Attorney General

JUN 15 2023

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 planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing cannabis into the human body; and

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

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

(b) Sixteen grams of concentrated cannabis, which includes hashish and cannabis extracts; and

(c) Cannabis products, other than concentrated cannabis, containing one thousand six 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 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:

(1) Possessing, using, ingesting, inhaling, processing, or transporting not more than the possession limit of cannabis; or transferring without consideration not more than the possession limit of cannabis to a person who is twenty-one years of age or older;

(2) Possessing, planting, cultivating, harvesting, drying, processing, or manufacturing not more than six cannabis plants and possessing and processing 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 not exceed twelve, even if more than two people who are twenty-one years of age or older live in the residence;

(3) Possessing, using, or manufacturing any cannabis accessory;

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

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

(6) Any combination of the acts allowed by this section.

Section 3. 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, while it is being operated;

(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 smoking of cannabis in a public place;

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

(11) Performing solvent-based extractions on cannabis using solvents other than water, glycerin, propylene glycol, vegetable oil, or food grade ethanol.

Section 4. 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.