



**OFFICE OF ATTORNEY GENERAL**

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

**MARTY J. JACKLEY**  
ATTORNEY GENERAL

**MARK W. BARNETT**  
CHIEF DEPUTY ATTORNEY GENERAL

**RECEIVED**

AUG 30 2023

SD Secretary of State

August 30, 2023

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

RE: Attorney General's Statement (Proposed Initiated Measure Legalizing the Recreational Use, Possession, and Distribution of Marijuana)

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 Attorney General's Statement for this initiated measure.

By copy of this letter, I am providing a copy of the 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 30<sup>th</sup> day of

August 2023

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

**SECRETARY OF STATE**

Cc/encl: Matthew Schweich  
Reed Holwegner – Legislative Research Council

RECEIVED

AUG 30 2023

SD Secretary of State

INITIATED MEASURE  
ATTORNEY GENERAL'S STATEMENT

Title: An Initiated Measure Legalizing the Recreational Use, Possession, and Distribution of Marijuana.

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 two ounces of marijuana in a form other than marijuana concentrate or other marijuana products. Individuals may possess up to six marijuana plants with no more than twelve plants per household. The measure also places limits on the possession of other forms of marijuana and marijuana products.

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 restricts where individuals may possess or consume marijuana, such as schools or where tobacco is prohibited.

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

The measure does not affect State laws dealing with hemp. It also does not change laws concerning the State's medical marijuana program.

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

Judicial or legislative clarification of this measure may be necessary.

Filed this 30<sup>th</sup> day of

August 2023

*Monae L. Johnson*

SECRETARY OF STATE

RECEIVED

AUG 30 2023

SD Secretary of State

Filed this 30<sup>th</sup> day of

August 2023

Be it enacted by the people of South Dakota.

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

*Monae L. Johnson*

Terms used in this chapter mean:

SECRETARY OF STATE

(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.

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**From:** Matthew Schweich <matt@eaglecampaigns.com>  
**Sent:** Monday, August 21, 2023 11:59 PM  
**To:** ATG Ballot Comments  
**Subject:** [EXT] Comment regarding the Initiated Measure Concerning Legalization of Cannabis

Attorney General Jackley,

My name is Matthew Schweich and I am one of the two sponsors, along with Quincy Hanzen, of the proposed initiated measure to legalize cannabis for adults 21 and over in South Dakota.

I am writing to respectfully submit a comment, in my capacity as a South Dakota registered voter, regarding the draft title and draft explanation that you proposed on August 11 for our initiated measure.

My comment comprises a number of points related to both the draft title and the draft explanation.

**1. The title should be changed to: "An Initiated Measure Legalizing the Possession and Use of Cannabis."**

The use of the word "distribution" is misleading and ignores common sense, thereby violating SDCL 12-13-25.1. In the context of cannabis, the vast majority of voters would interpret "distribution" as the sale of cannabis. However, the proposed measure does not legalize cannabis sales.

The proposed measure does permit one adult to transfer "without consideration" up to the possession limit. This is the same thing as a gift.

When a person gives a friend or family member a bottle of wine as a gift, we do not consider that person to be a "wine distributor" or to be engaging in "wine distribution." In the context of consumable products such as alcohol or cannabis, the common sense, plain English meaning of the word "distribution" is the sale of that product.

For reasons explained below, the word "marijuana" should be replaced with "cannabis."

**2. Throughout the title and explanation, the word "marijuana" should be replaced with "cannabis"**

There are two reasons for this:

The proposed initiated measure uses the word "cannabis" and only includes "marijuana" in the definition of "cannabis". There is no valid reason for disregarding the sponsors' decision to use the word "cannabis" and this is therefore a violation of SDCL 12-13-25.1.

There is a clear and compelling precedent for the use of the word "cannabis" – the legal title of South Dakota's existing medical cannabis law, which is "Medical Cannabis."

**3. For reasons explained above, the words "distribution" and "distribute" should be removed from the explanation.**

**4. The final sentence of the explanation should be removed entirely.**

The final sentence currently states: "Judicial or legislative clarification of this measure may be necessary." This is a vague statement that has the potential to unjustly suppress support for the measure by giving voters doubts regarding its legality.

