



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>

RECEIVED

NOV 09 2022

SD Secretary of State

MARK A. VARGO
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

November 9, 2022

Honorable Steve Barnett
Secretary of State
500 E. Capitol
Pierre, SD 57501

RE: Attorney General's Statement (Initiated Measure: Sales Tax on Eating and Drinking)

Dear Secretary Barnett,

Enclosed is a copy of a proposed initiated 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 initiated measure.

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

Very truly yours,

Mark A. Vargo
ATTORNEY GENERAL

MAV/dd
Enc.

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

Filed this 9th day of
November, 2022
Steve Barnett
SECRETARY OF STATE

INITIATED MEASURE
ATTORNEY GENERAL'S STATEMENT

RECEIVED

NOV 09 2022

SD Secretary of State

Title: An Initiated Measure Prohibiting Taxes on Anything Sold for Eating or Drinking.

Explanation:

Currently, the state collects tax on the sale or use of certain foods or drinks. Many municipalities also collect tax on the sale or use of foods or drinks.

This initiated measure prohibits the state, or municipalities, from collecting sales or use tax on anything sold for eating or drinking by humans. The measure eliminates these sources of revenue.

The measure 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.

Judicial or legislative clarification of the measure may be necessary.

Filed this 9th day of

November, 2022

Steve Barnett

SECRETARY OF STATE

RECEIVED

NOV 09 2022

SD Secretary of State

RECEIVED

OCT 24 2022

SD Secretary of State

August 26, 2022

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

Reed.Holwegner@sdlegislature.gov
Director Reed Holwegner
Legislative Research Council
500 E. Capitol Ave.
Pierre, SD 57501

Steve.Barnett@state.sd.us
Secretary of State Steve Barnett
Capitol Building
500 E. Capitol Ave. Ste 204
Pierre, SD 57501

Gentlemen:

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

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

That Title 10 be amended by adding a NEW SECTION to read:

Notwithstanding any other provision of law, the state may not tax the sale of anything sold for eating or drinking by humans, except alcoholic beverages and prepared food.

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

Thank you.

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

Filed this 24th day of

October, 2022

SECRETARY OF STATE

Filed this 9th day of

November 2022

SECRETARY OF STATE

Dougherty, Debbie

From: Kooistra, Stacy <stacy.kooistra@siouxfalls.org>

Sent: Tuesday, November 8, 2022 9:21 AM

Subject: [EXT] Initiated Amendment - Food and Drinks - City of Sioux Falls comments

Attorney General Vargo,

On behalf of the City of Sioux Falls, thank you for this opportunity to submit comments regarding your proposed explanation for the food tax initiated amendment. For your convenience, I have attached proposed revisions in both tracked changes and clean versions.

The intent of the City's proposed changes is to provide information to the voters regarding the municipal uses of the existing tax because the City knows that removal of the tax will significantly impact both our general fund and capital fund, which will likely result in the reduction of services and capital investments. The City believes that the impact will be even greater on South Dakota's smaller communities, due to their sales tax bases being far less diversified.

We presume that there will be a fiscal note that will go along with the AG's explanation that will provide information to the voter regarding the total impact to the state and municipalities.

Thank you to you and your team for your consideration!

Respectfully,

Stacy

Stacy F. Kooistra

City Attorney

224 West Ninth Street

P.O. Box 7402

Sioux Falls, SD 57117-7402



 605-367-8880

 stacy.kooistra@siouxfalls.org

www.siouxfalls.org

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Title: An Initiated Amendment Prohibiting Taxes on Anything Sold for Eating or Drinking.

Explanation:

Currently, the state collects tax on the sale or use of certain foods or drinks. Many municipalities also collect tax on the sale or use of foods or drinks, which is a primary revenue source used to fund government services such as the construction and maintenance of roads, funding public safety personnel and equipment, and other essential municipal services.

This initiated amendment overrides existing laws and prohibits the state, or municipalities, from collecting sales or use tax on anything sold for eating or drinking by humans. The amendment eliminates these sources or revenue.

