



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
<http://atg.sd.gov/>

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

March 27, 2017

Hon. Shantel Krebs
Secretary of State
500 E. Capitol
Pierre, SD 57501

RE: **Attorney General's Statements for initiated measures legalizing marijuana**

Dear Secretary Krebs,

This Office received proposed initiated measures that the sponsor will seek to place on the November 2018 general election ballot. Enclosed is a copy of each of the initiated measures, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to both measures.

By copy of this letter, I am providing copies of the Attorney General's Statements to the sponsor of the initiated measures pursuant to SDCL 12-13-25.1.

Very truly yours,

A handwritten signature in black ink, appearing to read "Marty J. Jackley".

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc/enc.: Melissa Mentele
Jason Hancock, Director of LRC

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to legalize certain amounts of marijuana, drugs made from marijuana, and drug paraphernalia, and to regulate and tax marijuana establishments.

Explanation:

The measure makes it lawful under the laws of a political subdivision (county, city, etc.) to possess, grow, use, process, purchase, transport, or distribute certain amounts of marijuana and drugs made from marijuana. This includes some drugs that are felony controlled substances under existing State law. It also legalizes drug paraphernalia for people over age 21.

The measure prevents the State from seizing or forfeiting assets of a person involved in manufacturing, possessing, transporting, or trafficking certain amounts of marijuana or some kinds of controlled substances.

The measure authorizes local jurisdictions and the State Department of Revenue to regulate marijuana establishments. It imposes an excise tax payable by marijuana cultivation facilities for marijuana sales to other establishments.

For people who have already been convicted or incarcerated for non-violent drug-related offenses that this measure legalizes, their cases must be reviewed or sentences commuted.

With limited exceptions, the acts described in the measure would remain illegal under State or Federal law. This 35-section measure has numerous conflicts with other State laws and within the measure itself. Because its full scope and effect are unclear, judicial or legislative clarification will likely be necessary. A court may find portions of the measure unconstitutional.

An Act to provide for the regulation and taxation of cannabis and cannabis products.

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA

Section 1. Terms used in this Act shall mean:

1. "Consumer" means a person twenty one years of age or older who purchases cannabis or cannabis products for personal use, but not for resale.
2. "Department" means South Dakota Department of Revenue.
3. "Immature cannabis plant" any cannabis plant that has not flowered and that does not have buds that may be observed by visual examination.
4. "Hemp" means any plant within the genus cannabis and any part of the plant, whether growing or not growing, with a delta-9 tetrahydrocannabinol concentration that does not exceed three tenths of a percent on a dry weight basis of any part of the plant, or per volume or weight of cannabis product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant regardless of moisture content.
5. "Locality" means any municipality or county.
6. "Local regulatory authority" the office or entity designated to process cannabis establishment applications by a county.
7. "Cannabis" the plant of the genus cannabis, the seeds,, the resin extracted from any part of the plant, compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including cannabis concentrate. The term does not include hemp, or any fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with the plant to prepare topical or oral administrations, food, drink, or any other product.
8. "Cannabis accessories" any equipment, product, or other material that is used, intended to be used, or designed to be used in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis into the human body.
9. "Cannabis cultivation facility" an entity registered to cultivate, prepare or package and sell cannabis to a cannabis establishment, but not to consumers. No cannabis cultivation facility may produce cannabis concentrates, tinctures, extracts, or other cannabis products.
10. "Cannabis establishment" means a cannabis cultivation facility, cannabis testing facility, cannabis product manufacturing facility, or retail cannabis store.
11. "Cannabis product manufacturing facility" any entity registered pursuant to this Act to purchase cannabis, manufacture, prepare, or package cannabis products; or sell cannabis and cannabis products to cannabis product manufacturing facilities or retail cannabis stores, but not to consumers.

12. "Cannabis products" products that are comprised of cannabis and other ingredients and are intended for use or consumption

13. "Cannabis testing facility" an entity registered pursuant to this Act to test cannabis for potency or contaminants.

14. "Possession limit" the amount of cannabis that may be possessed at any one time by any individual pursuant to this Act.