There is a clear difference between: (a) explaining the technical policy changes effectuated by a proposed initiated measure (which is accomplished in the preceding sentences of your draft explanation); and (b) making unsubstantiated and superfluous predictions regarding hypothetical legal or legislative scenarios involving that proposed initiated measure.

The final sentence of your draft explanation makes such a prediction. This assertion has the capacity to influence voters to oppose the initiative, especially given the historical background of legalization in this state (the Amendment A case). Therefore, the current draft explanation fails to meet the standard established by SDCL 12-13-25.1.

Thank you for considering my comment.

Respectfully,  
Matthew Schweich

## **Dougherty, Debbie**

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**From:** Paul and Diana Moxness <pdmoxness@gmail.com>  
**Sent:** Sunday, August 20, 2023 11:08 AM  
**To:** ATG Ballot Comments  
**Subject:** Re: [EXT] Proposed ballot initiative

To South Dakota Attorney General's Office,

I wrote earlier that any bill to legalize marijuana would be a BAD IDEA for South Dakota!

I refer you to an article written by a Minnesota Legislator regarding the recent laws passed in MN on legalization of marijuana.

Minnesotans are realizing that they got a lot more than they bargained for with the legalization of recreational marijuana on Aug. 1. Unfortunately, the flaws in the bill got little to no coverage during the legislative session. As a mom and legislator, I am concerned about the impact legalization will have on the mental and physical health of young people, on low-income communities, and the increased costs to all Minnesota taxpayers.

The link to the article: <https://alphanews.org/rep-robbins-marijuana-legalization-too-hasty-reckless/>

Sincerely,

Paul Moxness  
Vaubay SD

On Mon, Aug 14, 2023 at 9:55 AM Paul and Diana Moxness <[pdmoxness@gmail.com](mailto:pdmoxness@gmail.com)> wrote:  
BAD NEWS. NOT INN THE BEST INTERESTS OF OUR STATE. I OPPOSE ANY AMENDMENT TO LEGALIZE RECREATIONAL MARIJUANA.

PAUL MOXNESS  
WAUBAY SD

Attorney General

AUG 17 2023

Mitchell SD 573-1  
Aug 15 2023

Atty general Marty Jacklesy  
Pierre SD 57501

Dear Mr Jackley,

I am writing to express my concern for getting more cannabus into So Dak. I have seen too many folks start on a lesser s\_trong drug, then it goes to something worse.

I do not really believe it is a cure all for what ails us either, even tho some swear it does.

I am urging it not to get on any ballot nor ever be brot into SO Dak anymore than it already has.

I am a 97 yr old woman who has lived thro many a disaster, so I am concerned for young people these days, w/so many bad things for them to be tempted by.

Yours truly,

*Norma Fristad*

Norma Fristad  
1600 Country Dr #9

Norma Fristad  
1600 Country Dr, Apt. 9  
Mitchell, SD 57301-6015

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**From:** Donald Ferguson <df74371@gmail.com>  
**Sent:** Tuesday, August 15, 2023 3:11 AM  
**To:** ATG Ballot Comments  
**Subject:** [EXT] Outline draft

And the outline draft as stated. Can be found here. Yet when I hit suggested HERE. Nothing pops up. How come??

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**From:** Tom Kaps <mcdeptom50@yahoo.com>  
**Sent:** Monday, August 14, 2023 1:12 PM  
**To:** ATG Ballot Comments  
**Subject:** [EXT] Cannabis for Recreation Use - law for Sioux Falls

To Whom It May Concern,

After reading a recent news article today where Matthew Schweich from Sioux Falls is promoting a law/regulation to "legalize recreational marijuana", I could not believe someone would support such reckless desires for our community. Please let me explain.

