

IM-28 Frequently Asked Questions

What does IM-28 do?

IM-28 would eliminate the sales tax on “anything sold for human consumption,” except alcohol and prepared food. The author of IM-28 probably intended to repeal the state’s 4.2% sales tax on groceries. However, by using the phrase “human consumption,” IM-28 repeals a variety of other items such as tobacco, vaping products, candy, soda, paper products, over-the-counter medicines, and hygiene products.

What is the impact of IM-28 on the state budget?

According to South Dakota’s nonpartisan Legislative Research Council, IM-28 could reduce state funding by up to \$646 million annually—more than 46% of sales tax collections. The report is available [here](#).

Does IM-28 prevent city governments from collecting sales tax?

Yes. IM-28 is in direct conflict with South Dakota Codified Law 10-52-2, which allows cities and towns to impose a sales tax of up to 2% on the same items taxed by the state. This means that if the state cannot tax “anything sold for human consumption,” neither can a city or town.

The South Dakota Municipal League estimates that our cities and towns will lose \$51 million annually, reducing funding to fix potholes, update infrastructure, staff libraries, operate pools, and maintain parks. That’s why the Municipal League is opposed to IM-28, and a number of communities have passed resolutions about its negative consequences for local budgets.

Would IM-28 reduce funding for Tribal governments?

Yes. Tribal governments in South Dakota have compact agreements with the State of South Dakota that tie their sales tax rates to that of the state. If IM-28 passes, Tribes in South Dakota will lose millions of dollars needed for essential services. In 2023, South Dakota Tribes opposed HB 1075 to eliminate the sales tax on groceries because it negatively impacted their members.

Does IM-28 eliminate the tobacco tax?

Yes. South Dakota Codified Law 34-46-1 defines tobacco products as “any item made of tobacco intended for human consumption, including cigarettes, cigars, pipe tobacco, and smokeless tobacco, and vapor products as defined in § 34-46-20.” Passage of IM-28 would result in a loss of \$43 million each year in tobacco taxes and a further loss of \$22 million in master settlement agreement funds for a total annual loss of \$65 million.

Is IM-28 the same as what Gov. Noem proposed in 2023?

No. In 2023, HB 1075 sought to amend existing state law to reduce the state’s sales tax on groceries from 4.5% to 0% and used the terms “food” and “food ingredients.” This wording would have allowed cities and towns to continue taxing groceries. IM-28 would eliminate the sales tax on “anything sold for human consumption,” which is much broader and would also prevent cities and towns from collecting sales taxes on those items.

Is IM-28 poorly written?

Yes. Despite warnings from the nonpartisan Legislative Research Council and the Attorney General, the legally binding language of IM-28 is poorly written and has significant negative consequences. The Attorney General's explanation of IM-28 says that the measure "may affect the State's obligations under the tobacco master settlement agreement and the streamlined sales tax agreement" as a result of its imprecise language. The Attorney General's explanation also says, "Judicial or legislative clarification of the measure will be necessary" because of these errors.

If the wording is bad, can we fix IM-28 before the vote in November?

No. Once the language of a ballot measure has been certified, the language cannot be changed prior to the election. There's no ability to change the wording in IM-28 prior to the public vote.

Can the Legislature fix IM-28 if voters approve the measure?

As an initiated measure, the legislature could make changes; however, because of the vague language, it's unclear exactly how to address voter intent. Further, because IM-28 would eliminate taxes on anything sold for human consumption, legislative action to make up the lost revenue through other tax increases would require a 2/3 vote of the legislature. It's irresponsible to pass a tax cut of up to \$646 million without a clear way to make up the difference.

Could IM-28 lead to a state income tax?

Yes. IM-28 would cut 25% of the State's budget and hurt cities to the tune of \$51 million. South Dakota cannot sustain that kind of budget shortfall and still deliver the essential functions of government like education, healthcare, public safety, and infrastructure. Without the ability to collect sales taxes, it's likely that activists would bring a ballot measure to force burdensome new taxes, including an income tax, on South Dakotans.

How is human consumption defined?

"Human consumption" is not defined in state law. According to the state's nonpartisan Legislative Research Council, "anything sold for human consumption" may be interpreted in several different ways. The common definition following Black's Law Dictionary would mean "The act of destroying a thing by using it; the use of a thing in a way that exhausts it." Due to this definition, IM-28 repeals the sales tax on tobacco, vaping products, candy, soda, paper products, food, over-the-counter medicines, and more—totaling \$646 million from the state's budget.

How does South Dakota's tax burden compare to other states?

South Dakota consistently ranks among the lowest-taxed states. According to Wallet Hub, South Dakota has the country's seventh-lowest tax burden. We have no personal income tax. The average property tax burden is 2.58%. Our state sales tax is 4.2%.