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
TTY (605) 773-6585
http://atg.sd.gov/

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

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October 8, 2021

Honorable Steve Barnett
Secretary of State
500 E. Capitol
Pierre, SD 57501

RE: Attorney General's Statement (Constitutional Amendment: Article XXI – Marijuana (Version B))

Dear Secretary Barnett,

Enclosed is a copy of a proposed constitutional amendment, in final form, that the sponsor submitted to this Office. In accordance with state law, I hereby file the enclosed Attorney General's Statement for this initiated measure.

By copy of this letter, I am providing a copy of the Statement to the sponsors.

Very truly yours,

Jason R. Ravnsborg
ATTORNEY GENERAL

JRR/dd
Enc.

Filed this 8 day of October
Steve Barnett
SECRETARY OF STATE

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CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution to legalize the possession, use, and distribution of marijuana and to legalize commercial marijuana activities.

Explanation:

This constitutional amendment legalizes the possession, use, and distribution of marijuana and marijuana paraphernalia by people age 21 and older. Individuals may possess one ounce or less of marijuana. They may also distribute one ounce or less of marijuana without payment or other consideration. Marijuana plants and marijuana produced from those plants may be possessed under specific conditions.

The amendment authorizes commercial cultivation, distribution, and sale of marijuana. The Legislature must pass laws regulating commercial marijuana activities. Up to a 15% tax may be imposed on the commercial sale of marijuana and marijuana paraphernalia.

Certain violations of the restrictions the amendment places on the possession, use, and distribution of marijuana and marijuana paraphernalia are subject to various civil penalties. Individuals under age 21 may be offered drug education or counseling instead of paying a penalty. The amendment authorizes the Legislature to adjust these penalties, but those adjustments cannot exceed the rate of inflation.

The amendment does not intend to affect certain laws otherwise regulating marijuana, including laws regulating medical marijuana or industrial hemp.

The amendment legalizes substances considered felony controlled substances under State law. Marijuana remains illegal under Federal law.

Judicial or legislative clarification of the amendment may be necessary.

Filed this 8 day of
October
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BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

Section 1. That Article XXI of the Constitution of the State of South Dakota, be amended by adding a NEW SECTION to read:

Filed this 8 day of October
Steve Barnett
SECRETARY OF STATE

§ 10. Marijuana

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: possessing, using, ingesting, transporting, processing, delivering without consideration, or distributing without consideration one ounce or less of marijuana, except that not more than eight grams of marijuana may be in a concentrated form; cultivating not more than three marijuana plants and possessing the marijuana produced by the plants, provided the plants and any marijuana produced by the plants in excess of one ounce are kept at one private residence, are in a locked space, are not visible by normal, unaided vision from a public place, and not more than six plants are kept in or on the grounds of a private residence at one time; possessing, cultivating, manufacturing, testing, or delivering, distributing, or selling for consideration to persons twenty-one years of age or older marijuana or marijuana accessories, by licensed commercial cultivators, wholesalers, testing facilities, or retail sales outlets; and assisting another person who is at least

twenty-one years of age, or allowing property to be used, in any of the acts permitted by this section.

This section does not limit or affect laws that otherwise regulate: the use, ingestion, purchase, possession, transport, delivery, or distribution of marijuana or marijuana accessories by a person younger than twenty-one years of age; the delivery or distribution of marijuana or marijuana accessories, with or without consideration, to a person younger than twenty-one years of age; 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; smoking marijuana within a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is being operated; the possession or consumption of marijuana or possession of marijuana accessories on the grounds of a public or private school, in a school bus, or on the grounds of any correctional facility; smoking marijuana in a location where smoking tobacco is prohibited; the consumption of marijuana in a public place, unless permitted by statute; the consumption of marijuana as part of a criminal penalty or a diversion program; undertaking any task under the influence of marijuana, if doing so would constitute negligence or professional malpractice; performing solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food grade ethanol, unless permitted by statute; conduct that endangers others; or medical marijuana or industrial hemp.

This section does not require that an employer permit or accommodate an employee to engage in conduct allowed by this section. This section does not limit the right of a person who occupies, owns, or controls private property from otherwise regulating conduct permitted by this section on or in that property, or limit the ability of the state or a local government to otherwise regulate any conduct permitted under this section within a building owned, leased, or occupied by the state or the local government.

Marijuana plants that are otherwise cultivated not in violation of state or local law, but that are in public view or not kept in a locked space, shall subject the possessor of the plants to a civil penalty not exceeding two hundred and fifty dollars. A person who smokes marijuana in a public place where smoking marijuana is not lawfully permitted is subject to a civil penalty not exceeding one hundred dollars. A person who is under twenty-one years of age and possesses, uses, ingests, transports, processes, delivers without consideration or distributes without consideration one ounce or less of marijuana or marijuana accessories is subject to a civil penalty not to exceed one hundred dollars, and may be provided the option of attending up to four hours of drug education or counseling in lieu of the civil penalty. The legislature may periodically adjust the amounts of the civil penalties provided herein, not to exceed the rate of inflation.

This section must be construed broadly to accomplish its purposes and intent. The legislature shall enact laws regulating the commercial cultivation, manufacturing, processing, testing, transport, delivery, and sale of marijuana, and may enact other laws as necessary to implement this section, but the legislature may not hinder or frustrate the purposes or intent of this section. The legislature may impose a tax on the commercial sale of marijuana and marijuana accessories, not to exceed fifteen percent.

Nothing in this section purports to supersede any applicable federal law, except where allowed by federal law. If any provision in this section 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 section that can be given effect without the invalid or unconstitutional provision or application, and to this end, the provisions of this section are severable.