I have had direct experience in dealing with "recreational marijuana" laws as a former police officer from California (I'm retired now, and have lived here in SD since June 2022). The increase of police calls to residential areas for "home invasion robberies" (where guns and violent force was used) was on the rise when I retired from the force, along with other related calls of service. These victims were people possessing marijuana ("legal growing" and possessing) in their personal/rented/or leased homes by groups of criminals (2+ persons) that would force their way in to steal the "personal use" recreational marijuana items. This put innocent and unsuspecting neighbors and children at risk by the activities of "victims" that legally possessed recreational marijuana in their homes, thus making quiet neighborhoods places of violence and needless danger.

Also, once retired, I went to several weekly public county supervisors meetings where I heard from Sheriff, Law Enforcement officials, and other county administrators discuss how they were now protecting "legal marijuana growing" facilities and going after "unauthorized and illegal marijuana growers". This was diverting law enforcement resources away from already over-taxed and under-staffed police services. Many additional comments could be heard by the public about supporting legal drug dealers and attacking unlawful drug dealers, how can we tell the difference?

And then, I also had the opportunity in talking with two marijuana distribution store owners, where they had difficulty in depositing their monies/profits into a bank (since marijuana sales is still a federal crime, and banks are under federal regulation) where depositing monies into a bank would be considered criminal "money laundering". Many financial transactions also had to be "cash sales" which could be in the millions, and the store owner could be subject to physical harm or violence.

I have also talked with a few medical and psychological professionals, where they have told me they have seen the California homeless increase due to people "self medicating" on marijuana. These self medicating people refuse to be seen by proper health care professionals, since marijuana was easy to obtain. All we have to do is look at those areas (cities and states) that have allowed recreational marijuana, and we will see a correlation of increased homelessness, increased crime, increased violence, trespassing on public lands and increased costs of government services in cleaning up the problems from the secondary and tertiary issues. Which then poses the question to be asked, thinking of government budgets, "Which government services should be budget-impacted/reduced to deal with the problems related to recreational marijuana, should we cut or reduce budgets in: schools, parks & street maintenance, criminal justice, health & social services, etc.???" It's not a matter of IF services will be cut, but WHAT and WHEN should we shift public-monies to support recreational marijuana.

Any law or effort to decriminalize marijuana will place innocent people at risk of physical harm from secondary and tertiary activities on a grander scale than people realize, where recreational marijuana supports will deny any such problems. I have escaped this type of community and environment, and all we have to do is look at states that have passed recreational marijuana laws to see the failures and destruction that it does in fact cause.

Please feel free to contact me at any time on this topic.

In all respect,

**Thomas Kaps**

420 N Lincoln St

Canton, SD 57013

209.482.1039

**Romans 12:2** 

From Tom's iPad :-)

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**From:** Keith Babby <graphicstars@hotmail.com>  
**Sent:** Monday, August 14, 2023 12:56 AM  
**To:** ATG Help  
**Subject:** [EXT] When you were offline (via LivePerson)

I would like to thank Attorney General Marty Jackley for the initiated measure which could legalize marijuana in the State of South Dakota. The revenue alone generated from it is worth it and I cannot believe so many are opposed to it with so much science and research behind it. Additionally, it is the right step to take if we are to get a handle on things like addiction. It is my stance that pharmaceutical companies knowingly made and marketing very addictive substances such as oxycodone and hydrocodone that created a crises. Just as addictive as herion itself which has no medical use whatsoever. But being that he has proposed that measure, he would be well aware of all of the benefits that cannabis does bring for the State and for individuals as well who are responsible just like alcohol is legal to drink and many enjoy just fine. Of course it is well known that many struggle with alcohol, but that doesn't mean we blame the alcohol and say well, we have to outlaw alcohol now. I appreciate his view on these topics and it is a great thing to see Mr Jackley propose this. Thank you.

---

The above message was sent when you were offline, via your LivePerson account.

Message sent from IP: 142.0.9.55

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**From:** Paul and Diana Moxness <pdmoxness@gmail.com>  
**Sent:** Monday, August 14, 2023 9:56 AM  
**To:** ATG Ballot Comments  
**Subject:** [EXT] Proposed ballot initiative

BAD NEWS. NOT INN THE BEST INTERESTS OF OUR STATE. I OPPOSE ANY AMENDMENT TO LEGALIZE RECREATIONAL MARIJUANA.

