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MEMORANDUM - OPINION

TO: Lawrence Klemin, Speaker of the House  
FROM: Wayne Stenehjem, Attorney General  
RE: Senate Bill No. 2140  
DATE: April 10, 2019

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Thank you for your question asking whether the two-third vote requirement contained in Article III, § 8 of the North Dakota Constitution, applies to Section One of Engrossed S.B. 2140, 2019 N.D. Leg. For the following reasons, it is my opinion Section One of Engrossed S.B. 2140, 2019 N.D. Leg. is subject to the constitutional limitations provided in N.D. Const. art. III, § 8.

North Dakota voters legalized the medical use of marijuana by approving Initiated Measure No. 5 during the 2016 election, creating N.D.C.C. ch. 19-24, known as the North Dakota Compassionate Care Act.<sup>1</sup> In the subsequent legislative session, S.B. 2344 repealed N.D.C.C. ch. 19-24 and created N.D.C.C. ch. 19-24.1.<sup>2</sup> Senate Bill 2344 was approved by the Legislative Assembly with at least two-thirds vote of the members elected to each house.<sup>3</sup>

Article III, § 8, N.D. Const., provides in part:

A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.

The North Dakota Supreme Court held that where the Legislative Assembly amended and reenacted an initiated measure, its initiative character was not destroyed, and any subsequent amendments were still subject to the constitutional limitations provided by the then-current provision which is now found at N.D. Const. art. III, § 8.<sup>4</sup>

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<sup>1</sup> 2017 N.D. Sess. Laws, ch. 453.

<sup>2</sup> 2017 N.D. Sess. Laws, ch. 171.

<sup>3</sup> 2017 House Journal at 1385 (Apr. 4, 2017); 2017 Senate Journal at 1421 (Apr. 13, 2017).

<sup>4</sup> *State ex rel. Strutz v. Baker*, 299 N.W. 574, 575-76, 580 (N.D. 1941). See also *State ex rel. Dahl v. Dewing*, 131 N.W.2d 434, 437 (N.D.1964); N.D.A.G. 49-102

A prior opinion of my office stated the following:

N.D.C.C. ch. 19-24 was substantially similar to N.D.C.C. ch. 19-24.1 in both scope and operation. "There may be some changes, but the law is the same law, so far as the law is concerned."<sup>5</sup> Although N.D.C.C. ch. 19-24 has been repealed, the purpose and principle of Initiated Measure No. 5 remains in effect at N.D.C.C. ch. 19-24.1.<sup>6</sup>

Therefore, N.D.C.C. ch. 19-24.1 retains its initiated status and is subject to the constitutional limitations. Section One of Engrossed S.B. 2140, 2019 N.D. Leg. seeks to amend the confidentiality and disclosure requirements in N.D.C.C. ch. 19-24.1. As a result, it is my opinion Section One of Engrossed S.B. 2140, 2019 N.D. Leg. is subject to the constitutional limitations provided in N.D. Const. art. III, § 8, and requires a two-thirds vote of the members elect for the Assembly in order to be enacted. ■

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<sup>5</sup> *Strutz* at 576 (emphasis in original).

<sup>6</sup> N.D.A.G. 2017-L-06