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.

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

Title: An Initiated Amendment Prohibiting Taxes on Anything Sold for Eating or Drinking.

Explanation:

Currently, the state collects tax on the sale or use of certain foods or drinks. Municipalities also collect tax on the sale or use of foods or drinks, which is a primary revenue source used to fund government services such as the construction and maintenance of roads, funding public safety personnel and equipment, and other essential municipal services.

This initiated amendment overrides existing laws and prohibits the state, or municipalities, from collecting sales or use tax on anything sold for eating or drinking by humans. The amendment eliminates these sources or revenue.

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.

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

NOV - 4 2022

Ballot Comment:

I don't get involved in politics, usually. Things are getting so stupid, I must do my part to try and save the state. I have given up on Washington DC. I hate to see my state lose it's common sense way.

South Dakota ranks well in so many conservative ways. We can be proud, in comparison to so many other states.

The revenue taken in from the tax on food has to be a very large amount. Keep that tax. It works. Look around, you will see that most people are eating a little better than they should.

I can look ahead and see the future here. Without a tax on food, there will come a budget shortfall. Our political governor will be one of many republicans getting blamed for it. Democrats will get elected. They will propose an income tax and get it. South Dakota will lose it's main selling point for it's future.

I will be moving to a no income tax state.

May be the so called "republicans" in this state aren't much different than DC. I think our republican DC-3 ^{Thune Johnson} Rounds are all big business establishment people. Not conservatives.

One more thing. We people in South Dakota should be able to know from campaign signs and literature if a candidate is republican, democrat or other. The party title of the candidate tells me more than catchy rhetoric which I don't know if it is true or not.

Anna Lutterman

I'm a realist. I probably wasted my time writing this letter. The political fix is in. At least I get to express, not my feelings, but my anger.

I had thought Kristy was different. I think I was wrong.

I'm sorry I'm not sophisticated enough to
E-MAIL.

primitive person

From: Lana Greenfield < >
Sent: Tuesday, October 25, 2022 2:28 PM
To: ATG Ballot Comments
Subject: [EXT] Possible elimination of sales tax on food.

I think the elimination of sales tax should only apply to foods with nutritional value. The WIC program set up good parameters, and so should this idea should it come to fruition. It is senseless to exempt soda, chips, and candy from sales tax.

Sincerely,
Lana Greenfield

From: Jim Leach >
Sent: Tuesday, October 25, 2022 3:50 PM
To: ATG Ballot Comments
Subject: [EXT] Comment re Draft Attorney General's Statement re Sales Tax on Food and Drink
Attachments: 21025.Ltr.A.G.Vargo.pdf

JAMES D. LEACH

Attorney at Law
1617 Sheridan Lake Road
Rapid City, SD 57702-3483
Tel: (605) 341-4400
Fax: (605) 341-0716

Legal Assistant
Raquel L. Vokenroth, CLA

Legal Secretary
Verma J. Stehly

jim@southdakotajustice.com

October 25, 2022

By email and U.S. Mail

Attorney General Mark Vargo
Office of the Attorney General
1302 E Hwy 14, Suite 1
Pierre SD 57501-8501

Re: Draft Attorney General's Statement re Sales Tax on Food and Drink

Dear Attorney General Vargo:

I am the attorney for Richard P. Weiland and Dakotans for Health, who submitted the proposed initiated constitutional measure and law concerning sales tax on food and drink.

On October 19, the Legislature Research Council submitted a fiscal note that accurately states that if these measures are passed, "Municipalities could still tax anything sold for eating or drinking by humans." But the draft Attorney General's Statement says that these measures prohibit "the state, *or municipalities*" (emphasis added) from collecting such taxes.

With respect, the LRC is correct. Neither proposal affects municipalities' ability to tax food and drink. Both measures say that "the *state* may not tax" (emphasis added) food and drink. The State's power to tax food and drink comes from SDCL 10-45 and 10-46. Municipalities' power to tax food and drink has a separate source: SDCL10-52-2.

