

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

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

MARTY J. JACKLEY
ATTORNEY GENERAL

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NOV 17 2023

SD Secretary of State

November 17, 2023

Honorable Monae L. Johnson
Secretary of State
500 E. Capitol
Pierre, SD 57501

RE: Draft Attorney General's Statement (Proposed Initiated Measure
Legalizing the Possession, Use, and Distribution of Marijuana and
Creating Dual-Use Marijuana Licenses)

Dear Secretary Johnson,

Enclosed is a copy of a proposed Initiated Measure, in final form, that the sponsor submitted to this Office. In accordance with state law, I hereby file the enclosed *draft* Attorney General's Statement for the purposes of receiving public comment on the same.

By copy of this letter, I am providing a copy of the *draft* Statement to the sponsor.

Very truly yours,

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

Marty J. Jackley
ATTORNEY GENERAL

MJJ/dd
Enc.

Filed this 17th day of
November 2023

A handwritten signature in black ink, appearing to read "Monae L. Johnson".

SECRETARY OF STATE

Cc/encl: Emmett Reistroffer
Reed Holwegner – Legislative Research Council

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INITIATED MEASURE
DRAFT ATTORNEY GENERAL'S STATEMENT

Title: An Initiated Measure Legalizing the Possession, Use, and Distribution of Marijuana and Creating Dual-Use Marijuana Licenses.

Explanation:

This initiated measure allows individuals 21 years of age or older to possess, grow, ingest, and distribute marijuana or marijuana paraphernalia. Individuals may possess up to three ounces of marijuana plant material. The measure places other limits on the possession of marijuana concentrate (such as oil or wax), or marijuana products (such as edibles and lotions). Individuals may also possess up to six marijuana plants with no more than twelve plants possessed per household.

Under the measure, the possession, ingestion, and distribution of marijuana and marijuana paraphernalia remains illegal for individuals under the age of 21. Driving under the influence of marijuana remains illegal.

The measure authorizes the Department of Health to issue dual-use licenses to medical marijuana dispensaries. A dual-use license allows dispensaries to sell marijuana to persons 21 years of age or older. Local governments may not prohibit dual-use licenses but may cap the number available within their jurisdictions.

The measure allows employers to restrict employee use of marijuana. Property owners may regulate the use of marijuana on their property.

The measure does not affect State laws dealing with hemp.

The measure legalizes marijuana-derived substances considered felony controlled substances under State law. Marijuana remains illegal under federal law.

Filed this 17th day of
November 2023

Monae L. Johnson

SECRETARY OF STATE

Filed this 17th day of

November 2023

Be it enacted by the people of South Dakota.

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

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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 cannabis plant concentrate. The term includes an altered state of cannabis absorbed into the human body. The term does not include hemp, as defined in § 38-35-1.
- (3) "Cannabis accessory," any equipment, product, or material that is specifically designed for:
 - (a) Planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or containing cannabis; or
 - (b) 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 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; and
 - (c) Cannabis products, other than concentrated cannabis, containing not more than two thousand four hundred milligrams of tetrahydrocannabinol.

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

Notwithstanding any law or ordinance, a person twenty-one or older may:

- (1) Possess, use, ingest, inhale, process, or transport an amount of cannabis not exceeding the possession limit; or transfer without consideration an amount of cannabis to a person who is twenty-one years or older;
- (2) Possess, plant, cultivate, harvest, dry, process, or manufacture not more than six cannabis plants and possess and 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 does not exceed twelve plants, even if more than two people who are twenty-one years or older live in the residence;

(3) Possess, use, or manufacture any cannabis accessory;

(4) Deliver, distribute, transfer, or sell a cannabis accessory to a person twenty-one years or older;

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

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

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 or older, provided that the agent or licensee does not knowingly sell a quantity of cannabis to a person that causes the person to possess a quantity of cannabis that exceeds the possession limit.

(2) Notwithstanding any provision of law, cannabis produced by a cultivation facility, or a cannabis product manufacturing facility licensed pursuant to chapter 34-20G may be sold by a dual-use licensee to any person who is at least twenty-one years or older, provided that the cannabis is cultivated, manufactured, transferred, and sold in accordance with Department of Health rules.

(3) No later than August 15, 2025, the secretary of the Department of Health shall promulgate rules pertaining to cannabis produced by a cultivation facility, or a cannabis product manufacturing facility licensed pursuant to chapter 34-20G to be sold by a dual-use licensee to any person who is at least twenty-one years or older.

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

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;

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

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

(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;

(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 extraction on cannabis using an inherently hazardous substance without a license or prior written approval from the Department of Health.

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 promulgate rules, pursuant to chapter 1-26, for the regulation and licensure of dual-use licenses, including:

(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 requirements for dual-use licensee agents, which must include training on verifying information contained on an identification card and identifying a false identification card.

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) 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, provided that:

(a) The medical cannabis dispensary applies for a dual-use license;

(b) The medical cannabis dispensary pays the required fee;

(c) The medical cannabis dispensary is not subject to a suspension of a license for a violation of chapter 34-20G or rules; and

(d) The medical cannabis dispensary was granted a medical cannabis dispensary license by the Department of Health and holds an active medical cannabis establishment license at the time of application.

(3) No later than 30 days after a dual-use licensee applies for a dual-use license renewal, the Department of Health shall issue a renewal license provided that: the applicant pays the required fee; and the applicant 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 an entity with a dual-use license from operating within its jurisdiction; however 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 the number of medical cannabis establishment licenses available in the jurisdiction.

Section 8. 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.