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January 6, 2017

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S.D. SEC. OF STATE

Ms. Melissa Mentele  
New Approach SD  
241 N. 7<sup>th</sup> Street  
Emery, SD 57332

Dear Ms. Mentele:

Pursuant to SDCL 12-13-25, this office is required to review each initiated measure. Further, this office is required by SDCL 12-13-24 to determine if each initiated measure is written in a clear and coherent manner in the style and form of other legislation and that it is worded so that the effect of the measure is not misleading or likely to cause confusion among voters. You are under no obligation to accept any of the suggestions contained in this letter. But please keep in mind the legal standards established in SDCL 12-13-24.

The draft language of the initiated measure submitted to this office is not written in the same style and form used for preparing legislation for the South Dakota Legislature. It may be helpful to review the drafting manual for legislation that may be found on the LRC website or you may find examples of legislation introduced in previous sessions to provide a format for preparing your proposed initiated measure.

The title for the proposed measure should begin with an active verb that expresses the subject of the proposed measure. Findings and declaration of purpose are rarely used in legislation and it does not appear that the proposed findings list any facts, but expresses an opinion of the purpose of the measure. There are several other style and form issues that are either outlined in this letter or marked on the proposed measure.

Do not attempt to amend or propose the catchline for each section of law as the catchline is not part of the statute. The publisher and Code Counsel will amend or prepare the catchlines. Also, never attempt to assign the codification number for any new section as that will be determined by the publisher and Code Counsel.

In general, avoid multi-paragraph sections by making each paragraph a separate section and use internal references, if needed. Section 13 of the measure as submitted to this office is a prime example of a multi-paragraph section. These paragraphs should be made into separate sections.

We do not use numerals in the drafting of legislation, except for the drafting of special appropriations. Please avoid the use of pronouns whenever possible by using gender-neutral terms that could be substituted for several of these pronouns. We also write in the active voice and use the singular subject instead of the plural when drafting. The simplest way to accurately state a proposition is the preferred format. Please use short and concise sentences and avoid long complex sentences.

When drafting bills or amendments we use "may not" instead of "shall not." A negative used with "may" negates the obligation and permission to act and is the stronger prohibition. A negative used with "shall" negates the obligation but not the permission to act and therefore is avoided.

If the voters were to adopt this initiated measure, federal law would still apply to conduct related to marijuana use, possession, production, sale, or transportation. Passage of this initiated measure would place South Dakota law in conflict with federal law.

The initiated measure does not specify which department will be responsible for regulating marijuana in South Dakota. There are no such bodies within South Dakota that have regulatory authority called the "SD Liquor Board" or "Retailers Association." You must choose an existing department that will assume the regulatory authority over the activities covered by this Act.

The definitions section includes terms that are commonly repeated or terms that need to be defined to ensure complete clarity in their intended use. Terms that are defined in this section should not include definitions of legal substance. Therefore, the substantive legal definitions for "Marijuana cultivation facility" and "Possession limit" should be moved to their own section of the Act as they regulate activities related to these terms and do not merely provide a clarifying definition.

With regard to the definition of "Possession limit" there is a likely constitutional question under the Constitution of the United States, as this section would apply two separate standards of possession limits for persons in the state based on their state of residency.

Sections 3 and 9 of the Act attempt to provide an exception to illegal conduct. Activities that are not explicitly prohibited under law are deemed legal activities. In order to legalize an activity that is currently illegal, the statute that prohibits that activity should be repealed or amended. Because this Act is not attempting to carve out an exception to existing law that would remain intact if the Act were adopted, but instead seeks to overturn existing marijuana prohibitions, the language of existing statutes should be amended to accomplish the Act's goal or the Act would likely "cause confusion among voters." Consider amending §§ 22-42-6, 22-42-7, and 34-20B-70.

The civil violations that are provided under several provisions of the Act are not penalties recognized within the South Dakota code. Penalties that are recognized are either civil penalties that must be imposed by an agency with the proceeds directed to a particular fund, or they are criminal penalties that fit within a specific class of either a misdemeanor or a felony depending upon the severity of the violation and the extent of the penalty. A person in violation of a regulation is "subject to" a civil penalty; a person in violation of a criminal code is "guilty of" a particular class of offense. Refer to the Drafting Manual, pp 11-12, to identify the form of criminal penalty to be imposed with the appropriate class.

