STATE OF SOUTH DAKOTA

OFFICE OF ATTORNEY GENERAL
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
http://atg.sd.gov

MARTY J. JACKLEY
ATTORNEY GENERAL

MARK W. BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

RECEIVED
FEB 27 2023
SD Secretary of State

February 27, 2023

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

RE: Attorney General's Statement (Constitutional 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 Attorney General's Statement for this constitutional amendment.

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

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/dd
Enc.

Filed this 27th **day of** February 2023

Monae L. Johnson

SECRETARY OF STATE

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

RECEIVED
FEB 27 2023
SD Secretary of State

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

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 these taxes.

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 affect the State's obligations under the tobacco master settlement agreement and the streamlined sales tax 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. The streamlined sales tax agreement is a multistate program designed to simplify the collection of sales and use tax for companies selling in multiple jurisdictions.

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

Filed this 27th day of
February 2023
Monae L. Johnson
SECRETARY OF STATE

December 7, 2022

Attorney General
DEC - 9 2022

By email and U.S. Mail

Mark.Vargo@state.sd.us
Attorney General Mark Vargo
1302 E. Hwy 14, #1
Pierre, SD 57501

Reed.Holwegner@sdlegislature.gov
Director Reed Holwegner, LRC
500 E. Capitol Ave.
Pierre, SD 57501

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

RECEIVED
FEB 27 2023
SD Secretary of State

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 *expedite* your response to this request. Thank you.

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

Filed this 27th day of
February 2023
Monae L. Johnson
SECRETARY OF STATE