

CONSTITUTIONAL AMENDMENT
ATTORNEY GENERAL'S STATEMENT

RECEIVED
AUG 16 2019
S.D. SEC. OF STATE

Title: An amendment to the South Dakota Constitution to legalize, regulate, and tax marijuana; and to require the Legislature to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use.

Explanation:

This constitutional amendment legalizes the possession, use, transport, and distribution of marijuana and marijuana paraphernalia by people age 21 and older. Individuals may possess or distribute one ounce or less of marijuana. Marijuana plants and marijuana produced from those plants may also be possessed under certain conditions.

The amendment authorizes the State Department of Revenue ("Department") to issue marijuana-related licenses for commercial cultivators and manufacturers, testing facilities, wholesalers, and retailers. Local governments may regulate or ban the establishment of licensees within their jurisdictions.

The Department must enact rules to implement and enforce this amendment. The amendment requires the Legislature to pass laws regarding medical use of marijuana. The amendment does not legalize hemp; it requires the Legislature to pass laws regulating the cultivation, processing, and sale of hemp.

The amendment imposes a 15% tax on marijuana sales. The tax revenue will be used for the Department's costs incurred in implementing this amendment, with remaining revenue equally divided between the support of public schools and the State general fund.

Judicial clarification of the amendment may be necessary. The amendment legalizes some substances that are considered felony controlled substances under current State law. Marijuana remains illegal under Federal law.

Filed this 16th day of
August 2019
Steve Barnett
SECRETARY OF STATE

That the Constitution of the State of South Dakota be amended to add a new Article to read as follows:

RECEIVED
AUG 16 2019
S.D. SEC. OF STATE

§ 1. Terms used in this article mean:

- (1) "Department," the Department of Revenue or its successor agency;
- (2) "Hemp," the plant of the genus cannabis, and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis;
- (3) "Local government," means a county, municipality, town, or township;
- (4) "Marijuana," the plant of the genus cannabis, and any part of that plant, including, the seeds, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including hash and marijuana concentrate. The term includes an altered state of marijuana absorbed into the human body. The term does not include hemp, or fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products;
- (5) "Marijuana accessory," any equipment, product, material, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the human body.

§2. Notwithstanding the provisions of this article, this article does not limit or affect laws that prohibit or otherwise regulate:

- (1) Delivery or distribution of marijuana or marijuana accessories, with or without consideration, to a person younger than twenty-one years of age;
- (2) Purchase, possession, use, or transport of marijuana or marijuana accessories by a person younger than twenty-one years of age;
- (3) Consumption of marijuana by a person younger than twenty-one years of age;

Filed this 16th day of
August 2019
Steve Barnett
SECRETARY OF STATE

- (4) Operating or being in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of marijuana;
- (5) Consumption of marijuana while operating or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport, while it is being operated;
- (6) Smoking marijuana within a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is being operated;
- (7) Possession or consumption of marijuana or possession of marijuana accessories on the grounds of a public or private preschool, elementary school, or high school, in a school bus, or on the grounds of any correctional facility;
- (8) Smoking marijuana in a location where smoking tobacco is prohibited;
- (9) Consumption of marijuana in a public place, other than in an area licensed by the department for consumption;
- (10) Consumption of marijuana as part of a criminal penalty or a diversion program;
- (11) Conduct that endangers others;
- (12) Undertaking any task under the influence of marijuana, if doing so would constitute negligence or professional malpractice; or
- (13) Performing solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food grade ethanol, unless licensed for this activity by the department.

§3. Notwithstanding the provisions of this article, this article does not:

- (1) Require that an employer permit or accommodate conduct allowed by this article;
- (2) Affect an employer's ability to restrict the use of marijuana by employees;
- (3) Limit the right of a person who occupies, owns, or controls private property from prohibiting or otherwise regulating conduct permitted by this article on or in that property; or
- (4) Limit the ability of the state or a local government to prohibit or restrict any conduct otherwise permitted under this article within a building owned, leased, or occupied by the state or the local government.

