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Attorney General -

DEC 21 2022

December 20, 2022

Matthew Schweich, Associate
Eagle Campaigns, LLC
4510 W. 35th St. N. #204
Sioux Falls, SD 57107

Dear Matthew Schweich:

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 establish the legalization of the adult-use of marijuana with certain limitations. 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, 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.

Schweich—Marijuana
December 20, 2022
Page 2

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 Mark Vargo, Attorney General
Quincy Hanzen

~~Title: An initiated measure legalizing the possession, use, and distribution of marijuana.~~¹

Be it enacted by the people of South Dakota:

~~The text of the proposed law is as follows:~~²

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

Terms³ used in this chapter mean:

(1) "Hemp," the plant of the genus ~~cannabis~~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;

(2) "Local government," ~~means~~ a county, municipality, town, or township;

(3) "Marijuana," the plant of the genus ~~cannabis~~Cannabis, and any part of that plant, including the seeds, the resin extracted⁴ from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, ~~its the plant's~~ seeds⁵, or ~~its the plant's~~ resin⁶, including hash⁷ and marijuana concentrate⁸. 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 plant⁹, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare a topical or oral ~~administrations~~administration¹⁰, food, drink, or ~~any~~ other ~~products~~product; and

(4) "Marijuana accessory," any equipment, product, or material, ~~which that~~ 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.

¹ The attorney general will provide a title pursuant to SDCL 12-13-9. This can be removed.

² This isn't necessary. It can be removed.

³ All proposed text of the law (but not section lead in language) should be underscored.

⁴ Isn't this the same thing as marijuana concentrate?

⁵ This is already included earlier in the sentence.

⁶ This is already included earlier in the sentence.

⁷ Isn't this the same thing as marijuana concentrate?

⁸ Does this need to be defined? Most states define this. If it is defined, conforming changes throughout would need to be made.

⁹ Is this the marijuana plant or the hemp plant?

¹⁰ SD drafting convention is to draft in singular. See page 32 of LRC's drafting manual.

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

~~This chapter does not affect laws that otherwise regulate~~Nothing in this chapter affects a law¹¹ prohibiting:

- (1) ~~Delivery~~The delivery or distribution of marijuana or ~~a marijuana accessories-~~accessory with or without consideration, to a person younger than twenty-one years of age;
- (2) ~~Purchase~~The purchase, possession, use, or transport of marijuana or marijuana accessories by a person younger than twenty-one years of age;
- (3) ~~Consumption~~The consumption of marijuana by a person younger than twenty-one years of age;
- (4) ~~Operating~~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 marijuana;
- (5) ~~Consumption~~The 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~~The smoking of marijuana within a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is being operated;
- (7) ~~Possession~~The 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~~The smoking of marijuana in a location where smoking tobacco is prohibited;
- (9) ~~Consumption~~The smoking of marijuana in a public place, unless permitted by ~~statute~~law;
- (10) ~~Consumption~~The consumption of marijuana as part of a criminal penalty or a diversion program;
- (11) Conduct that endangers others¹²;
- (12) ~~Undertaking~~The undertaking of 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 permitted by ~~statute~~law.

¹¹ Should possession of one ounce or more be added to the list?

¹² Is this necessary? It is so overly vague that it may not have any real meaning.

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

This chapter does not:

- (1) Require ~~that 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 marijuana by ~~employees~~ an employee¹³;
- (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.

Section 4. That title 34 be amended by adding a NEW SECTION¹⁴ to read:

~~Subject¹⁵ 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 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, ingesting, inhaling, processing, transporting, delivering, or distributing without consideration, or ~~distributing~~ distribute without consideration one ounce or less of marijuana, except that not more than eight grams of marijuana may be in a concentrated form¹⁶;
- (2) ~~Possessing~~ Possess, planting, cultivating, harvesting, drying, processing, or manufacturing manufacture not more than six marijuana plants and ~~possessing~~ possess the marijuana produced by the plants, if:

¹³ SD drafting convention is to draft in singular. See page 32 of LRC's drafting manual.

¹⁴ It may make sense to have this section as section 2 of the measure, since it is the most significant section. The other sections flow from this provision.

¹⁵ 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.

¹⁶ Should there be a separate subdivision dealing with marijuana concentrate?

(a) The plants and any marijuana produced by the plants in excess of one ounce are kept at one private residence only, are in a locked space at the private residence, and are not visible by normal, unaided vision from a public place; and

(b) Not more than twelve¹⁷ plants are kept in or on the grounds of a private residence at one time;

(3) ~~Assisting Assist~~¹⁸ another person who is ~~at least~~ twenty-one years ~~of age~~ or older with any act authorized by this section¹⁹; ~~or~~

~~(4) allowing~~ Allow the person's property to be used, ~~in for~~ any of the acts permitted by this section; and

(5) Possess, use, or manufacture any marijuana accessory; and

~~(4)(6) Possessing, using, delivering, distributing, manufacturing, transferring, or selling~~ Deliver, distribute, transfer, or sell a marijuana accessory to persons a person twenty-one years of age or older marijuana accessories²⁰.