Section 7 of the Act would prohibit the purchase of marijuana by a minor with the use of a false identification. The primary offense under this section is the prohibition against a minor purchasing marijuana. Any other offense, such as the use of a false identification, is an offense that would be charged under separate statutes already in existence.

Section 8 of the Act provides for a felony with a penalty that does not fit within the classes of felony that exist within the South Dakota code. We ascribed a Class 6 to this felony because it is the closest to the penalty described in the section.

Section 11 of the Act provides for a complete defense to a person's reasonable reliance on a minor's identification when purchasing marijuana or marijuana products. As stated above, the simplest way to accurately state a proposition is the preferred format. Existing language in § 34-46-5 provides a simpler way of accomplishing the same objective as the language in this section.

Ms. Melissa Mentele

January 6, 2017

Page 3

Section 19 of the Act provides that contracts related to the operation of a marijuana establishment would be enforceable under South Dakota law. If this Act were adopted by voters, this section would be in direct conflict with § 53-9-1, which provides that any contract contrary to an express provision of law, including federal law, is unenforceable. Consider removing this section of the Act and instead amending § 53-9-1 to achieve the objective of the Act and avoid any "confusion among voters."

Section 22 of the Act creates a likely constitutional question under Article 12 of the South Dakota Constitution.

Severability clauses may be used in other states; however, severability is a long-established doctrine of the South Dakota Supreme Court. This is sometimes referred to as "the doctrine of severability." Section 23 of the draft as it was submitted to this office should be deleted.

The effective date of initiated measures is determined by § 2-1-12 to be the day following the completion of the official canvass by the State Canvassing Board. Therefore, Section 24 of the Act should be removed.

Section 25 of the Act likely raises a constitutional question regarding separation of powers.

The final section of the bill is unnecessary. Reservations in South Dakota are subject to federal law with regard to marijuana legalization.

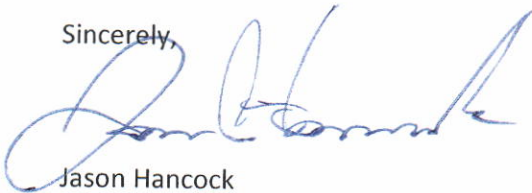
Finally, the proposed initiated measure is lengthy. Please keep in mind that the proposed measure along with the Attorney General explanation, instructions to signers, and signature blocks must all fit on a single initiative petition form.

Attached is a copy of your proposed initiated measure with all our suggested style and form changes.

Please note that if you proceed with your initiative that a prison or jail population cost estimate must be requested pursuant to SDCL 2-1-19.

This letter constitutes neither an endorsement of your initiated measure nor a guarantee of its statutory sufficiency. It does constitute fulfillment of your responsibility pursuant to SDCL 12-13-25 to submit your draft to this office for review and comment. If you proceed with your initiated measure, please take care to ensure that your statements or advertising do no imply that this office endorses or approves your proposals.

Sincerely,



Jason Hancock  
Director

JH/WC/ct

Enclosure

CC: The Honorable Shantel Krebs, Secretary of State  
The Honorable Marty Jackley, Attorney General



An Act to ~~Regulate and Tax Marijuana Like Alcohol~~ provide for the regulation and taxation of marijuana and marijuana products.

Be it enacted by the people of South Dakota:

~~Section 1. Purpose and findings.~~

~~(a) In the interest of allowing law enforcement to focus on the growing methamphetamine, heroin, prescription drug problems, violent and property crimes, generating revenue for education and other public purposes, and individual freedom, the State of South Dakota finds and declares that the use of marijuana should be legal for persons 21 years of age or older and taxed in a manner similar to alcohol.~~

~~(b) In the interest of the health and public safety of our citizens, the people of the state of South Dakota further find and declare that marijuana should be regulated in a manner similar to alcohol so that:~~

~~(1) Individuals will have to show proof of age before purchasing marijuana;~~

~~(2) Selling, distributing, or transferring marijuana to minors and other individuals under the age of 21 shall remain illegal;~~

~~(3) Driving under the influence of marijuana shall remain illegal;~~

~~(4) Legitimate, taxpaying business people, and not criminal actors, will conduct sales of marijuana; and~~

~~(5) Marijuana sold in this state will be tested, labeled, and subject to additional regulations to ensure that consumers are informed and protected.~~

