

SPEAKER HUGH M. BARTELS, CHAIR | PRESIDENT PRO TEMPORE LEE SCHOENBECK, VICE CHAIR
REED HOLWEGNER, DIRECTOR | JUSTIN GOETZ, CODE COUNSEL

500 EAST CAPITOL AVENUE, PIERRE, SD 57501 | 605-773-3251 | SDLEGISLATURE.GOV



August 23, 2023

Emmett Reistroffer
2916 Dundee Street
Rapid City, SD 57702
(605) 906-3291
emmett.reistroffer@gmail.com

AUG 24 2023

Dear Emmett Reistroffer:

SDCL 12-13-25 requires the South Dakota Legislative Research Council (LRC) to review each initiated measure submitted to it by a sponsor, for the purpose of assisting the sponsor in writing the measure "in a clear and coherent manner in the style and form of other legislation" that "is not misleading or likely to cause confusion among voters."

The measure, as submitted, proposes to legalize the adult-use of cannabis with certain limitations, including legalizing the sale of cannabis by certain licensed entities. LRC encourages you to consider the edits and suggestions to the proposed text. The edits are suggested for sake of clarity and to bring the proposed measure into conformance with the style and form of South Dakota legislation. LRC comments are based upon the Guide to Legislative Drafting (GLD), which may be found on the South Dakota legislative website—sdlegislature.gov. The suggested edits are included in the attached document.

Although a sponsor is not statutorily required to make changes based upon the suggestions and comments provided by the LRC, you are encouraged to be cognizant of the standards established in SDCL 12-13-24 and 12-13-25 and ensure that your language is in conformity.

Fiscal Impact

It has been determined during this review that this proposed initiated measure may have an impact on revenues, expenditures, or fiscal liability of the state and its agencies and political subdivisions. Please provide the Legislative Research Council a copy of this initiated measure as submitted in final form to the Attorney General so the LRC can develop any fiscal note required by SDCL 2-9-30.

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Compliance

This letter is issued in compliance with statutory requirements placed upon this office. It is not an endorsement of the proposed measure or any of LRC's suggested edits, and it is not a guarantee of the measure's sufficiency. If you proceed with the proposed measure or any of the edits suggested by the LRC, please ensure that neither your statements nor any advertising contain any suggestion of endorsement or approval by the Legislative Research Council.

Sincerely,



Reed Holwegner
Director

Enclosure

CC: The Honorable Monae L. Johnson, Secretary of State
The Honorable Marty Jackley, Attorney General
Justin Johnson

Be it enacted by the people of South Dakota.

Section 1. That title 34 be amended by adding a NEW SECTION to read:

Terms used in this chapter mean:

(1) "Local government," a county, municipality, town, or township;

(2) "Cannabis," the plant of the genus *Cannabis*, and any part of that plant, including the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, or the plant's 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, as defined in § 38-35-1 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 administration, food, drink, or any other product;

(3) "Cannabis accessory," any equipment, product, or material that is specifically designed for use in:

(a) ~~planting~~Planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or containing cannabis; or

(b) ~~ingesting~~Ingesting, inhaling, or otherwise introducing cannabis into the human body;

(4) "Dual-use license," a license ~~issued by the Department of Health~~ allowing a medical cannabis dispensary licensed pursuant to chapter 34-20G to sell cannabis to any person ~~at least~~ twenty-one years of age ~~or older~~; and

(5) "Possession limit," the following amounts of cannabis:

(a) Three ounces of cannabis in a form other than ~~concentrated cannabis or cannabis products~~;

(b) Twenty-four grams of concentrated cannabis, ~~which includes hashish and cannabis extracts~~; and

(c) Cannabis products, other than concentrated cannabis, containing ~~not more than two thousand four hundred milligrams~~ ~~hundred milligrams~~ of tetrahydrocannabinol.

Section 2. That title 34 be amended by adding a NEW SECTION to read:

~~Subject to the limitations in this chapter, and notwithstanding any other law, the following acts, if done by a person at least twenty-one years of age, may not be an offense under state or local~~

Commented [JM1]: "resin" is already mentioned in the definition. Does it need to be mentioned two times?