§4. Subject to the limitations in this article, the following acts are not unlawful and shall not be an offense under state law or the laws of any local government within the state or be subject to a

civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, or to deny any right or privilege, or to seize or forfeit assets under state law or the laws of any local government, if the person is at least twenty-one years of age:

- (1) Possessing, using, ingesting, inhaling, processing, transporting, delivering without consideration, or distributing without consideration one ounce or less of marijuana, except that not more than eight grams of marijuana may be in a concentrated form;
- (2) Possessing, planting, cultivating, harvesting, drying, processing, or manufacturing not more than three marijuana plants and possessing the marijuana produced by the plants, provided:
 - (a) The plants and any marijuana produced by the plants in excess of one ounce are kept at one private residence, are in a locked space, and are not visible by normal, unaided vision from a public place;
 - (b) Not more than six plants are kept in or on the grounds of a private residence at one time; and
 - (c) The private residence is located within the jurisdiction of a local government where there is no licensed retail store where marijuana is available for purchase pursuant to this article.
- (3) Assisting another person who is at least twenty-one years of age, or allowing property to be used, in any of the acts permitted by this section; and
- (4) Possessing, using, delivering, distributing, manufacturing, transferring, or selling to persons twenty-one years of age or older marijuana accessories.

§5.

- (1) A person who, pursuant to §4 of this article, cultivates marijuana plants that are visible by normal, unaided vision from a public place is subject to a civil penalty not exceeding two-hundred and fifty dollars.
- (2) A person who, pursuant to §4 of this article, cultivates marijuana plants that are not kept in a locked space is subject to a civil penalty not exceeding two-hundred and fifty dollars.
- (3) A person who, pursuant to §4 of this article, cultivates marijuana plants within the jurisdiction of a local government where marijuana is available for purchase at a licensed retail store is subject to a civil penalty not exceeding two-hundred and fifty dollars, unless the

cultivation of marijuana plants is allowed through local ordinance or regulation pursuant to §10.

- (4) A person who smokes marijuana in a public place, other than in an area licensed for such activity by the department, is subject to a civil penalty not exceeding one-hundred dollars.
- (5) A person who is under twenty-one years of age and possesses, uses, ingests, inhales, transports, delivers without consideration or distributes without consideration one ounce or less of marijuana or possesses, delivers without consideration, or distributes without consideration marijuana accessories is subject to a civil penalty not to exceed one-hundred dollars. The person shall be provided the option of attending up to four hours of drug education or counseling in lieu of the fine.

§ 6. The department shall have the exclusive power, except as otherwise provided in § 10, to license and regulate the cultivation, manufacture, testing, transport, delivery, and sale of marijuana in the state and to administer and enforce this article. The department shall accept applications for and issue, in addition to any other types of licenses the department deems necessary:

- (1) Licenses permitting commercial cultivators and manufacturers of marijuana to cultivate, process, manufacture, transport, and sell marijuana to marijuana wholesalers;
- (2) Licenses permitting independent marijuana testing facilities to analyze and certify the safety and potency of marijuana;
- (3) Licenses permitting marijuana wholesalers to package, process, and prepare marijuana for transport and sale to retail sales outlets; and
- (4) Licenses permitting retail sales outlets to sell and deliver marijuana to consumers.

§ 7. Not later than April 1, 2022, the department shall promulgate rules and issue regulations necessary for the implementation and enforcement of this article. The rules shall be reasonable and shall include:

- (1) Procedures for the issuance, renewal, suspension, and revocation of licenses;
- (2) Application, licensing, and renewal fees, not to exceed the amount necessary to cover the costs to the department of implementing and enforcing this article;

- (3) Time periods, not to exceed ninety days, by which the department must issue or deny an application;
- (4) Qualifications for licensees;
- (5) Security requirements, including lighting and alarm requirements, to prevent diversion;
- (6) Testing, packaging, and labeling requirements, including maximum tetrahydrocannabinol levels, to ensure consumer safety and accurate information;
- (7) Restrictions on the manufacture and sale of edible products to ensure consumer and child safety;
- (8) Health and safety requirements to ensure safe preparation and to prohibit unsafe pesticides;
- (9) Inspection, tracking, and record-keeping requirements to ensure regulatory compliance and to prevent diversion;
- (10) Restrictions on advertising and marketing;
- (11) Requirements to ensure that all applicable statutory environmental, agricultural, and food and product safety requirements are followed;
- (12) Requirements to prevent the sale and diversion of marijuana to persons under twenty-one years of age; and
- (13) Civil penalties for the failure to comply with rules adopted pursuant to this article.