~~(c) In the interest of enacting rational policies for the treatment of all variations of the cannabis plant, the state of South Dakota further finds and declares that hemp should be regulated separately from strains of cannabis with higher delta-9 tetrahydrocannabinol (THC) concentrations. (d) The state of South Dakota further finds and declares that it is necessary to ensure consistency and fairness in the application of this chapter throughout the state and that, therefore, the matters addressed by this chapter are, except as specified herein, matters of statewide concern.~~

Section ~~2-~~ 1. Definitions. As used in this chapter unless the context otherwise requires That the code be amended by adding a NEW SECTION to read:

Terms used in this Act shall mean:

~~(a) (1) "Consumer," means a any person 21 twenty-one years of age or older who purchases marijuana or marijuana products for personal use ~~by persons 21 years of age or older~~, but not for resale;~~

~~(b) (2) "Department," means (SD Liquor Board or Retailers Association ) ~~or its successor agency~~;~~

~~(c) (3) "Immature marijuana plant," means a any marijuana plant that has not flowered and ~~which that~~ does not have buds that may be observed by visual examination;~~

~~(d) (4) "Hemp," means the any plant ~~of within~~ the genus cannabis and any part of ~~such the~~ plant, whether growing or not growing, with a delta-9 tetrahydrocannabinol concentration that does not exceed ~~threetenths~~ three-tenths of a percent on a dry weight basis of any part of the plant ~~cannabis~~, or per volume or weight of marijuana product, or the combined percent of~~

delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant ~~cannabis~~ regardless of moisture content<sub>;</sub>

~~(e) (5) "Locality," means a any municipality or, in reference to a location outside the boundaries of a municipality, a county<sub>;</sub>~~

~~(f) (6) "Local regulatory authority," means the office or entity designated to process marijuana establishment applications by a municipality or, in reference to a location outside the boundaries of a municipality, a county. any locality;~~

~~(g) (7) "Marijuana," means all parts of the a plant of within the genus cannabis<sub>;</sub> the seeds thereof of the plant<sub>;</sub> the resin extracted from any part of the plant<sub>;</sub> and every or any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "Marijuana" The term does not include hemp, nor does it include or any fiber produced from the stalks, oil or cake made from the seeds of the plant<sub>;</sub> sterilized seed of the plant which that is incapable of germination<sub>;</sub> or the weight of any other ingredient combined with marijuana the plant to prepare topical or oral administrations, food, drink, or any other product<sub>;</sub>~~

~~(h) (8) "Marijuana accessories," means any any equipment, products product, or materials of any kind which are other material that is used, intended for use to be used, or designed for use to be used in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body<sub>;</sub>~~

~~(i) (9) "Marijuana cultivation facility," means an any entity registered pursuant to this Act to cultivate, prepare, and or package marijuana and sell marijuana to retail marijuana stores, to~~



~~marijuana product manufacturing facilities, to marijuana lounges, and to other marijuana cultivation facilities~~ a marijuana establishment, but not to consumers; ~~A No~~ marijuana cultivation facility may ~~not~~ produce marijuana concentrates, tinctures, extracts, or any other marijuana products.

~~(j) (10)~~ "Marijuana establishment," ~~means a any~~ marijuana cultivation facility, ~~a~~ marijuana lounge, ~~a~~ marijuana testing facility, ~~a~~ marijuana product manufacturing facility, or ~~a~~ retail marijuana store;

~~(k) (11)~~ "Marijuana product manufacturing facility," ~~means an any~~ entity registered pursuant to this Act to purchase marijuana; manufacture, prepare, ~~and or~~ package marijuana products; ~~and or~~ sell marijuana ~~and or~~ marijuana products to other marijuana product manufacturing facilities, marijuana lounges, ~~and or~~ retail marijuana stores, but not to consumers;

~~(m) (12)~~ "Marijuana products," ~~means concentrated marijuana products and marijuana products~~ products that are comprised of concentrated marijuana and other ingredients, and are intended for use or consumption, ~~such as, but not limited to, edible products, ointments, and tinctures;~~

~~(n) (13)~~ "Marijuana testing facility," ~~means an any~~ entity registered pursuant to this Act to test marijuana for potency ~~and or~~ contaminants;

~~(o) (14)~~ "Possession limit," ~~means the the~~ amount of marijuana that may be possessed at any one time by ~~an any~~ individual ~~over the age of 21;~~

(1) ~~In reference to For~~ a South Dakota resident, the possession limit is no more than:

~~(i) (a)~~ One ounce of marijuana, no more than five grams of which may be concentrated marijuana;

~~(ii) (b)~~ Five marijuana plants; and

~~(iii)(c)~~ Any additional marijuana produced by the person's marijuana plants, provided that any amount of marijuana in excess of one ounce of marijuana must be possessed in the same secure facility where the plants were cultivated.