(1) For a South Dakota resident, the possession limit is no more than:

a. One ounce of cannabis, no more than five grams of which may be concentrated cannabis;

b. Five cannabis plants; and

c. Any additional cannabis produced by the person's cannabis plants, provided that any amount of cannabis in excess of one ounce of cannabis must be possessed in the same secure facility where the plants were cultivated.

(2) For a non resident of South Dakota, the possession limit is no more than one-fourth of an ounce of cannabis, including up to one gram of concentrated cannabis.

15. "Public place" any place to which the general public has access.

16. "Retail cannabis store" an entity registered pursuant to this Act to purchase cannabis from cannabis cultivation facilities or cannabis and cannabis products from cannabis product manufacturing facilities and to sell cannabis and cannabis products to consumers.

17. "Unreasonably impracticable" measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a cannabis establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

Section 2.

Notwithstanding any other law, the following acts are not unlawful under law of any subdivision or be a basis for seizure or forfeiture of assets under South Dakota law

(a) Possessing, consuming, growing, using, processing, purchasing, or transporting an amount of cannabis that does not exceed the possession limit;

(b) Transferring one ounce or less of cannabis and up to six immature cannabis plants to a person who is twenty one years of age or older without remuneration;

(c) Controlling property where actions described by this Act occur; and

(d) Assisting any other person who is twenty one years of age or older in any of the acts described in this Act.

Section 3.

No person may cultivate cannabis in a location where the plant is subject to public view, or subject to view from any other private property, without the use of binoculars, aircraft, or other optical aids.

Any person who cultivates cannabis shall take reasonable precautions to ensure any plant are secure from unauthorized access.

A person may cultivate cannabis on any property in the person's lawful possession or any property in the lawful possession of any other person who consents to the cultivation of cannabis

If a person violates the provisions of this section the department may impose a civil penalty of up to seven hundred fifty dollars.

Section 4.

If any person smokes cannabis in a public place the department may impose a civil penalty of up to one hundred dollars.

Section 5.

No person may consume cannabis while operating a motor vehicle, boat, vessel, aircraft, or any other motorized device used for transportation.

Punishment for prohibited driving--First offense. If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less than thirty days.

Punishment for second offense--Revocation of driving privilege--Jail sentence for driving while privilege revoked--Limited driving privilege for certain purposes. If conviction for a violation of § 32-23-1 is for a second offense, such person is guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally revoke the defendant's driving privilege for a period of not less than one year.

Section 6.

No person who is under twenty one years of age may purchase, attempt to purchase, or otherwise procure or attempt to procure cannabis; or gain access to a cannabis establishment.

If any person violates any provisions of this section the department may impose a civil penalty of not less than two hundred dollars and not more than four hundred dollars.

Section 7.

No person, other than a registered cannabis product manufacturer, may perform solvent-based extractions on cannabis using solvents other than water or vegetable glycerin.

Any person who violates the provisions of this section is guilty of a Class 6 felony.

Section 8.

Notwithstanding any other law, it is not unlawful under the law of the state or the subdivision, or be a basis for seizure or forfeiture of assets for any person who is twenty one years of age or older to manufacture, possess, or purchase cannabis accessories, or to distribute or sell cannabis accessories to any other person who is twenty one years of age or older.

Any person who is twenty one years of age or older is authorized to manufacture, possess, and purchase cannabis accessories, and to distribute or sell cannabis accessories to any other person twenty one years of age or older.

Section 9.

No person other than a registered retail cannabis store, or any person who is an owner, employee, or agent of a retail cannabis store may:

1. Possess, display, store, or transport cannabis or cannabis products;
2. Purchase cannabis from a cannabis cultivation facility
3. Purchase cannabis or cannabis products from a cannabis product manufacturing facility;
4. Deliver or transfer cannabis or cannabis to a cannabis testing facility; or
5. Deliver, distribute, or sell cannabis or cannabis products to consumers or retail cannabis stores.

Section 10.