PAUL MOXNESS  
WAUBAY SD

---

**From:** Jeremy Klingbeil <klingbeil21@hotmail.com>  
**Sent:** Sunday, August 13, 2023 9:25 AM  
**To:** ATG Ballot Comments  
**Subject:** [EXT] Cannabis laws

It is obvious that cannabis should be legal in South Dakota and the United States as a whole. As a Sioux Falls resident I was appalled and disgusted when the government overturned the will of the voters last time we passed it. Please do the right thing, allow a vote and tell Kristi "know it all" noem to respect democracy. Thank you

Sent from my iPhone

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**From:** Craig Ferguson <cferguson7272@gmail.com>  
**Sent:** Saturday, August 12, 2023 3:59 PM  
**To:** ATG Ballot Comments  
**Subject:** [EXT] Recreational Marijuana Amendment

Seems like common sense legislation to me. We claim to be a state that is proudly free and are always boasting having a strong economy. Well here is a chance to show it. 21 years and above makes a lot of sense too.

---

**From:** Alison Reynolds <alison.rnlds@gmail.com>  
**Sent:** Saturday, August 12, 2023 2:06 PM  
**To:** ATG Ballot Comments  
**Subject:** [EXT]

Let me know how to support this.

---

**From:** chris miller <311christopher@gmail.com>  
**Sent:** Saturday, August 12, 2023 10:38 AM  
**To:** ATG Ballot Comments  
**Subject:** [EXT] Recreational Marijuana Proposal

This is what we the people want. This is what we voted for. Education and information is key. This proposal makes sense and the revenue can really help our communities.

Chris Miller  
M & M Medical Solutions

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**From:** Donna Oliver <bookfan1890@gmail.com>  
**Sent:** Saturday, August 12, 2023 7:43 AM  
**To:** ATG Ballot Comments  
**Subject:** [EXT] Recreational marijuana

Please do not allow recreational marijuana to become legal in our state. It has been a disaster in other states. Keep South Dakota clean and safe. Thank you.

---

**From:** Charlie Foley <charlie.foley4@gmail.com>  
**Sent:** Saturday, August 12, 2023 5:29 AM  
**To:** ATG Ballot Comments  
**Subject:** [EXT] Rec program

Our state desperately needs to legalize recreational cannabis and start allocating the funds spent to enforce the laws on real drug crimes

Sent from my iPhone

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**From:** Josh running <patchforever13@gmail.com>  
**Sent:** Friday, August 11, 2023 11:04 PM  
**To:** ATG Ballot Comments  
**Subject:** [EXT]

I think recreational marijuana should be legal in the state of South Dakota it's should of already been legal in the last election but south Dakota was the first state every to get medical and recreational marijuana both passing the vote but yet we only got medical I think it's time we join the other recreational marijuana states it will help out the public from getting arrested or ticked for having marijuana or paraphernalia on them and make the jails have less (criminals) in it the times have changed and it's time for the people to get what they already voted for but didn't pass

**Dougherty, Debbie**

---

**From:** Travis Boulware <travboulware@gmail.com>  
**Sent:** Friday, August 11, 2023 3:18 PM  
**To:** ATG Ballot Comments  
**Subject:** [EXT]

Make it legal for everyone

STATE OF SOUTH DAKOTA



**OFFICE OF ATTORNEY GENERAL**

1302 East Highway 14, Suite 1  
Pierre, South Dakota 57501-8501  
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**MARTY J. JACKLEY**  
ATTORNEY GENERAL

**MARK W. BARNETT**  
CHIEF DEPUTY ATTORNEY GENERAL

August 11, 2023

**RECEIVED**

AUG 11 2023

**SD Secretary of State**

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)

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

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Marty J. Jackley  
ATTORNEY GENERAL

MJJ/dd  
Enc.

Cc/encl: Matthew Schweich  
Reed Holwegner – Legislative Research Council

Filed this 11<sup>th</sup> day of

AUGUST 2023

Handwritten signature of Monae L. Johnson in black ink.