(2) ~~In reference to a person who is not a resident~~ For a non-resident of South Dakota, the possession limit is no more than ~~one-fourth~~ one-fourth of an ounce of marijuana, including up to one gram of concentrated marijuana.

~~(p)(15)~~ "Public place," ~~means any~~ means any place to which the general public has access;

~~(q)(16)~~ "Retail marijuana store," ~~means an~~ means an entity registered pursuant to this Act to purchase marijuana from marijuana cultivation facilities ~~and or~~ and marijuana and marijuana products from marijuana product manufacturing facilities, and to sell marijuana and marijuana products to consumers;

~~(r)(17)~~ "Unreasonably impracticable," ~~means that the measures~~ means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

Section 3. ~~Personal use of marijuana.~~ That the code be amended by adding a NEW SECTION to read:

Notwithstanding any other ~~provision of law, except as otherwise provided in this chapter,~~ the following acts are not unlawful ~~and shall not be a criminal or civil offense under South Dakota the law of the state or the law of any political subdivision of South Dakota,~~ or be a basis for seizure or forfeiture of assets under South Dakota law for persons 21 years of age or older:

(a) Possessing, consuming, growing, using, processing, purchasing, or transporting an amount of marijuana that does not exceed the possession limit;



(b) Transferring one ounce or less of marijuana and up to six immature marijuana plants to a person who is ~~21~~twenty-one years of age or older without remuneration;

(c) Controlling property where actions ~~that~~ described by this ~~section~~Act occur; ~~and or~~

(d) Assisting ~~another~~any other person who is ~~21~~twenty-one years of age or older in any of the acts described in this ~~section~~Act.

Section 4. ~~Restrictions on personal cultivation, penalty. That the code be amended by adding a NEW~~  
SECTION to read:

~~It is unlawful to cultivate marijuana plants in a manner that is contrary to this section.~~

~~(1) No person may~~ Marijuana plants may not be cultivated cultivate marijuana in a location where the ~~plants are~~ plant is subject to public view, ~~including or subject to view from another from any other~~  
private property, without the use of binoculars, aircraft, or other optical aids.

~~(2) A~~ Any person who cultivates marijuana ~~must~~ shall take reasonable precautions to ensure ~~the plants~~  
~~are~~ any plant is secure from unauthorized access ~~and access by a person under 21 years of age. For~~  
~~purposes of illustration and not limitation, cultivating marijuana in an enclosed, locked space that~~  
~~persons under 21 years of age do not possess a key to constitutes reasonable precautions.~~

~~(3) Marijuana cultivation may only occur~~ A person may cultivate marijuana on any property lawfully in  
the person's lawful possession of the cultivator or with the consent of the person in lawful possession of  
the property on any property in the lawful possession of any other person who consents to the  
cultivation of marijuana.

~~A~~ If a person who violates the provisions of this section is guilty of the department may impose a civil  
violation punishable by a fine penalty of up to \$750 seven hundred fifty dollars.

Section 5. ~~Public smoking banned, penalty.~~ That the code shall be amended by adding a NEW SECTION to read:

~~It is unlawful to smoke~~ If any person smokes marijuana in a public place. ~~A person who violates this section is guilty of~~ the department may impose a civil ~~violation punishable by a fine~~ penalty of up to \$100 one hundred dollars.

Section 6. ~~Consuming marijuana in a moving vehicle, penalty.~~ That the code shall be amended by adding a NEW SECTION to read:

~~(a)~~ No person ~~shall~~ may consume marijuana while operating ~~or driving in~~ a motor vehicle, boat, vessel, aircraft, or any other motorized device used for transportation.