No person other than a registered cannabis cultivation facility , or any person who is an owner, employee, or agent of a cannabis cultivation facility may:

1. Cultivate, harvest, process, package, transport, display, store, or process cannabis;
2. Deliver or transfer cannabis to a cannabis testing facility;
3. Deliver, distribute, or sell cannabis to a cannabis cultivation facility, a cannabis product manufacturing facility, or a retail cannabis store;
4. Receive or purchase cannabis from a cannabis cultivation facility; or
5. Receive cannabis seeds or immature plants.

Section 11.

No person other than a registered product manufacturing facility, or a person who is an owner, employee, or agent of a product manufacturing facility may;

1. Package, process, transport, manufacture, display or possess cannabis or cannabis products;
2. Deliver or transfer cannabis or cannabis products to a cannabis testing facility;
3. Deliver or sell cannabis or cannabis products to a retail cannabis store, or a cannabis product manufacturing facility;
4. Purchase cannabis from a cannabis cultivation facility;
5. Purchase cannabis or cannabis products from a cannabis product manufacturing facility.

Section 12.

No person other than a registered cannabis testing facility or a person who is an owner, employee, or agent of a cannabis testing facility may:

1. Possess, cultivate, process, repackage, store, transport, or display cannabis or cannabis products;
2. Receive cannabis or cannabis products from a cannabis establishment or a person twenty one years of age or older;
3. Return cannabis or cannabis products to a cannabis establishment, or a person twenty one years of age or older; or

Section 13.

No cannabis establishment or any agent or employee of a cannabis establishment may sell, deliver, give, transfer, or otherwise provide cannabis to any person who is under the age of twenty one..

Except as otherwise provided this section, in any prosecution for selling, transferring, delivering, giving, or otherwise furnishing cannabis, cannabis products, or cannabis paraphernalia to any other person who is under twenty one years of age, it is a complete defense if:

- (1) The person who sold, gave, or otherwise furnished cannabis, cannabis products, or cannabis paraphernalia was a retailer or was acting in his or her capacity as an owner, employee, or agent of a retailer at the time the cannabis, cannabis products, or cannabis paraphernalia was sold, given, or otherwise furnished to the person; and
- (2) Before selling, giving, or otherwise furnishing cannabis, cannabis products, or cannabis paraphernalia to a person who is under twenty one years of age, the person who sold, gave, or otherwise furnished the cannabis or cannabis paraphernalia, or a staffer or agent of the retailer, was shown a document which appeared to be issued by an agency of a federal, state, tribal, or foreign sovereign government and that indicated the person to whom the cannabis or cannabis paraphernalia was sold, given, or otherwise furnished was twenty one years of age or older at the time the cannabis or cannabis paraphernalia was sold, given, or otherwise furnished to the person.

Section 14.

The complete defense set forth in this section does not apply if:

- (1) The document that was shown to the person who sold, gave, or otherwise furnished the cannabis, cannabis products, or cannabis paraphernalia was counterfeit, forged, altered, or issued to a person other than the person to whom the cannabis, cannabis products or cannabis paraphernalia was sold, given, or otherwise furnished; and
- (2) Under the circumstances, a reasonable person would have known or suspected that the document was counterfeit, forged, altered, or issued to a person other than the person to whom the cannabis, cannabis products, or cannabis paraphernalia was sold, given, or otherwise furnished. Reasonable reliance upon proof of age of the purchaser or the recipient of the cannabis is a complete defense to any action brought against a person for a violation of this section.

Section 15.

Not later than one hundred eighty days after the effective date of this Act, the department shall adopt rules pursuant to chapter 1-25 that are necessary for the implementation of this Act. No rule adopted by the department may prohibit the operation of cannabis establishments, either expressly or through regulations that make their operation unreasonably impracticable. Rules adopted by the department shall include:

