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REED HOLWEGNER, DIRECTOR | SUE CICHOS, DEPUTY DIRECTOR | JUSTIN GOETZ, CODE COUNSEL

500 EAST CAPITOL AVENUE, PIERRE, SD 57501 | 605-773-3251 | SDLEGISLATURE.GOV



January 5, 2023

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

**RECEIVED**

JAN 05 2023

SD Secretary of State

Dear Secretary Johnson,

The Legislative Research Council (LRC) received an initiated amendment to reduce the tax on anything sold for human consumption, except alcoholic beverages and prepared food. The initiated amendment requires a fiscal note because it was determined it may have an impact on revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions. SDCL 2-9-31 requires the fiscal note be no longer than fifty words. If this amendment is approved by the people of South Dakota, the amendment will take effect on July 1, 2025.

The fiscal note examines the fiscal impacts associated with no longer taxing anything sold for human consumption, except alcoholic beverages and prepared food. The methodology revolves around calculating the revenue generated with and without the exemption based the proportion of total expenditures attributable to food. Data on expenditures of food at home from the U.S. Bureau of Labor Statistics, state sales tax revenues, and other research and data contributed to this methodology. The South Dakota Department of Revenue was contacted to provide relevant data for this analysis.

The model produced an estimate showing a reduction in state sales tax of \$123.9 million for fiscal year FY2026, beginning July 1, 2025. Municipalities could still tax anything sold for human consumption. The actual amount of state sales tax revenue lost will vary from this estimate, as it is a point-in-time estimate completed at least two years prior to implementation.

In any fiscal estimate, assumptions must be made as to future economic activity and the meaning of words found in the initiated proposal filed with the Secretary of State. In neither the draft proposal nor the LRC's review, dated December 2, 2022, is the phrase "anything sold for human consumption" used or suggested. For purposes of this fiscal note, the LRC assumes that phrase only includes food items because of the modifying language "except alcoholic beverages and prepared food" and does not include personal tangible property and services, both of which can also be sold for human consumption. Other assumptions as to the meaning of this phrase may be just as reasonable, if not more so.

Filed this 5<sup>th</sup> day of

January 2023

*Monae L. Johnson*

SECRETARY OF STATE

Enclosed is a copy of the initiated amendment, in final form, that was submitted to this office. In accordance with SDCL 2-9-31, I hereby submit the Legislative Research Council's fiscal note with respect to this initiated amendment.

Sincerely,

A handwritten signature in blue ink that reads "Reed Holwegner". The signature is written in a cursive style with a large initial "R".

Reed Holwegner  
Director

Enclosures

Cc: Rick Weiland  
Mark Vargo, Attorney General

**SOUTH DAKOTA LEGISLATIVE RESEARCH COUNCIL**

FISCAL NOTE

**INITIATED AMENDMENT**

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**AN INITIATED AMENDMENT TO THE SOUTH DAKOTA CONSTITUTION –  
THE STATE MAY NOT TAX THE SALE OF ANYTHING SOLD FOR HUMAN  
CONSUMPTION, EXCEPT ALCOHOLIC BEVERAGES AND PREPARED FOOD.**

Beginning July 1, 2025, the State could see a reduction in sales tax revenues of \$123.9 million annually from no longer taxing the sale of anything sold for eating or drinking by humans except alcoholic beverages and prepared food. Municipalities could continue to tax anything sold for human consumption.

Approved: Reed Holwegner Date: January 5, 2023  
Director, Legislative Research Council



December 7, 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

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:

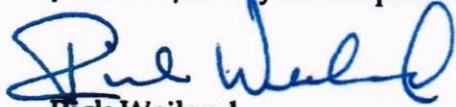
**BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:**

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



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