~~(b) Any~~ If any person violates any provision of this section for a first offense, person found in violation of this section may be fined not more than \$200 or have his or her driver's license suspended for up to the department may impose a fine of not more than two hundred dollars, and the defendant's driving privileges may be revoked for not more than six months, or both, ~~for the first violation.~~

~~(c) Any person found in violation of this section may be fined not more than \$500 or have his or her driver's license suspended for up to~~ If any person violates any provision of this section for a second or subsequent offense, the department may impose a civil penalty of not more than five hundred dollars, and the defendant's driving privileges may be revoked for not more than one year, or both ~~for each second or subsequent violation.~~

Section 7. ~~False identification, penalty.~~ That the code shall be amended by adding a NEW SECTION to read:

~~A No~~ person who is under ~~21~~ twenty-one years of age may ~~not present or offer to a marijuana establishment or the marijuana establishment's agent or employee any written or oral evidence of age that is false, fraudulent, or not actually the minor's own, for the purpose of:~~

~~(1) Purchasing purchase, attempting attempt~~ to purchase, or otherwise ~~procuring procure~~ or ~~attempting attempt~~ to procure marijuana; or

~~(2) Gaining gain~~ access to a marijuana establishment.

~~A If any~~ person ~~who violates any provisions of this section is guilty of the department may impose~~ a civil violation ~~punishable by a fine penalty of~~ not less than ~~\$200~~ two hundred dollars and not more than ~~\$400~~ four hundred dollars.

Section 8. ~~Unlawful marijuana extraction, penalties.~~ That the code be amended by adding a NEW SECTION to read:

~~(a) No person,~~ other than a registered marijuana product manufacturer ~~complying with this chapter and department regulations,~~ may perform solvent-based extractions on marijuana using solvents other than water or vegetable glycerin.

~~(b) A Any~~ person who violates the provisions of this section is guilty of a Class 6 felony ~~punishable by up to three years in prison and a fine of up to \$5,000.~~

Section 9. ~~Marijuana accessories authorized.~~ That the code be amended by adding a NEW SECTION to read:

~~(a) Notwithstanding any other provision of law, it is not unlawful and shall not be an offense under South Dakota the law of the state or the law of any political subdivision of South Dakota,~~ or be a basis for seizure or forfeiture of assets ~~under South Dakota law for persons 21~~ any person who is twenty-one



years of age or older to manufacture, possess, or purchase marijuana accessories, or to distribute or sell marijuana accessories to ~~a any other~~ person who is ~~21 twenty-one~~ years of age or older.

~~(b) A Any~~ person who is ~~21 twenty-one~~ years of age or older is authorized to manufacture, possess, and purchase marijuana accessories, and to distribute or sell marijuana accessories to ~~a any other~~ person who is ~~21 twenty-one~~ years of age or older.

Section 10. ~~Lawful operation of marijuana-related facilities. That the code be amended by adding a NEW~~  
~~SECTION to read:~~

~~Notwithstanding any other provision of law, the following acts, when performed by a No person other than a registered~~ retail marijuana store ~~with a current, valid registration, or a any person 21 years of age or older who is acting in his or her capacity as an owner, employee, or agent of a retail marijuana store, are not unlawful and shall not be an offense under South Dakota law or be a basis for seizure or forfeiture of assets under South Dakota law may:~~

- (1) ~~Possessing, displaying, storing, or transporting~~ Possess, display, store, or transport marijuana or marijuana products;
- (2) ~~Purchasing~~ Purchase marijuana from a marijuana cultivation facility;
- (3) ~~Purchasing~~ Purchase marijuana or marijuana products from a marijuana product manufacturing facility;
- (4) ~~Delivering~~ Deliver or ~~transferring~~ transfer marijuana or marijuana products to a marijuana testing facility; ~~and or~~
- (5) ~~Delivering, distributing, or selling~~ Deliver, distribute, or sell marijuana or marijuana products to consumers or retail marijuana stores.

Section 11. That the code be amended by adding a NEW SECTION to read:

~~Notwithstanding any other provision of law, the following acts, when performed by a No person other than a registered~~ marijuana cultivation facility ~~with a current, valid registration, or a any person 21 years of age or older who is acting in his or her capacity as an owner, employee, or agent of a marijuana cultivation facility, are not unlawful and shall not be an offense under South Dakota law or be a basis for seizure or forfeiture of assets under South Dakota law~~ may:

