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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

RECEIVED

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