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OCT 08 2021
S.D. SEC. OF STATE

October 8, 2021

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

RE: Attorney General's Statement (Initiated measure: Title 34 be amended by adding a new section (Version B))

Dear Secretary Barnett,

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 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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INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure legalizing the possession, use, and distribution of marijuana and legalizing commercial marijuana activities.

Explanation:

This initiated measure 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.

Certain violations of the restrictions the measure places on the possession, cultivation, use, and distribution of marijuana and marijuana paraphernalia are subject to various civil penalties. Individuals under age 21 can attend drug education or counseling instead of paying a civil penalty.

The measure authorizes the Department of Revenue to issue marijuana-related licenses for commercial cultivators and manufacturers, testing facilities, wholesalers, and retailers. Local governments may regulate or ban the establishment of licensees within their jurisdiction.

The measure imposes a 15% tax on marijuana sales. The tax revenue will be used for the Department's costs incurred in implementing the measure, with remaining revenue equally divided between support of public schools and the State general fund

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

Judicial or legislative clarification of the measure may be necessary.

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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) "Department," the Department of Revenue or its successor agency;
(2) "Hemp," the plant of the genus 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;
(3) "Local government," means a county, municipality, town, or township;
(4) "Marijuana," the plant of the genus cannabis, and any part of that plant, including, the seeds, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its 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, 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 administrations, food, drink, or other products;
(5) "Marijuana accessory," any equipment, product, or material that is 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.

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

This chapter does not affect laws that otherwise regulate:
(1) Delivery or distribution of marijuana or marijuana accessories, with or without consideration, to a person younger than twenty-one years of age;
(2) Purchase, possession, use, or transport of marijuana or marijuana accessories by a person younger than twenty-one years of age;
(3) Consumption of marijuana by a person younger than twenty-one years of age;
(4) Operating 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 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;

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(6) Smoking marijuana within a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is being operated;
(7) 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 marijuana in a location where smoking tobacco is prohibited;
(9) Consumption of marijuana in a public place, other than in an area licensed by the department for consumption;
(10) Consumption of marijuana as part of a criminal penalty or a diversion program;
(11) Conduct that endangers others;
(12) Undertaking 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 licensed for this activity by the department.

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

This chapter does not:
(1) Require that an employer 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;
(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 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, transporting, 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;
(2) Possessing, planting, cultivating, harvesting, drying, processing, or manufacturing not more than three marijuana plants and possessing the marijuana produced by the plants, if:

(a) 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, and are not visible by normal, unaided vision from a public place;
(b) Not more than six plants are kept in or on the grounds of a private residence at one time; and
(c) The private residence is located within the jurisdiction of a local government where there is no licensed retail store where marijuana is available for purchase pursuant to this chapter;

(3) 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; and
(4) Possessing, using, delivering, distributing, manufacturing, transferring, or selling to persons twenty-one years of age or older marijuana accessories.

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

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

(1) Violates section 4(2)(a) of this chapter by cultivating marijuana plants that are visible by normal, unaided vision from a public place, two hundred and fifty dollars;
(2) Violates section 4(2)(a) of this chapter by cultivating marijuana plants that are not kept in a locked space, two hundred and fifty dollars;
(3) Cultivates marijuana plants within the jurisdiction of a local government where marijuana is available for purchase at a licensed retail store or where the cultivation of plants is not allowed through local ordinance or regulation pursuant to section 10 of this chapter, two hundred and fifty dollars;
(4) Smokes marijuana in a public place, other than in an area licensed for such activity by the department, one hundred dollars;
(5) Is under twenty-one years of age 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. The person shall be provided the option of attending up to four hours of drug education or counseling in lieu of the civil penalty.