- (1) ~~Cultivating, harvesting, processing, packaging, transporting, displaying, storing, or possessing~~ Cultivate, harvest, process, package, transport, display, store, or possess marijuana;
- (2) ~~Delivering~~ Deliver or ~~transferring~~ transfer marijuana to a marijuana testing facility;
- (3) ~~Delivering, distributing, or selling~~ Deliver, distribute, or sell marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, a marijuana lounge, or a retail marijuana store;
- (4) ~~Receiving or purchasing~~ Receive or purchase marijuana from a marijuana cultivation facility; ~~and or~~
- (5) ~~Receiving~~ Receive marijuana seeds or immature marijuana plants ~~from a person 21 years of age or older.~~

Section 12. That the code be amended by adding a NEW SECTION to read:

~~Notwithstanding any other provision of law, the following acts, when performed by a No person other than a registered~~ product manufacturing facility ~~with a current, valid registration, or a person 21 years of age or older who is acting in his or her capacity as an owner, employee, or agent of a product manufacturing facility, are not unlawful and shall not be an offense under South Dakota law or be a basis for seizure or forfeiture of assets under South Dakota law~~ may:

(1) ~~Packaging, processing, transporting, manufacturing, displaying, or possessing~~ Package, process, transport, manufacture, display, or possess marijuana or marijuana products;

(2) ~~Delivering~~ Deliver or ~~transferring~~ transfer marijuana or marijuana products to a marijuana testing facility;

(3) ~~Delivering~~ Deliver or ~~selling~~ sell marijuana or marijuana products to a retail marijuana store, marijuana lounge, or a marijuana product manufacturing facility;

(4) ~~Purchasing~~ Purchase marijuana from a marijuana cultivation facility; ~~and or~~

(5) ~~Purchasing~~ Purchase marijuana or marijuana products from a marijuana product manufacturing facility.

Section 13. That the code be amended by adding a NEW SECTION to read:

~~Notwithstanding any other provision of law, the following acts, when performed by a~~ No person other than a registered marijuana testing facility ~~with a current, valid registration, or a person 21 years of age or 9 older who is acting in his or her capacity as~~ an owner, employee, or agent of a marijuana testing facility, ~~are not unlawful and shall not be an offense under South Dakota law or be a basis for seizure or forfeiture of assets under South Dakota law~~ may:

(1) ~~Possessing, cultivating, processing, repackaging, storing, transporting, or displaying~~ Possess, cultivate, process, repackage, store, transport, or display marijuana or marijuana products;

(2) ~~Receiving~~ Receive marijuana or marijuana products from a marijuana establishment or a person ~~21~~ twenty-one years of age or older;



(3) ~~Returning~~ Return marijuana or marijuana products to a marijuana establishment, or a person 21 years of age or older; ~~and or~~

~~Nothing in this section prevents the imposition of penalties for violating this chapter or rules adopted by the department or localities pursuant to this chapter.~~

Section ~~1114~~. ~~Verifying the age of marijuana consumers. That the code be amended by adding a NEW~~  
SECTION to read:

~~A~~ No marijuana establishment or ~~an any~~ agent or ~~staffer employee~~ of a marijuana establishment may ~~not~~ sell, deliver, give, transfer, or otherwise ~~furnish provide~~ marijuana ~~a to any~~ person who is under the age of ~~21~~ twenty-one.

~~Except as otherwise provided this section, in a any~~ prosecution for selling, transferring, delivering, giving, or otherwise furnishing marijuana, marijuana products, or marijuana paraphernalia to any other person who is under ~~21~~ twenty-one years of age, it is a complete defense if:

(1) The person who sold, gave, or otherwise furnished marijuana, marijuana products, or marijuana paraphernalia was a retailer or was acting in his or her capacity as an owner, employee, or agent of a retailer at the time the marijuana, marijuana products, or marijuana paraphernalia was sold, given, or otherwise furnished to the person; and

(2) Before selling, giving, or otherwise furnishing marijuana, marijuana products, or marijuana paraphernalia to a person who is under ~~21~~ twenty-one years of age, the person who sold, gave, or otherwise furnished the marijuana or marijuana paraphernalia, or a staffer or agent of the retailer, was shown a document which appeared to be issued by an agency of a federal, state, tribal, or foreign sovereign government and ~~which that~~ indicated ~~that~~ the person to whom the marijuana or marijuana

paraphernalia was sold, given, or otherwise furnished was ~~21~~twenty-one years of age or older at the time the marijuana or marijuana paraphernalia was sold, given, or otherwise furnished to the person.