**SECRETARY OF STATE**

INITIATED MEASURE  
DRAFT ATTORNEY GENERAL'S STATEMENT

Title: An Initiated Measure Legalizing the Possession, Use, and Distribution of Marijuana.

Explanation:

This initiated measure allows individuals 21 years of age or older to possess, grow, sell, ingest, and distribute marijuana or marijuana paraphernalia. Individuals may possess up to two ounces of marijuana in a form other than marijuana concentrate or other marijuana products. An individual may possess up to six marijuana plants with no more than twelve plants possessed per household. The measure also limits the possession of other forms of marijuana and marijuana products.

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

The measure imposes restrictions on where an individual may possess or consume marijuana, such as schools or where tobacco is prohibited.

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

This initiated measure does not affect laws dealing with hemp. The measure also does not change State laws concerning the State's medical marijuana program.

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

Judicial or legislative clarification of this measure may be necessary.

**RECEIVED**

AUG 11 2023

**SD Secretary of State**

Filed this 11<sup>th</sup> day of

August 2023

*Monae L. Johnson*

SECRETARY OF STATE

RECEIVED

AUG 11 2023

SD Secretary of State

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(c) Cannabis products, other than concentrated cannabis, containing one thousand six hundred milligrams of tetrahydrocannabinol.

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(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.

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(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.

Filed this 11<sup>th</sup> day of

August 2023

*Monae L. Johnson*

SECRETARY OF STATE

AUG 10 2023

SPEAKER HUGH M. BARTELS, CHAIR | PRESIDENT PRO TEMPORE LEE SCHOENBECK, VICE CHAIR  
REED HOLWEGNER, DIRECTOR | JUSTIN GOETZ, CODE COUNSEL

500 EAST CAPITOL AVENUE, PIERRE, SD 57501 | 605-773-3251 | SDLEGISLATURE.GOV



August 9, 2023

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

Dear Secretary Johnson,

The Legislative Research Council received an initiated measure to legalize cannabis in small amounts for those twenty-one years of age or older. The initiated measure requires a fiscal note because it was determined it may have an impact on revenues, expenditures, or the fiscal liability of the state or its agencies and subdivisions. SDCL 2-9-30 requires the fiscal note to be no longer than fifty words.

The fiscal note examines the fiscal impact associated with legalizing cannabis through this initiated measure. The measure seeks to legalize the possession, use, ingestion, transportation, processing, and transfer without consideration of 1) two ounces or less of cannabis, 2) sixteen grams or less of concentrated cannabis, and 3) cannabis products containing 1,600 milligrams or less of tetrahydrocannabinol. In addition, the cultivation of six or fewer cannabis plants and the cannabis produced would also be legalized as long as the plants and cannabis grown are kept in a locked place and out of public view. Accessories relating to cannabis and cannabis use would also be legalized.

Based on the language in the initiated measure, the sale of cannabis, and the criminal penalties therefor, would not be affected. Specifically, SDCL 22-42-7 makes distribution of cannabis a crime, including all transfers. While the measure does decriminalize transfers of cannabis without consideration (i.e., for free), it does not decriminalize the sale of cannabis. Accordingly, neither the state nor municipalities could expect to earn additional sales tax revenue through the sale of cannabis. However, the state and municipalities could earn minimally more sales tax revenue with the decriminalization of cannabis accessories.

While the measure would decriminalize several behaviors currently penalized under state law, the largest impact would be to SDCL 22-42-6. Under SDCL 22-42-6, the possession of two ounces or less of cannabis is a Class 1 misdemeanor. According to SDCL 22-6-2, the penalty for such a crime could be up to a maximum of a year in a county jail. With the passage of the measure, such possession could no longer be punished. The average number of days spent in jail by all those who violated SDCL 22-42-6 was 6,039 days in calendar years 2021 and 2022. For those years, the average cost per day to keep a person in jail was \$96.30 per day. Thus, the total cost per year to hold those convicted of a Class 1 misdemeanor per SDCL

22-42-6 is about \$581,556. The counties are responsible for this cost, and the counties would realize the projected savings.