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

The department shall have the power, except as otherwise provided in section 10 of this chapter, to license and regulate the cultivation, manufacture, testing, transport, delivery, and sale of marijuana in the state and to administer and enforce this chapter. The department shall accept applications for and issue:

(1) Licenses permitting commercial cultivators and manufacturers of marijuana to cultivate, process, manufacture, transport, and sell marijuana to marijuana wholesalers;

(2) Licenses permitting independent marijuana testing facilities to analyze and certify the safety and potency of marijuana;
(3) Licenses permitting marijuana wholesalers to package, process, and prepare marijuana for transport and sale to retail sales outlets; and
(4) Licenses permitting retail sales outlets to sell and deliver marijuana to consumers.

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

Not later than July 1, 2023, the department shall promulgate rules pursuant to chapter 1-26 addressing:
(1) Procedures for the issuance, renewal, suspension, and revocation of licenses;
(2) Application, licensing, and renewal fees, not to exceed the amount necessary to cover the costs to the department of implementing and enforcing this chapter;
(3) Time periods, not to exceed ninety days, by which the department must issue or deny an application;
(4) Qualifications for licensees;
(5) Security requirements, including lighting and alarm requirements, to prevent diversion;
(6) Testing, packaging, and labeling requirements, including maximum tetrahydrocannabinol levels, to ensure consumer safety and accurate information;
(7) Restrictions on the manufacture and sale of edible products to ensure consumer and child safety;
(8) Health and safety requirements to ensure safe preparation and to prohibit unsafe pesticides;
(9) Inspection, tracking, and record-keeping requirements to ensure regulatory compliance and to prevent diversion;
(10) Restrictions on advertising and marketing;
(11) Requirements to ensure that all applicable statutory environmental, agricultural, and food and product safety requirements are followed;
(12) Requirements to prevent the sale and diversion of marijuana to persons under twenty-one years of age; and
(13) Civil penalties, not to exceed $10,000, for the failure to comply with rules adopted pursuant to this chapter.

Section 8. That title 34 be amended by adding a NEW SECTION to read:

In determining the appropriate number of licenses to issue, as required under this chapter, the department shall:
(1) Issue enough licenses to substantially reduce the illicit production and sale of marijuana throughout the state; and
(2) Limit the number of licenses issued, if necessary, to prevent an undue concentration of licenses in any one municipality.

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

Actions and conduct by a licensee, a licensee's employee , and a licensee's agent, as permitted pursuant to a license issued by the department, or by those who allow property to be used by a licensee, a licensee's employee, or a licensee's agent, as permitted pursuant to a license issued by the department, 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. No contract is unenforceable on the basis that marijuana is prohibited by federal law.

Section 10. That title 34 be amended by adding a NEW SECTION to read:

A local government may enact ordinances or regulations governing the time, place, manner, and number of licensees operating within its jurisdiction. A local government may ban the establishment of licensees or any category of licensee within its jurisdiction. A local government may allow for cultivation at private residences within its jurisdiction that would otherwise not be allowed under section 4(2)(c) of this chapter so long as the cultivation complies with sections 4(2)(a) and 4(2)(b) and the other requirements of this chapter. A local government may not prohibit the transportation of marijuana through its jurisdiction on public roads by any person licensed to do so by the department or as otherwise allowed by this chapter.

Section 11. That title 34 be amended by adding a NEW SECTION to read:

An excise tax of fifteen percent is imposed upon the gross receipts of all sales of marijuana to a consumer by a person licensed by the department pursuant to this chapter. The department shall promulgate rules pursuant to chapter 1-26 to establish a procedure for the collection of this tax and shall collect the tax. The revenue collected under this section must be appropriated to the department to cover costs incurred by the department in carrying out its duties under this chapter. Fifty percent of the remaining revenue must be appropriated for the support of South Dakota public schools and the remainder must be deposited into the state general fund.

Section 12. That title 34 be amended by adding a NEW SECTION to read:

The department shall publish an annual report that includes the number and type of licenses issued; demographic information on licensees; a description of any enforcement or disciplinary action taken against licensees; a statement of revenues and expenses of the department related to the implementation, administration, and enforcement of this chapter; and a statement of taxes collected in accordance with this chapter and an accounting for how the tax revenues were disbursed.

Section 13. That title 34 be amended by adding a NEW SECTION to read:

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.