

REPRESENTATIVE G. MARK MICKELSON, CHAIR | SENATOR BROCK L. GREENFIELD, VICE CHAIR
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June 23, 2017

Mr. Drey Samuelson
1711 S. Phillips Ave.
Sioux Falls, SD 57105

RECEIVED

JUN 26 2017

S.D. SEC. OF STATE

Dear Mr. Samuelson:

Pursuant to SDCL 12-13-25, this office is required to review each initiated measure, and this office is required by SDCL 12-13-24 to determine if each initiated measure is "written in a clear and coherent manner in the style and form of other legislation" and that it is "worded so that the effect of the measure is not misleading or likely to cause confusion among voters." You are under no obligation to accept any of the suggestions contained in this letter, but please keep in mind the legal standards established in SDCL 12-13-24.

The title of the bill may be more accurate to focus the subject on the state rather than individual consumers and could be viewed as potentially misleading in its current form. In addition, it is not necessary to use the phrase "the State of South Dakota" throughout the bill. "State" and its use are defined in SDCL 2-14-2.

Section 4 of the proposed measure includes overly broad rule making authority. The South Dakota Legislature "Guide to Legislative Drafting" manual calls for specificity and narrowly tailored authority, stating that "a grant of rulemaking power without standards... is an unconstitutional delegation of legislative authority." It should be determined which agency (or agencies) will draft the rules and what rules are required. Specific rulemaking authority should be tailored under these standards. Please refer to the drafting manual for guidance on this issue.

Section 5 is not necessary, as per SL 2017, ch 11 (2017 Senate Bill 59), effective July 1, 2017. The effective date under this new law would be July 1, 2019, so a separate effective date section is superfluous.

Attached is a copy of your proposed initiated measure to establish a prescription drug pricing law with the suggested style and form changes.

This letter constitutes neither an endorsement of your initiated measure nor a guarantee of its statutory sufficiency. It does constitute fulfillment of your responsibility pursuant to SDCL 12-13-25 to submit your draft to this office for review and comment. If you proceed with your initiated measure, please take care to ensure that your statements or advertising do not imply that this office endorses or approves your proposals.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Hancock". The signature is fluid and cursive.

Jason Hancock
Director

JH:EK:KS

Enclosure

cc: The Honorable Shantel Krebs, Secretary of State
The Honorable Marty Jackley, Attorney General

For An Act Entitled, An Act to establish a prescription drug pricing law enabling ~~citizens of the State of South Dakota~~ ^{the State} to pay the same or lower prices for prescription drugs as the prices paid by the United States Department of Veterans Affairs.

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

Section 1. Notwithstanding any other provision of law ~~the State of South Dakota, and all of its agencies~~ ^{a state agency} may not enter into any agreement with the manufacturer of any drug for the purchase of a prescribed drug or agree to pay, directly or indirectly, for a prescribed drug, unless the net cost of the drug, inclusive of cash discounts, free goods, volume discounts, rebates, and all other discounts or credits, as determined by the purchasing department, agency, or entity, is the same as or less than the lowest price paid for the same drug by the United States Department of Veterans Affairs.

Section 2. The price ceiling described in ^(lower case) ~~Section 1~~ ^S of this Act ~~also~~ ^{A not needed} applies to all programs in which the ~~State of South Dakota~~ ^{State} or any of its agencies is the ultimate payer for the drug, even if it does not purchase the drug directly.

Section 3. In addition to ^{any agreement} ~~agreements~~ for any cash discounts, free goods, volume discounts, rebates, and ~~all~~ ^{any} other discounts or credits already in place for these programs, ~~the State of South Dakota~~ ^{the State} and its agencies shall enter into additional agreements with drug manufacturers for further price reductions so ~~that~~ the net cost of the drug, as determined by the purchasing department, agency, or entity, is the same as or less than the lowest price paid for the same drug by the United States Department of Veterans Affairs.

Section 4. Each agency implementing this Act may adopt rules pursuant to ^c ~~Chapter 1-26~~ ^{lower case} of the ~~South Dakota Codified Laws~~ ^A for the purpose of determining the lowest possible drug prices by ^{overly broad rulemaking}

↳ Who (agency) is the lead/co-lead to make rules?

↳ What if different agencies come up with different processes.

potentially misleading title. This affects State agency not all individual consumers

use singular

obtaining all information regarding credits, discounts, and other price advantages to ensure that the lowest possible prices ^{is} are secured. ^{Any State} Each agency may seek waivers of federal law, rule, or regulation necessary to implement this Act. In addition, each agency implementing this Act may adopt all rules necessary or useful so that the purposes of this Act are fulfilled in their entirety. *Again, overly broad rule making authority*

Section 5. ~~The effective date of this Act is July 1, 2019.~~ *NOT necessary. As of July 1, 2017, SDCL 2-1-12 would specify July 1, 2019 as the effective date of this measure, unless measure states to contrary.*

Use concise, clear language. Does not fit with SD drafting.
 Section ⁵ 6. If any provision of this Act is challenged in court, the committee of individuals (hereinafter the Proponents) responsible for circulating the petition to qualify this Act for the ballot are deemed to have a direct and personal stake in defending this Act from constitutional or other challenges. If the Act is challenged, any ~~one or more of the Proponents~~ ^{Committee members} shall be entitled to assert ^{the member's} their direct and personal stake by defending the Act's validity.

Defect 5. Liability & Standing Issues