Enclosed is a copy of the initiated measure, in final form, that was submitted to this office. In accordance with SDCL 2-9-31, I hereby submit the Legislative Research Council's fiscal note with respect to this initiated measure.

Sincerely,

A handwritten signature in cursive script that reads "Reed Holwegner".

Reed Holwegner  
Director

Cc: Matthew Schweich  
Marty Jackley, Attorney General

Enclosures

**SOUTH DAKOTA LEGISLATIVE RESEARCH COUNCIL**

**FISCAL NOTE**

**INITIATED MEASURE**

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**AN INITIATED MEASURE TO LEGALIZE CANNABIS.**

The state and municipalities would collect minimal additional sales tax revenue, as the measure would not decriminalize the sale of cannabis but would decriminalize the sale of cannabis accessories. Counties could see incarceration expenses reduced by \$581,556 every year.

Approved: Reed Bluegum Date: August 9, 2023

Director, Legislative Research Council

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.



**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

**MARK W. BARNETT**  
CHIEF DEPUTY

June 15, 2023

Matthew Schweich  
Eagle Campaigns, LLC  
4510 W. 35<sup>th</sup> St. N. #204  
Sioux Falls, SD 57107  
[matt@eaglecampaigns.com](mailto:matt@eaglecampaigns.com)

Re: **Proposed Initiated Measure Legalizing the Recreational Use of Marijuana**

Dear Mr. Schweich:

This letter acknowledges our receipt of the proposed initiated measure that you submitted to this Office. Your proposed measure was received by email on June 14, 2023. As required by SDCL 12-13-25.1, the Attorney General will prepare a draft title and explanation for the measure and file it with the Secretary of State on or before August 13, 2023. You will be provided a copy of the draft title and explanation at the time it is filed.

Sincerely,

A handwritten signature in black ink, appearing to read "SRB", followed by a horizontal line.

Steven R. Blair  
Assistant Attorney General

SRB/dd

cc: Reed Holwegner, Director – Legislative Research Council  
Hon. Monae L. Johnson, Secretary of State

---

**From:** McGuigan, Charles  
**Sent:** Thursday, June 15, 2023 8:14 AM  
**To:** Blair, Steven; Dougherty, Debbie  
**Subject:** FW: [EXT] Proposed initiated measure to legalize cannabis in South Dakota.  
**Attachments:** Initiated measure to legalize cannabis.docx

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**From:** Matthew Schweich <matt@eaglecampaigns.com>  
**Sent:** Wednesday, June 14, 2023 2:08 PM  
**To:** reed.holwegner@sdlegislature.gov; Elections <Elections@state.sd.us>; McGuigan, Charles <Charles.McGuigan@state.sd.us>  
**Cc:** Quincy Hanzen <quincy@eaglecampaigns.com>  
**Subject:** [EXT] Proposed initiated measure to legalize cannabis in South Dakota.

Quincy Hanzen and I are hereby submitting the attached initiated measure in accordance with SDCL 12-13-25.1.

This initiative has already been submitted to the LRC for comments.

Matthew Schweich  
421 N Phillips Ave #205  
Sioux Falls, SD 57104

Matthew Schweich  
President | Eagle Campaigns LLC | Sioux Falls, SD  
207-504-6948 (cell) | 605-610-8396 (cell)  
[matt@eaglecampaigns.com](mailto:matt@eaglecampaigns.com)

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.

PRESIDENT PRO TEMPORE LEE SCHOENBECK, CHAIR | SPEAKER SPENCER GOSCH, VICE CHAIR  
REED HOLWEGNER, DIRECTOR | SUE CICHOS, DEPUTY DIRECTOR | JUSTIN GOETZ, CODE COUNSEL

500 EAST CAPITOL AVENUE, PIERRE, SD 57501 | 605-773-3251 | SDLEGISLATURE.GOV



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](http://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.~~<sup>1</sup>

Be it enacted by the people of South Dakota:

~~The text of the proposed law is as follows:~~<sup>2</sup>

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

Terms<sup>3</sup> 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 extracted<sup>4</sup> from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, ~~its~~the plant's seeds<sup>5</sup>, or ~~its~~the plant's resin<sup>6</sup>, including hash<sup>7</sup> and marijuana concentrate<sup>8</sup>. 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<sup>9</sup>, 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~~administration<sup>10</sup>, food, drink, or any other productsproduct; 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.