§ 8. In determining the appropriate number of licenses to issue, as required under this article, the department shall:

- (1) Issue enough licenses to substantially reduce the illicit production and sale of marijuana throughout the state; and
- (2) Limit the number of licenses issued, if necessary, to prevent an undue concentration of licenses in any one municipality.

§ 9. Actions and conduct by a licensee, a licensee's employee, and a licensee's agent, as permitted pursuant to a license issued by the department, or by those who allow property to be used by a licensee, a licensee's employee, or a licensee's agent, as permitted pursuant to a license issued by the department, are not unlawful and shall not be an offense under state law, or the laws of any local government within the state, or be subject to a civil fine, penalty, or sanction, or be a basis for detention, search, or arrest, or to deny any right or privilege, or to seize

or forfeit assets under state law, or the laws of any local government within the state. No contract is unenforceable on the basis that marijuana is prohibited by federal law. A holder of a professional or occupational license is not subject to professional discipline for providing advice or services related to marijuana licensees or applications on the basis that marijuana is prohibited by federal law.

§10. A local government may enact ordinances or regulations governing the time, place, manner, and number of licensees operating within its jurisdiction. A local government may ban the establishment of licensees or any category of licensee within its jurisdiction. A local government may allow for cultivation at private residences within its jurisdiction that would otherwise not be allowed under §4(2)(c) so long as the cultivation complies with §4(2)(a) and §4(2)(b) and the other requirements of this article. A local government may not prohibit the transportation of marijuana through its jurisdiction on public roads by any person licensed to do so by the department or as otherwise allowed by this article.

§11. An excise tax of fifteen percent is imposed upon the gross receipts of all sales of marijuana sold by a person licensed by the department pursuant to this article to a consumer. The Legislature may adjust this rate after November 3, 2024. The department shall by rule establish a procedure for the collection of this tax and shall collect the tax. The revenue collected under this section shall be appropriated to the department to cover costs incurred by the department in carrying out its duties under this article. Fifty percent of the remaining revenue shall be appropriated by the Legislature for the support of South Dakota public schools and the remainder shall be deposited into the state general fund.

§ 12. Any rule adopted by the department pursuant to this article must comply with chapter 1-26 of the South Dakota Codified Laws. Any person aggrieved by a decision of the department is entitled to appeal the decision in accordance with chapter 1-26 of the South Dakota Codified Laws. If by April 1, 2022, the department fails to promulgate rules required by this article, or if the department adopts rules that are inconsistent with this article, any resident of the state may commence a mandamus action in circuit court to compel performance by the department in accordance with this article.

§13. The department shall publish an annual report that includes the number and type of licenses issued, demographic information on licensees, a description of any enforcement or disciplinary action taken against licensees, a statement of revenues and expenses of the department related to the implementation, administration, and enforcement of this article, and a statement of taxes collected in accordance with this article, and an accounting for how those revenues were disbursed.

§14. Not later than April 1, 2022, the Legislature shall pass laws to:

- (1) Ensure access to marijuana beyond what is set forth in this article by persons who have been diagnosed by a health care provider, acting within the provider's scope of practice, as having a serious and debilitating medical condition and who are likely to receive therapeutic or palliative benefit from marijuana; and
- (2) Regulate the cultivation, processing, and sale of hemp.

§15. This article shall be broadly construed to accomplish its purposes and intents. Nothing in this article purports to supersede any applicable federal law, except where allowed by federal law. If any provision in this article or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of the article that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this article are severable.