JAMES D. LEACH

Attorney at Law
1617 Sheridan Lake Road
Rapid City, SD 57702-3483
Tel: (605) 341-4400
Fax: (605) 341-0716

Legal Assistant
Raquel L. Vokenroth, CLA

Legal Secretary
Verma J. Stehly

jim@southdakotajustice.com

October 25, 2022

By email and U.S. Mail

Attorney General Mark Vargo
Office of the Attorney General
1302 E Hwy 14, Suite 1
Pierre SD 57501-8501

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October 25, 2022

Attorney General Mark Vargo

Page 2

The word "State" and the word "municipalities" have plain, common, ordinary meanings. Prohibiting the State from taxing food and drink does not limit municipalities' ability to do so.

When we submitted these measures to the LRC for its comments, the LRC did not suggest that either measure would somehow be construed to apply to municipal taxes on food and drink.

Accordingly, I request that you revise the Draft Attorney General's Statement re Sales Tax on Food and Drink so that it does not say that either measure would prohibit municipalities from taxing food and drink.

In light of the natural confusion that may result from events so far, and to eliminate any public uncertainty, I request that your final Attorney General's Statement explicitly say that neither proposal will affect municipalities' taxes on food and drink.

Respectfully submitted,

/s/ James D. Leach

James D. Leach

JDL/hs

cc: Richard P. Weiland

Attorney General

OCT 27 2022

JAMES D. LEACH

Attorney at Law
1617 Sheridan Lake Road
Rapid City, SD 57702-3483
Tel: (605) 341-4400
Fax: (605) 341-0716

Legal Assistant
Raquel L. Vokenroth, CLA

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jim@southdakotajustice.com

October 25, 2022

By email and U.S. Mail

Attorney General Mark Vargo
Office of the Attorney General
1302 E Hwy 14, Suite 1
Pierre SD 57501-8501

Re: Draft Attorney General's Statement re Sales Tax on Food and Drink

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With respect, the LRC is correct. Neither proposal affects municipalities' ability to tax food and drink. Both measures say that "the *state* may not tax" (emphasis added) food and drink. The State's power to tax food and drink comes from SDCL 10-45 and 10-46. Municipalities' power to tax food and drink has a separate source: SDCL10-52-2.

October 25, 2022

Attorney General Mark Vargo

Page 2

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In light of the natural confusion that may result from events so far, and to eliminate any public uncertainty, I request that your final Attorney General's Statement explicitly say that neither proposal will affect municipalities' taxes on food and drink.

Respectfully submitted,

/s/ James D. Leach

James D. Leach

JDL/hs

cc: Richard P. Weiland

From: Richard Schriever <rschriever@hotmail.com>
Sent: Wednesday, October 26, 2022 11:47 AM
To: ATG Ballot Comments
Subject: [EXT] Language in ballot questions regarding taxing food

Neither the proposed initiated measure, nor the proposed constitutional amendment have language that prohibit governmental subdivisions of the state (counties, municipalities, etc.) from collecting tax on food and drink.

When legislators (and the people are acting as legislators when they vote on these issues at the polls) write laws they include language that specifies which governmental divisions or subdivisions of the state that law affects. Examples: SDCL 1-25-1, SDCL 1-27-1.1 and SDCL 1-27-20.

Further – LRC’s fiscal note on these measures clearly states they are of the opinion that the language of these measures does not impact the ability of subdivisions of the state (counties, municipalities, etc.) from collecting taxes on food and drink.