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

<sup>2</sup> This isn't necessary. It can be removed.

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

<sup>4</sup> Isn't this the same thing as marijuana concentrate?

<sup>5</sup> This is already included earlier in the sentence.

<sup>6</sup> This is already included earlier in the sentence.

<sup>7</sup> Isn't this the same thing as marijuana concentrate?

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

<sup>9</sup> Is this the marijuana plant or the hemp plant?

<sup>10</sup> 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 law<sup>11</sup> 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 others<sup>12</sup>;
- (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.

<sup>11</sup> Should possession of one ounce or more be added to the list?

<sup>12</sup> 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 ~~employeesan employee~~<sup>13</sup>;
- (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<sup>14</sup> to read:

~~Subject<sup>15</sup> 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, usinguse, ingestingingest, inhalinginhale, processingprocess, transportingtransport, deliveringdeliver 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 form<sup>16</sup>;
- (2) ~~Possessing~~ Possess, plantingplant, cultivatingcultivate, harvestingharvest, dryingdry, processingprocess, or manufacturing manufacture not more than six marijuana plants and ~~possessing~~ possess the marijuana produced by the plants, if:

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

<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> 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 twelve<sup>17</sup> plants are kept in or on the grounds of a private residence at one time;

(3) ~~Assisting~~Assist<sup>18</sup> another person who is ~~at least~~ at least twenty-one years of age or older with any act authorized by this section<sup>19</sup>; or

~~(4) allowing~~Allow the person's property to be used, ~~in for~~ 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 accessories~~<sup>20</sup>.

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 of<sup>21</sup> the following acts is subject to a civil penalty<sup>22</sup> not exceeding the amount specified:

(1) ~~Violates section 4(2)(a) of this chapter~~ Violates subsection (2)(a) of section 4 of this Act<sup>23</sup>, by cultivating a marijuana plants<sup>24</sup> 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~~ Violates subsection (2)(a) of section 4, by cultivating a marijuana plants<sup>24</sup> that are 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.

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

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

<sup>19</sup> See page 45 of the LRC Drafting Manual.

<sup>20</sup> 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" ?

<sup>21</sup> Any one of them subjects one to a penalty, not all of them together.

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

<sup>23</sup> Correction of citation form.

<sup>24</sup> 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~~<sup>25</sup> 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 provided<sup>26</sup> the option of attending up to four hours of drug education or counseling ~~in lieu of the civil penalty.~~

**Section 6.**<sup>27</sup> 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 issue<sup>28</sup> a provisional<sup>29</sup> 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 to<sup>30</sup> chapter 34-20G<sup>31</sup> to any adult aged twenty-one years of age or older.<sup>32</sup>

~~Local governments shall have the ability to~~ ~~A local government may~~ regulate<sup>33</sup> or prohibit<sup>34</sup> ~~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.<sup>35</sup> ~~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 sales<sup>36</sup> taxes.

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**Section 7.** That title 34 be amended by adding a NEW SECTION<sup>37</sup> to read:

<sup>25</sup> See page 45 of the LRC Drafting Manual.

<sup>26</sup> Who is provided this alternative option? The secretary of DOH?

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

<sup>28</sup> 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?

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

<sup>30</sup> Would "subject to the requirements of" be more accurate?

<sup>31</sup> This reference to SDCL 34-20G may need further clarification.

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

<sup>33</sup> This may need further clarification. What regulations are allowed?

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

<sup>35</sup> 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."

<sup>36</sup> 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."

<sup>37</sup> 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.<sup>38</sup>

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[END]

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<sup>38</sup> Statements of severability are not needed. See page 20 of the LRC Drafting Manual.