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 for asset seizure or forfeiture.

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

A person who commits any of²¹ the following acts is subject to a civil penalty²² not exceeding the amount specified:

(1) ~~Violates section 4(2)(a) of this chapter~~ Violates subsection (2)(a) of section 4 of this Act²³, by cultivating a marijuana plants²⁴ that ~~are~~is visible by normal, unaided vision from a public place, two hundred and fifty dollars.

(2) ~~Violates section 4(2)(a) of this chapter~~ Violates subsection (2)(a) of section 4, by cultivating a marijuana plants²⁴ that ~~are~~is not kept in a locked space, two hundred and fifty dollars.

(3) Smokes marijuana in a public place, other than in an area licensed for such activity, one hundred dollars.

¹⁷ This allows "twelve" plants, but the lead-in clause allows "six." Should these numbers be the same?

¹⁸ What is the person being assisted with here? Assisted with any act allowed by this section?

¹⁹ See page 45 of the LRC Drafting Manual.

²⁰ Does this apply to all the actions enumerated in the list? If so, it doesn't quite make sense, i.e. "Possessing...to persons twenty-one years of age or older marijuana accessories" ?

²¹ Any one of them subjects one to a penalty, not all of them together.

²² Who is responsible for imposing and collecting this civil penalty? Is it the secretary of the Department of Health?

²³ Correction of citation form.

²⁴ Does it have to be more than one plant or only one plant that is visible?

(4) Is ~~under twenty-one years of age or younger~~²⁵ 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, one hundred dollars.

~~In lieu of the penalty prescribed under subdivision 4, The a person shall~~may be provided²⁶ the option of attending up to four hours of drug education or counseling ~~in lieu of the civil penalty.~~

Section 6.²⁷ That title 34 be amended by adding a NEW SECTION to read:

No later than July 8, 2025, the ~~South Dakota~~ secretary of the Department of Health shall issue²⁸ a provisional²⁹ adult-use license to any medical cannabis dispensary that, pursuant to chapter 34-20G, was granted a medical cannabis dispensary license by the South Dakota Department of Health on or before November 30, 2022, and holds an active medical cannabis dispensary license as of July 1, 2025. The provisional adult-use license ~~shall permit~~permits a medical cannabis dispensary to sell marijuana regulated pursuant to³⁰ chapter 34-20G³¹ to any adult aged twenty-one years of age or older.³²

~~Local governments shall have the ability to~~A local government may regulate³³ or prohibit³⁴ ~~businesses that utilize an entity that has~~ a provisional adult-use license provided that the annual local licensing fee does not exceed \$5,000 per year.³⁵ Sales

~~The retail sale of marijuana or any marijuana accessory made by a business that utilizes a provisional adult-use license shall be~~is subject to state and local sales³⁶ taxes.

Section 7. That title 34 be amended by adding a NEW SECTION³⁷ to read:

²⁵ See page 45 of the LRC Drafting Manual.

²⁶ Who is provided this alternative option? The secretary of DOH?

²⁷ This section should be split into three. There are three separate things going on (licensure, local gov't regulation, and taxation).

²⁸ This makes it a requirement. What if a dispensary does not want this type of license? Should "upon request" be inserted somewhere in this sentence?

²⁹ What makes it "provisional"? The text does not provide how long the license is good for.

³⁰ Would "subject to the requirements of" be more accurate?

³¹ This reference to SDCL 34-20G may need further clarification.

³² Does DOH need rule-making authority to develop rules for adult-use dispensary licenses?

³³ This may need further clarification. What regulations are allowed?

³⁴ What is being prohibited here? May a local government prohibit an adult-use dispensary from operating in its jurisdiction?

³⁵ Consider drafting this as separate sentences. The fee is a separate concept than "regulate" and "prohibit." i.e. "A local government may impose an annual fee on an entity with an adult-use marijuana dispensary license operating within the local government's jurisdiction. The annual fee may not exceed \$5,000."

³⁶ Should citations to these taxes be included? i.e. "is subject to the tax imposed by chapters 10-45 and 10-46, and any local retail sales tax."

³⁷ Generally, this section is not needed. State law cannot supersede federal law.

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This chapter must be broadly construed to accomplish its purposes and intents. Nothing in this chapter purports to supersede any applicable federal law, except where allowed by federal law. If any provision in this chapter or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality may not affect other provisions or applications of the chapter that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this chapter are severable.³⁸

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[END]

³⁸ Statements of severability are not needed. See page 20 of the LRC Drafting Manual.