Sincerely,

Richard F. Schriever, PhD (ABD)
Lennox, SD

Sent from Mail for Windows

From: Dale Christensen <et1partnr@yahoo.com>
Sent: Wednesday, October 26, 2022 7:57 PM
To: ATG Ballot Comments
Subject: [EXT] Clarify AG Ballot statements

The AG has erred in his ballot statements, should say state of SD only, municipalitys can still tax food! Thanks Dale Christensen, 1412 Grant Dr Watertown SD

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

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RECEIVED

OCT 24 2022

SD Secretary of State

MARK A. VARGO
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

October 24, 2022

Honorable Steve Barnett
Secretary of State
500 E. Capitol
Pierre, SD 57501

RE: Attorney General's Statement (Initiated Measure: Sales Tax on Eating and Drinking)

Dear Secretary Barnett,

Enclosed is a copy of a proposed initiated measure, 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,

A handwritten signature in black ink, appearing to read "Mark A. Vargo".

Mark A. Vargo
ATTORNEY GENERAL

MAV/dd
Enc.

Filed this 29th day of
October, 2022
A handwritten signature in black ink, appearing to read "Steve Barnett".
SECRETARY OF STATE

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

RECEIVED

OCT 24 2022

SD Secretary of State

INITIATED MEASURE

DRAFT ATTORNEY GENERAL'S STATEMENT

Title: An Initiated Measure Prohibiting Taxes on Anything Sold for Eating or Drinking.

Explanation:

Currently, the state collects tax on the sale or use of certain foods or drinks. Many municipalities also collect tax on the sale or use of foods or drinks.

This initiated measure prohibits the state, or municipalities, from collecting sales or use tax on anything sold for eating or drinking by humans. The measure eliminates these sources of revenue.

The measure 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.

Judicial or legislative clarification of the measure may be necessary.

Filed this 24th day of
OCTOBER 2022
Steve Barnett
SECRETARY OF STATE

RECEIVED

OCT 24 2022

SD Secretary of State

August 26, 2022

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

Reed.Holwegner@sdlegislature.gov
Director Reed Holwegner
Legislative Research Council
500 E. Capitol Ave.
Pierre, SD 57501

Steve.Barnett@state.sd.us
Secretary of State Steve Barnett
Capitol Building
500 E. Capitol Ave. Ste 204
Pierre, SD 57501

Gentlemen:

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

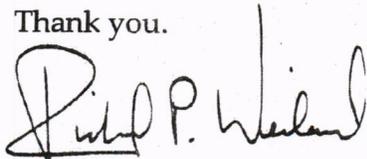
BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

That Title 10 be amended by adding a NEW SECTION to read:

Notwithstanding any other provision of law, the state may not tax the sale of anything sold for eating or drinking by humans, except alcoholic beverages and prepared food.

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

Thank you.



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

Filed this 24th day of

October, 2022


SECRETARY OF STATE

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>

MARK A. VARGO
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

September 1, 2022

Richard P. Weiland
Dakotans for Health
PO Box 2063
Sioux Falls, SD 57101

Re: **Proposed Initiated Measure Concerning Sales Tax on Food and Beverages**

Dear Mr. Weiland:

This letter acknowledges our receipt of the proposed initiated measure that you submitted to this Office. Your proposed measure was received on August 26, 2022. As required by SDCL 12-13-25.1, the Attorney General will prepare a draft title and explanation for the measure and file it with the Secretary of State on or before October 25, 2022. You will be provided a copy of the title and explanation at the time it is filed.

Sincerely,

A handwritten signature in black ink, appearing to read "SRB", followed by a horizontal line.

Steven R. Blair
Assistant Attorney General

SRB/dd

cc: Reed Holwegner, Director – Legislative Research Council
Hon. Steve Barnett, Secretary of State

Attorney General

AUG 29 2022

August 26, 2022

Mark.Vargo@state.sd.us
Attorney General Mark Vargo
1302 E. Hwy. 14, #1
Pierre, SD 57501
Steve Blair 605-394-2258

Reed.Holwegner@sdlegislature.gov
Director Reed Holwegner
Legislative Research Council
500 E. Capitol Ave.
Pierre, SD 57501

Steve.Barnett@state.sd.us
Secretary of State Steve Barnett
Capitol Building
500 E. Capitol Ave. Ste 204
Pierre, SD 57501

Gentlemen:

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

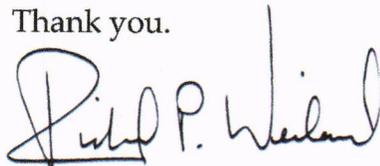
BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

That Title 10 be amended by adding a NEW SECTION to read:

Notwithstanding any other provision of law, the state may not tax the sale of anything sold for eating or drinking by humans, except alcoholic beverages and prepared food.