Commented [JM2]: Isn't "hash" simply the resin of cannabis? Is this reference necessary?

Commented [JM3]: This definition uses "marijuana" in 3 places. Should those 3 instances be changed to "plant." It seems inconsistent to use both "cannabis" and "marijuana." Typically, only one of these is used in similar proposals.

Commented [JM4]: See comment above.

Commented [JM5]: Is this reference to plant referring to the cannabis plant or the hemp plant? If cannabis, should a new sentence be drafted for clarity, separating it out from the hemp portion?

Commented [JM6]: See comment above.

Commented [JM7]: Restructured definition for clarity.

Commented [JM8]: Clarity suggestion.

Commented [JM9]: Style and Form: See *Guide to Legislative Drafting* (GLD), page 45.

Commented [JM10]: Clarity: Should these terms be defined?

Commented [JM11]: Clarity: Is it necessary to include these references here, when they are already provided for in the definition of "cannabis"?

Does "cannabis extract" need its own definition?

Commented [JM12]: It may be clearer to create a positive right to do any of these acts, rather than stating they are not an offense. Other material from this paragraph is suggested to be moved to the end of the section.

~~law, regulation, or ordinance; be subject to a civil fine, penalty, or sanction; be a basis for detention, search, or arrest; be a basis for the denial of any right or privilege; or be a basis for asset seizure or forfeiture.~~ Notwithstanding any law or ordinance, a person twenty-one years or older may:

(1) ~~Possessing Possess, using use, ingesting ingest, inhaling inhale, processing process, or transporting not more than the possession limit of:~~ transport an amount of cannabis not exceeding the possession limit; ~~or transferring transfer without consideration not more than the possession limit of:~~ an amount of cannabis not exceeding the possession limit to a person who is twenty-one years ~~of age~~ or older;

Commented [JM13]: See Style and Form, GLD, page 45.

(2) ~~Possessing Possess, planting plant, cultivating cultivate, harvesting harvest, drying dry, processing process, or manufacturing manufacture not more than six cannabis plants and possessing possess and processing process the cannabis produced by the plants, provided that the plants and any cannabis produced by the plants in excess of the possession limit are kept at one private residence only; are in a locked space at the private residence; are not visible by normal, unaided vision from a public place; and that the total number of plants at the private residence may does not exceed twelve plants, even if more than two people who are twenty-one years of age or older live in the residence;~~

(3) ~~Possessing Possess, using use, or manufacturing manufacture~~ any cannabis accessory;

(4) ~~Delivering Deliver, distributing distribute, transferring transfer, or selling sell~~ a cannabis accessory to a person twenty-one years ~~of age~~ or older;

(5) ~~Allowing Allow~~ the person's property to be used for any of the acts permitted by this chapter; and

(6) ~~Any Carry out any~~ combination of the acts allowed by this section.

Commented [JM14]: Clarity: There seems to be a verb missing here.

~~Any act authorized by this section may not be the basis for any civil fine, penalty, or sanction; detention, search, or arrest; the denial of any right or privilege; or asset seizure or forfeiture.~~

Section 3. That title 34 be amended by adding a NEW SECTION to read:

(1) ~~Notwithstanding any other provision of law, no dual-use licensee or agent of a dual-use licensee is subject to prosecution, search, seizure, or penalty of any kind, or may be denied any right or privilege for acting in accordance with this chapter to deliver or sell cannabis to a person who is twenty-one years of age or older, provided that the agent or licensee does not knowingly sell a quantity of cannabis to a person who is not a cardholder, as defined in § 34-20G-1, that causes the person to possess a quantity of cannabis that exceeds the possession limit.~~

(2) ~~This section does not prevent the imposition of penalties for a violation of a regulation issued by the Department of Health.~~

Commented [JM15]: Is this subdivision necessary? The first paragraph is limited to acting in accordance with "this chapter," which wouldn't preclude imposing a penalty for a violation of rules.

Section 4. That title 34 be amended by adding a NEW SECTION to read:

Nothing in this chapter affects a law prohibiting:

(1) The delivery or distribution of cannabis or a cannabis accessory, with or without consideration, to a person ~~younger than~~ twenty-one years of age ~~or younger~~;

Commented [JM16]: Style and form - see page 45 of GLD.

