



October 7, 2024

Mr. Rick Weiland
Dakotans for Health
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Dear Mr. Weiland:

In the Legislative Research Council's (LRC) [review](#) of your proposed initiated measure (IM 28) from December 2, 2022, the LRC provided the following regarding your proposal:

Please ensure that neither your statements nor any advertising contain any suggestion of endorsement or approval by the Legislative Research Council.

The LRC is a nonpartisan legislative office and does not take positions on any matter of public policy. One of the LRC's roles in the ballot initiative process is to review each initiated measure 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." See [SDCL 12-13-24](#).

In several interactions with the media and public on IM 28, you have attributed your proposed language to being based on LRC recommendations contained in the LRC's review from December 2, 2022. Most recently, you [stated](#) that the "human consumption" language came "on advice from the South Dakota Legislative Research Council." You have also been quoted in another [article](#) stating that same thing.

We are respectfully asking you to refrain from stating that the LRC advised you to use the "anything sold for human consumption" language. We are doing this for two reasons. The first is that a sponsor of an initiated measure is responsible for the contents of the sponsor's proposal. The law doesn't require a sponsor to amend an initiated measure based on the LRC's comments. See [SDCL 12-13-25](#). The LRC provides comments and suggestions on ballot language—the LRC is not in a position "to advise" a ballot initiative sponsor. The LRC did not provide you, as the sponsor of IM 28, "advice" on how to proceed with the ballot measure's language. The LRC, in compliance with its statutory duties, provided you a suggested rewrite of your original proposed language so that it would be written in a "clear and coherent manner" and not be "misleading or likely to cause confusion among voters."

The second reason we are asking you to refrain from stating that the LRC advised you to use the phrase "anything sold for human consumption" is because *the LRC did not recommend using that language*. In fact, the LRC recommended something entirely different than the language you are sponsoring and that will be on the November ballot.

There is no ambiguity in what the LRC suggested for your consideration in the LRC's review. Here is the language:

"The retail sale of any food or food ingredient for any purpose is exempt from any tax imposed by law. The exemption provided under this section does not apply to the taxing authority of a municipality. A municipality may tax the retail sale of any food or food ingredient, as provided under chapter 10-52."

Here is the language that you are sponsoring, as contained in IM 28:

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.

It is obvious to the casual reader that these two options are very different. The LRC did not advise you to use the language you are sponsoring.

The LRC's suggested rewrite is consistent with how other states have drafted tax exemptions for food. (See Minn. Stat. § 297A.67, subdivision 2, NDCC § 57-39-2-04.1, and Iowa Code § 423.3(57). To make the language clear, the LRC suggested using terms already defined by state [law](#): "retail sale," "food," and "food ingredients." The LRC's review included an analysis of the current statutory definition of "food." In that analysis, the LRC mentions the term, "consumed." However, the LRC concluded that "[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." The LRC did not advise, recommend, or suggest using the term "consumed" or a variation of that term. More specifically, the LRC did not advise, recommend, or suggest using the phrase "anything sold for human consumption."

Therefore, we are requesting that you honor the LRC's request, as provided in the LRC's review from December 2, 2022, that you "ensure that neither your statements nor any advertising contain any suggestion of endorsement or approval by the Legislative Research Council."

Sincerely,



Lee Schoenbeck Hugh Bartels
Senate President Pro Tempore Speaker of the House

CC: John McCullough
 LRC Director