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

Thank you.



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



Attorney General

AUG 15 2022

August 12, 2022

Mr. Rick Weiland
Dakotans for Health
P.O. Box 2063
Sioux Falls, SD 57101
rick@rickweiland.com

Dear Mr. Weiland:

SDCL 12-13-25 requires the South Dakota Legislative Research Council (LRC) to review each initiated measure submitted to it by a sponsor, for the purpose of assisting the sponsor in writing the amendment "in a clear and coherent manner in the style and form of other legislation" that "is not misleading or likely to cause confusion among voters."

LRC encourages you to consider the edits and suggestions to the proposed text. The edits are suggested for sake of clarity and to bring the proposed measure into conformance with the style and form of South Dakota legislation. LRC comments are based upon the Guide to Legislative Drafting, which may be found on the South Dakota legislative [website](#).

Initiated measure as submitted with comments following:

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

That Title 10 be amended by adding a NEW SECTION to read:

Notwithstanding any other provision of law, the state may not tax the sale of anything sold for eating or drinking by humans, except alcoholic beverages, tobacco, or prepared food.

1. The proposed language provides that "[t]he state may not tax the sale of anything sold for eating or drinking..." The proposed language assumes the "state" has the authority to impose a tax on the purchase of food and beverages. The state, on its own and by its very nature, does not have, separate from the law, the authority to impose a tax. The "state" (in most instances an executive branch agency) has the authority, as provided by law, to collect certain taxes. But the *law* provides the authority to impose a tax. For example, SDCL 10-45-2 provides the following:

There is hereby imposed a tax upon the privilege of engaging in business as a retailer, a tax of four and one-half percent upon the gross receipts of all sales of tangible personal property consisting of goods, wares, or merchandise, except as otherwise provided in this chapter, sold at retail in the State of South Dakota to consumers or users.

In the SDCL 10-45-2 example, the law imposes a tax "upon the privilege of engaging in business as a retailer." Retailers collect the tax and remit it to the state in compliance with the law. The state does not impose the tax.

The perceived intent of the proposed initiated measure is to exempt certain food and beverages from tax. By providing that the "[t]he state may not tax," it is unclear if the intent is actually achieved. The proposed language simply states an existing legal reality, namely, that the state does not have the authority to impose a tax on the purchase of food and beverages. The "notwithstanding" clause also may not serve a purpose since no law gives the "state" the authority to tax. The law is the authority to tax, not the state. If this language were to become effective, the intended effect may not be achieved.

2. By using the term "state" in the proposed statutory language, municipalities would not be prohibited from enacting a local ordinance requiring a tax on the purchase of food and beverages. Is this the intent of the proposal? If not, a rewrite of the language may be necessary.
3. The use of the phrase "the sale of anything sold for eating or drinking by humans" may be overly vague, inviting various interpretations in determining its meaning.

Under the current law, the terms "food" and "food ingredients" are defined as follows:

"Food" and "food ingredient," any substance, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for its taste or nutritional value. See SDCL 10-45-1.

