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S.D. SEC. OF STATE



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May 30, 2019

Mr. Brendan Johnson
Robins Kaplan LLP
140 North Phillips Ave., Ste 307
Sioux Falls, SD 57104

Dear Mr. Johnson:

This office is required by SDCL section 12-13-24 to review each initiated constitutional amendment for the purpose of determining whether the amendment is written in a clear and coherent manner that reflects the style and form of other legislation and for the purpose of ensuring that the amendment is not misleading or likely to cause confusion among the voters. In accordance with SDCL section 12-13-25, this office is required to provide written comments for the purpose of assisting the amendment's sponsor in meeting the requirements of SDCL section 12-13-24. This includes providing assistance regarding the substantive content of the measure in order to minimize any conflict with existing law and to ensure the amendment's effective administration. While there is no obligation to accept any of the suggestions contained in this letter, you are asked to keep in mind the legal standards established in sections 12-13-24 and 12-13-25.

As submitted, this constitutional amendment proposes to decriminalize small amounts of marijuana for one's personal use and rather than directing the Legislature to affect this outcome, it creates a statutory-type structure that it seeks to incorporate into the Constitution of this state. The purpose of a constitution is to provide a basic structure within which a government can function. The Constitution prescribes and limits the powers to be exercised by that government and sets forth the rights of the governed. The Constitution is not a compilation of policy statutes and as such, should not be amended to incorporate what ought to be statutory material. Therefore, this office recommends that the proposed measure be re-written so that it would amend the South Dakota Codified Laws, rather than the South Dakota Constitution. In the event that this recommendation is not accepted, there are a number of changes that this office encourages the sponsors to consider. The section numbers in our comments are based on the revised number we have provided.

As submitted, the amendment contained a section setting forth its title and a section setting forth its purpose. Both have been removed. SDCL section 12-13-25.1 requires the attorney general to prepare an accompanying "statement that consists of a title and explanation."

All catch lines to sections have been removed as that will be added by the code counsel if the amendment is approved.

SECTION 1

The Department of Revenue is not the best state agency to administer and regulate every aspect of activities encompassed by this amendment. The definition of "Department" has been broadened to allow the Legislature to match functions to state departments with the best mission fit.