENT
DRAFT ATTORNEY GENERAL'S STATEMENT

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FEB 07 2023

SD Secretary of State

Title: An Initiated Amendment Prohibiting Taxes on Anything Sold for Human Consumption.

Explanation:

Currently, the State collects tax on the sale or use of certain goods, including foods and drinks. Many municipalities also collect tax on the sale or use of goods.

This initiated amendment overrides existing laws and prohibits the State, from collecting sales or use tax on anything sold for human consumption. The amendment eliminates these sources of revenue for the State.

Human consumption is not defined by state law. However, its common definition includes more than foods and drinks.

The amendment does not prohibit the collection of sales or use tax on alcoholic beverages or prepared food. Prepared food is defined by law to include food that is sold heated or with utensils.

The amendment may prevent the State from carrying out its obligations under the tobacco master settlement agreement. The master settlement agreement resulted from multi-state lawsuits against cigarette manufacturers for the public health effects of smoking. South Dakota's annual share of the master settlement agreement is approximately \$20 million.

Judicial clarification of the amendment will be necessary. The Legislature cannot alter the provisions of a constitutional amendment.

Filed this 7th day of

February 2023

Monae L. Johnson

SECRETARY OF STATE

December 7, 2022

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FEB 07 2023

By email and U.S. Mail

SD Secretary of State

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Monac.Johnson@state.sd.us
Secretary of State Monac Johnson
500 E. Capitol Ave. Ste. 204
Pierre, SD 57501

Greetings:

In accordance with SDCL 12-13-25.1, I submit the following proposed initiated amendment to the Constitution in final form:

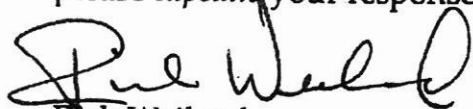
BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

That Article XI of the Constitution of the State of South Dakota be amended by adding a NEW SECTION to read:

The state may not tax the sale of anything sold for human consumption, except alcoholic beverages and prepared food. Municipalities may continue to impose such taxes.

I ask the Attorney General to prepare the necessary title and explanation for this initiated amendment. Per SDCL 2-9-30, I ask the Director of the Legislative Research Council to prepare the necessary fiscal note for it.

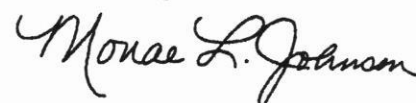
Because of the delay in our ability to begin collecting signatures caused by the Attorney General's misinterpretation of our previous submission on this subject, please *expedita* your response to this request. Thank you.



Rick Weiland
Dakotans for Health
P.O. Box 2063
Sioux Falls, SD 57101

Filed this 7th day of

February 2023



SECRETARY OF STATE