~~(c)~~ Section 15. That the code be amended by adding a NEW SECTION to read:

The complete defense set forth this ~~section~~Act does not apply if:

(1) The document ~~which~~that was shown to the person who sold, gave, or otherwise furnished the marijuana, marijuana products, or marijuana paraphernalia was counterfeit, forged, altered, or issued to a person other than the person to whom the marijuana, marijuana products or marijuana paraphernalia was sold, given, or otherwise furnished; and

(2) Under the circumstances, a reasonable person would have known or suspected that the document was counterfeit, forged, altered, or issued to a person other than the person to whom the marijuana, marijuana products, or marijuana paraphernalia was sold, given, or otherwise furnished. Reasonable reliance upon proof of age of the purchaser or the recipient of marijuana is a complete defense to any action brought against a person for a violation of this section.

~~Section 12 16. Rulemaking.~~ That the code be amended by adding a NEW SECTION to read:

Not later than ~~180~~one hundred eighty days after the effective date of this ~~act~~Act, the department shall adopt ~~regulations~~rules pursuant to chapter 1-26 that are necessary for the implementation of this ~~chapter Act~~. ~~Such regulations shall not~~No rule adopted by the department may prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. ~~Such regulations~~Rules adopted by the department shall include:

(1) Procedures for the issuance, renewal, suspension, and revocation of a registration to operate a marijuana establishment, ~~with such procedures subject to all requirements of the [state administrative procedure act];~~

(2) A schedule of fees for any application, registration, ~~and or~~ renewal ~~fees, provided, application fees~~ ~~shall not to~~ exceed \$5,000 five thousand dollars, ~~with this upper limit~~ adjusted annually for inflation, unless the department determines a greater fee is necessary to carry out its responsibilities under this chapter;

(3) Qualifications for registration that are ~~directly and demonstrably~~ related to the operation of a marijuana establishment;

(4) Security requirements ~~including lighting, physical security, video, and alarm requirements~~;

(5) Requirements for the transportation and storage of marijuana and marijuana products by marijuana establishments;

(6) Employment and training requirements, ~~including requiring that~~

(7) Requirements and standards for each marijuana establishment to create an identification badge for each employee or agent;

~~(7)-(8)~~ Requirements designed to prevent the sale or diversion of marijuana and marijuana products to persons under the age of 21;

~~(8)-(9)~~ Standards for marijuana product manufacturers to determine the amount of marijuana ~~that to~~ which marijuana products are considered ~~the an~~ equivalent ~~to~~;

~~(9)-(10)~~ Requirements for marijuana and marijuana products sold or distributed by a marijuana establishment; ~~including requiring~~

(11) Contents for marijuana ~~products' product~~ labels ~~to include, including the following~~:

~~(i)-(a)~~ The length of time it typically takes for a product to take effect;

~~(ii)-(b)~~ The amount of marijuana to which the product is considered ~~the an~~ equivalent ~~to~~;



~~(iii) Disclosing (c) Disclosure of~~ ingredients and ~~any~~ possible allergens; ~~and~~

~~(iv) (d)~~ A nutritional fact panel;

~~(v) Requiring (12) Requirements for~~ opaque, child resistant packaging, ~~which that~~ must be designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995); ~~and~~

~~(vi) Requiring (13) Requirements~~ that edible marijuana products be clearly identifiable, when practicable, with a standard symbol indicating that it contains marijuana;

~~(10) (14)~~ Health and safety regulations and standards for the manufacture of marijuana products and both ~~the~~ indoor and outdoor cultivation of marijuana by marijuana establishments;

~~(11) (15)~~ Restrictions on advertising, marketing, and signage including but not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching minors;

~~(12) (16)~~ Restrictions on the display of marijuana and marijuana products, ~~including to ensure that marijuana and marijuana products may not be displayed in a manner that is visible to the general public from a public right-of-way;~~

~~(13) (17)~~ Restrictions or prohibitions on additives to marijuana and marijuana-infused products, including ~~but not limited to~~ those that are toxic, designed to make the product more addictive, designed to make the product more appealing to children, or misleading to consumers; ~~the~~ ~~Any~~ prohibition may not ~~extend to include~~ common baking ~~and or~~ cooking items;

~~(14) (18)~~ Restrictions on the use of pesticides that are injurious to human health;