(2) The purchase, possession, use, or transport of cannabis or cannabis accessories by a person ~~younger than~~ twenty-one years of age ~~or younger~~;

(3) The consumption of cannabis by a person ~~younger than~~ twenty-one years of age ~~or younger~~;

(4) The operation of or being in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of cannabis;

(5) The consumption of cannabis 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;

Commented [JM17]: This subdivision already uses "while operating"

(6) The smoking of cannabis within a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is being operated;

(7) The possession or consumption of cannabis or possession of cannabis 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 or juvenile detention facility;

(8) The smoking of cannabis in a location where smoking tobacco is prohibited;

(9) The undertaking of any task under the influence of cannabis, if doing so would constitute negligence or professional malpractice; or

(10) Performing solvent-based extractions on cannabis without a license;

Commented [JM18]: Clarity: What license is being referred to here? Is this a dual-use license?

Section 5. That title 34 be amended by adding a NEW SECTION to read:

No later than August 15, 2025, the secretary of the Department of Health shall ~~issue~~ promulgate rules, pursuant to chapter 1-26, for the regulation and licensure of dual-use licenses, including:

Commented [JM19]: See page 50 of the GLD.

(1) A fee schedule of reasonable application, license, and annual renewal fees, not to exceed \$5,000 total annually;

(2) Application procedures for dual-use licenses and renewals;

(3) Training and education ~~required requirements~~ for dual-use licensee agents, which ~~shall~~ must include training on ~~checking photo~~ verifying information contained on an identification card and ~~for identifying a false identification card~~.

Commented [JM20]: Various clarity suggestions.

Section 6. That title 34 be amended by adding a NEW SECTION to read:

(1) A medical cannabis dispensary that is licensed with the Department of Health pursuant to chapter 34-20G may apply for a dual-use license.

(2) No later than September 15, 2025, the secretary of the Department of Health shall issue an annual dual-use license to any medical cannabis dispensary that is licensed with the Department of Health pursuant to chapter 34-20G, that:

(a) applies for a dual-use license;

(b) pays the required fee;

(c) is not subject to or have any record of a ~~suspension~~ suspension of a license for a violation of chapter 34-20G or rules; and

(e) was granted a medical cannabis dispensary license by the Department of Health on or before January 1, 2024, and holds an active medical cannabis establishment license as of July 1, 2025.

(3) No later than 30 days after a ~~dual-licensee~~ dual-use licensee applies for a dual-use license renewal, the Department of Health shall issue a renewal license provided the applicant:

(a) pays the required fee; and

(b) is not subject to a suspension for a violation of state law or rules.

Section 7. That title 34 be amended by adding a NEW SECTION to read:

A local government may not prohibit the operation of a dual-use license within its jurisdiction; however a local government may maintain or enact a ~~numerical~~ cap on the number of dual-use licenses available, contingent on the number of dual-use licenses available being equal to the number of medical cannabis establishment licenses.

Section 9. That title 34 be amended by adding a NEW SECTION to read:

This chapter does not:

(1) Require an employer to permit or accommodate an employee to engage in conduct allowed by this chapter;

(2) Affect an employer's ability to restrict the use of cannabis by an employee;

(3) Limit the right of a person who occupies, owns, or controls private property from prohibiting or otherwise regulating conduct permitted by this chapter 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 chapter within a building owned, leased, or occupied by the state or the local government.

Commented [JM21]: Does this mean that only existing medical cannabis dispensaries are eligible for the new dual-use license?

Commented [JRM22]: Clarity: A "dual-use license" cannot operate since the "license" is not an individual or an entity. An individual or an entity (or a medical cannabis dispensary) with a dual-use license can operate. Can this be reworded, i.e.

"A local government may not prohibit an entity with a dual-use license from operating within its jurisdiction." Or some variation of that.

Commented [JM23]: These two terms seem to introduce some ambiguity as to what is required of a local government. Should it be changed to say:

"A local government may establish a cap on the number of dual-use licenses available within its jurisdiction. The cap must be established by ordinance and be equal to or greater than the number of medical cannabis establishment licenses available in the jurisdiction."

Commented [JM24]: This seems redundant since the cap is "on the number..."