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**MARTY J. JACKLEY**  
ATTORNEY GENERAL

**RECEIVED**

FEB 07 2023

**SD Secretary of State**

**MARK W. BARNETT**  
CHIEF DEPUTY ATTORNEY GENERAL

February 7, 2023

Filed this 7<sup>th</sup> day of

February 2023

**SECRETARY OF STATE**

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

RE: Attorney General's Draft Statement (Initiated Measure: Prohibiting Taxes on Anything Sold for Human Consumption)

Dear Secretary Johnson,

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,

Marty J. Jackley  
ATTORNEY GENERAL

MJJ/dd  
Enc.

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

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FEB 07 2023

**SD Secretary of State**

INITIATED MEASURE

DRAFT ATTORNEY GENERAL'S STATEMENT

Title: An Initiated Measure 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 measure prohibits the State from collecting sales or use tax on anything sold for human consumption. The measure 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 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.

The measure 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 or legislative clarification of the measure will be necessary.

Filed this 7<sup>th</sup> day of

February 2023

*Monae L. Johnson*

SECRETARY OF STATE

**RECEIVED**

FEB 07 2023

SD Secretary of State

December 7, 2022

By email and U.S. Mail

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500 E. Capitol Ave.  
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Monae.Johnson@state.sd.us  
Secretary of State Monae 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 measure in final form:

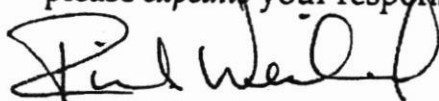
**BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:**

*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 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 measure. Per SDCL 2-9-30, I ask the Director of the Legislative Research Council to prepare the necessary fiscal note for it.

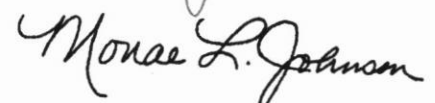
Because of the delay in our ability to begin collecting signatures caused by the Attorney General's misinterpretation of our previous submission on this subject, please *expedite* your response to this request. Thank you.



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

Filed this 7<sup>th</sup> day of

February 2023



SECRETARY OF STATE