1. Procedures for the issuance, renewal, suspension, and revocation of a registration to operate a cannabis establishment;
2. A schedule of fees for any application, registration, or renewal not to exceed five thousand dollars adjusted annually for inflation, unless the department determines a greater fee is necessary to carry out its responsibilities under this chapter;
3. Qualifications for registration that are related to the operation of a cannabis establishment;
4. Security requirements;
5. Requirements for the transportation and storage of cannabis and cannabis products by cannabis establishments;
6. Employment and training requirements,
7. Requirements and standards for each cannabis establishment to create an identification badge for each employee or agent;
8. Requirements designed to prevent the sale or diversion of cannabis and cannabis products to persons under the age of 21;
9. Standards for cannabis product manufacturers to determine the amount of cannabis to which cannabis products are considered an equivalent to;
10. Requirements for cannabis and cannabis products sold or distributed by a cannabis establishment,
11. Contents of cannabis product labels including:
 - a. The length of time it typically takes for a product to take effect;
 - b. The amount of cannabis to which the product is considered an equivalent;
 - c. Disclosure of ingredients and any possible allergens; and
 - d. A nutritional fact panel;
12. Requirements for opaque, child resistant packaging, that must be designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995);
13. Requirements that edible cannabis products be clearly identifiable, when practicable, with a standard symbol indicating that it contains cannabis;

14. Health and safety regulations and standards for the manufacture of cannabis products and both the indoor and outdoor cultivation of cannabis by cannabis establishments;
15. Restrictions on advertising, marketing, and signage including but not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors;
16. Restrictions on the display of cannabis and cannabis products.
17. Restrictions or prohibitions on additives to cannabis and cannabis-infused products, including those that are toxic, designed to make the product more addictive, designed to make the product more appealing to children, or misleading to consumers; Any prohibition may not include common baking or cooking items;
18. Restrictions on the use of pesticides that are injurious to human health;
19. Regulations governing visits to cultivation facilities and product manufacturers, including requiring the cannabis establishment to log visitors;
20. A definition of the amount of delta-9 tetrahydrocannabinol that constitutes a single serving in a cannabis product;
21. Standards for the safe manufacture of cannabis extracts and concentrates;
22. Requirements that educational materials be disseminated to consumers who purchase cannabis-infused products;
23. Requirements for random sample testing to ensure quality control, including by ensuring that cannabis and cannabis infused products are accurately labeled for potency. The Rules promulgated under this subdivision shall provide that testing analysis must include testing for residual solvents, poisons, or toxins; harmful chemicals; dangerous molds or mildew; filth; and harmful microbes such as E. Coli or salmonella and pesticides;
24. Standards for the operation of testing laboratories, including requirements for equipment and qualifications for personnel;
25. Civil penalties for the failure to comply with regulations made pursuant to this chapter; and
26. Procedures for collecting taxes levied on cannabis cultivation facilities.

The department may not require a consumer to provide a retail cannabis store with personal information other than proof of the consumer's age. No retail cannabis store may be required to acquire and record personal information about consumers.

Section 16.

Any application or renewal application for an annual registration to operate a cannabis establishment shall be submitted to the department. A renewal application may be submitted up to ninety days prior to the expiration of the cannabis establishment's registration

Section. 17.

The department shall begin accepting and processing applications to operate cannabis establishments no later than one hundred eighty days following the effective date of this Act.

Section 18.

Upon receiving an application or renewal application for a cannabis establishment, the department shall immediately forward a copy of each application and half of the registration application fee to the local regulatory authority in this jurisdiction in which the cannabis establishment shall be located, unless the locality has not designated a local regulatory authority.

Section 19.

No more than ninety days following receipt of an application or renewal application, the department shall issue an annual registration to the applicant, unless the department determines the applicant is not in compliance with regulations enacted pursuant to this Act or the department is notified by the local regulatory authority that the applicant is not in compliance with ordinances or regulations enacted pursuant to this Act

Section 20.

If a locality has enacted a limit on the number of cannabis establishments within that locality and a greater number of applicants seeks a registration than the locality provides, the department shall solicit and consider input from the local regulatory authority as to the locality's preference or preferences for registration.

Section 21.

Upon denial of any application, the department shall provide the applicant with the specific reason for the denial.

Section 22.

Every cannabis establishment registration shall specify the location where the cannabis establishment will operate. A separate registration shall be required for each location at which a cannabis establishment operates.

Section 23.

The department may inspect any cannabis establishment and any record maintained or created by any cannabis establishment.

Section 24.