The statutory definition of food uses the terms "ingestion," "chewing," and "consumed." These terms seem to be more precise than "eating or drinking," as they may better capture the various elements of food and beverage consumption. Certain food and food ingredients are not purchased specifically for eating or drinking but may be used in the process of making specific foods or beverages. For example, coffee beans are neither eaten nor drunk. To take a narrow reading of the proposed language, coffee beans are not sold specifically "for eating or drinking." They cannot be drunk and are not eaten, generally. Given that the statutory definition of "food and food ingredient" is drafted more broadly, it includes "food" such as coffee beans, as they are "sold for ingestion...by humans" and are "consumed for [their] taste." Other examples that may create interpretive questions with the proposed language are gum, seasonings, spices, cooking oils, dietary supplements, etc. None of these examples are sold specifically for eating or drinking, but they are sold for ingestion or chewing and consumption. "Ingestion," "chewing," and "consumed" are terms with broader application that may better capture the intent of the proposed statutory language. A rewrite of the language using terms consistent with the statutory definition of "food and food ingredients" may better clarify the intent of the proposed language. If the language is left in its current form, the question remains as to what food and beverages would be subject to tax.

The proposed language specifically provides that tobacco is an exception from "eating or drinking." Without adding defined terms to the proposed language, the tobacco exception may add to the interpretive confusion since tobacco is neither a food nor a beverage. If something that is not eaten or drunk is exempted from "eating or drinking," the language possibly could create an absurd legal reality, exempting items that generally do not apply in the ordinary sense of how "eating or drinking" are commonly understood.

Certain states that exempt the sale of food and beverages from tax exclude candy, soft drinks, and dietary supplements from the tax exemption. Perhaps the sponsors should consider a broader list of exclusions.

4. The proposed statutory language provides three exceptions to the tax prohibition: "alcoholic beverages, tobacco, or prepared food." The assumption is that the proposed language, if approved by the voters, would be codified in SDCL chapter 10-45, which provides a definition for "prepared foods." Given the definitions

in SDCL 10-45-1 apply to that entire chapter, the definition of "prepared foods" would also apply to the proposed language. SDCL title 10 does not define "alcoholic beverages" or "tobacco." It may add interpretive clarity if definitions are added for these terms.

The sponsors should also consider changing the "or" to "and" in the clause, "except alcoholic beverages, tobacco, or prepared food." The use of "and" makes it clearer that all three of the substances are excepted. Typically, the use of "or" means that one is to be chosen from the list.

5. Based on the above comments, a possible rewrite of the proposed statutory language is suggested as follows:

"The retail sale of any food or food ingredient for any purpose is exempt from any tax imposed by law or ordinance."

As already mentioned, since the proposed language would likely be codified under SDCL chapter 10-45, the definitions of "food" and "food ingredients," and "retail sale" (see SDCL 10-45-1) would likely apply to the above suggested language. Those definitions are as follows:

"Food" and "food ingredient," any substance, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion or chewing by humans and is consumed for its taste or nutritional value. The term, food, does not include alcoholic beverages, tobacco, or prepared food."

"Retail sale" or "sale at retail," any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

It may be worth considering whether additional exclusions to the definition of "food" and "food ingredients" should be added, such as candy, soft drinks, and dietary supplements. Further, as already suggested, since "alcoholic beverages" and "tobacco" are not defined in SDCL chapter 10-45, the sponsors may want to consider defining those terms for added clarity.

6. Although a sponsor is not statutorily required to make changes based upon the suggestions and comments provided above, you are encouraged to be cognizant of the standards established in [SDCL 12-13-24](#) and [12-13-25](#) and ensure that your language is in conformity.

Fiscal Impact

It has been determined during this review that this proposed initiated measure may have an impact on revenues, expenditures, or fiscal liability of the state and its agencies and political subdivisions. Please provide the Legislative Research Council a copy of this initiated measure as submitted in final form to the Attorney General so the LRC can develop any fiscal note required by SDCL 2-9-30.

Compliance

This letter is issued in compliance with statutory requirements placed upon this office. It is neither an endorsement of the measure nor a guarantee of its sufficiency. If you proceed with the measure, please ensure that neither your statements nor any advertising contain any suggestion of endorsement or approval by the Legislative Research Council.

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Sincerely,



Reed Holwegner

Director

Enclosure

CC: The Honorable Steve Barnett, Secretary of State

✓ The Honorable Mark Vargo, Attorney General

Cory Heidelberger

Jim Leach