Any locality may prohibit the operation of cannabis cultivation facilities, cannabis product manufacturing facilities, cannabis testing facilities, or retail cannabis store through initiated or referred measure, on a general election ballot.

Section 25.

Any locality may enact ordinances or regulations not in conflict with this Act, or with regulations enacted pursuant to this Act, governing cannabis establishments. Any locality may establish civil penalties for violation of any ordinance or regulation governing a cannabis establishment in the locality.

Section 26.

Any locality may designate a local regulatory authority that is responsible for processing applications submitted for a registration to operate a cannabis establishment in the locality.

Section 27.

Any locality may establish procedures for the issuance, suspension, or revocation of a registration issued by the locality.

Section 28.

Any locality may establish a schedule of annual operating and registration fees for cannabis establishments.

Section 29.

No employer may permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of cannabis in the workplace.

Section 30.

No lessor of residential real property may prohibit the possession or the consumption of cannabis by non-smoked means unless:

1. The lessee does not hold a lease for the entirety of the single unit or multiple unit residential real property.
2. The residence is incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;
3. The residence is a transitional housing facility; or
4. Failing to prohibit cannabis possession or consumption would constitute a violation of federal law or regulations or cause the landlord to lose a monetary or licensing-related benefit under federal law or regulations.

Section 31.

Any contract related to the operation of a cannabis establishment registered pursuant to this Act is enforceable. No contract entered into by a registered cannabis establishment or its employees or agents as permitted pursuant to a valid registration, or by those who allow property to be used by a registered establishment, its employees, or its agents, shall be unenforceable on the basis that cultivating, obtaining, manufacturing, distributing, dispensing, transporting, selling, possessing, or using cannabis or hemp is prohibited by federal law.

Section 32.

The cannabis Regulation Fund is hereby established within the state treasury consisting of any fee collected or penalty imposed under this Act. The department shall administer the fund. Monies in the fund are continuously appropriated.

Section 33.

There is hereby imposed an excise tax on the sale or transfer of cannabis from a cannabis cultivation facility to a retail cannabis store or cannabis product manufacturing facility at the rate of:

1. Two hundreds per pound on all cannabis flowers;
2. Fifty dollars per pound on all part of cannabis other than cannabis flowers and immature cannabis plants; and
3. Fifteen dollars per immature cannabis plant.

The rates of tax imposed by this section apply proportionately to quantities of less than one ounce. The department shall adjust the rates annually, through rules adopted pursuant to chapter 1-26, to account for inflation or deflation based on the Consumer Price Index.

Any cannabis cultivation facility shall pay no later than the fifteenth day of each month any excise taxes due on the cannabis that the cannabis cultivation facility transferred or sold in the prior calendar month.

Section 34.

Revenues generated in excess of the amount needed to implement and enforce this act by the cannabis excise tax shall be distributed every three months as follows:

1. Forty percent shall be distributed to the South Department of Education to retain and recruit educators. Five percent of the forty percent is to be set aside into an account to provide supplies and aid to all classrooms in South Dakota; including but not limited to classroom supplies, A/V equipment, computers, field trips and unpaid nutrition accounts.
2. Ten percent shall be distributed to the South Dakota Department of Health for use in evidence-based, voluntary programs for the prevention or treatment of alcohol, tobacco, heroin, methamphetamine, prescription drugs, and cannabis abuse;
3. Ten percent shall be distributed to the South Dakota Department of Health for a scientifically and medically accurate public education campaign educating youth and adults about the health and safety risks of alcohol, tobacco, heroin, methamphetamine, prescription drug and cannabis;
4. Twenty Percent shall be distributed to South Dakota Law Enforcement for officer training, detection dogs, equipment and educational programs to aid in youth diversion.
5. Twenty Percent to the General Fund.

Section 35.

Not later than one hundred eighty days following passage of this Act any prisoner in the state penitentiary, or in any county jail who was sentenced under any provision of law that is legal under this

Act, or any person who is awaiting sentence following conviction of any provision of law that is legal under this Act, will have that person's case reviewed or sentence commuted if:

1. The conviction or charge did not include any act that was violent; and
2. The conviction or charge was for cannabis.