~~(15)~~ (19) Regulations governing visits to cultivation facilities and product manufacturers, including requiring the marijuana establishment to log visitors;

~~(16)~~ (20) A definition of the amount of delta-9 tetrahydrocannabinol that constitutes a single serving in a marijuana product;

~~(17)~~ (21) Standards for the safe manufacture of marijuana extracts and concentrates;

~~(18)~~ (22) Requirements that educational materials be disseminated to consumers who purchase marijuana-infused products;

~~(19)~~ (23) Requirements for random sample testing to ensure quality control, including by ensuring that marijuana and marijuana infused products are accurately labeled for potency. The Rules promulgated under this subdivision shall provide that testing analysis must include testing for residual solvents, poisons, or toxins; harmful chemicals; dangerous molds or mildew; filth; and harmful microbial such as E. Coli or salmonella and pesticides;

~~(20)~~ (24) Standards for the operation of testing laboratories, including requirements for equipment and qualifications for personnel;

~~(21)~~ (25) Civil penalties for the failure to comply with regulations made pursuant to this chapter; and

~~(22)~~ (26) Procedures for collecting taxes levied on marijuana cultivation facilities.

~~In order to ensure that individual privacy is protected, the~~ The department ~~shall~~ may not require a consumer to provide a retail marijuana store with personal information other than government issued identification to determine proof of the consumer's age, ~~and a~~ No retail marijuana store ~~shall not may~~ be required to acquire and record personal information about consumers.

~~Section 13 17. Marijuana establishment registrations. That the code be amended by adding a NEW SECTION to read:~~

~~(a) Each~~ Any application or renewal application for an annual registration to operate a marijuana establishment shall be submitted to the department. A renewal application may be submitted up to ~~90~~ ninety days prior to the expiration of the marijuana establishment's registration.

~~(b) Section 18. That the code be amended by adding a NEW SECTION to read:~~

The department shall begin accepting and processing applications to operate marijuana establishments ~~180 no later than one hundred eighty days after following~~ the effective date of this ~~act~~ Act.

~~(c) Section 19. That the code be amended by adding a NEW SECTION to read:~~

Upon receiving an application or renewal application for a marijuana establishment, the department shall immediately forward a copy of each application and half of the registration application fee to the local regulatory authority ~~for the locality in the jurisdiction~~ in which the ~~applicant desires to operate the~~ marijuana establishment shall be located, unless the locality has not designated a local regulatory authority.

~~(d) Within 45 to 90~~ Section 20. That the code be amended by adding a NEW SECTION to read:

No more than ninety days ~~after receiving following receipt of~~ an application or renewal application, the department shall issue an annual registration to the applicant, unless the department ~~finds-determines~~ the applicant is not in compliance with regulations enacted pursuant to ~~Section 12 this Act~~ or the department is notified by the ~~relevant locality~~ local regulatory authority that the applicant is not in compliance with ordinances ~~and-or~~ regulations ~~made-enacted~~ pursuant to ~~Section 14 and in effect at the time of application~~ this Act.

~~(e) Section 21. That the code be amended by adding a NEW SECTION to read:~~



If a locality has enacted a ~~numerical~~ limit on the number of marijuana establishments within that locality, and a greater number of applicants ~~seek registrations~~ seeks a registration than the locality provides, the department shall solicit and consider input from the local regulatory authority as to the locality's preference or preferences for registration.

~~(f)~~ Section 22. That the code be amended by adding a NEW SECTION to read:

Upon denial of ~~an any~~ application, the department shall ~~notify~~ provide the applicant ~~in writing of the~~ with specific reason for ~~its the~~ denial.

~~(g)~~ Section 23. That the code be amended by adding a NEW SECTION to read:

Every marijuana establishment registration shall specify the location where the marijuana establishment ~~will~~ shall operate. A separate registration shall be required for each location at which a marijuana establishment operates.

~~(h) Marijuana establishments~~ Section 24. That the code be amended by adding a NEW SECTION to read:

The department may inspect any marijuana establishment and the books and records any record maintained and or created by any marijuana establishments are subject to inspection by the department establishment.

~~(i) South Dakota Native American Tribes are exempt from the registration requirements as being a sovereign nation their laws will supersede any state regulations.~~

~~Section 14 25. Local control.~~ That the code be amended by adding a NEW SECTION to read:

~~(a) A Any~~ locality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana store through ~~an~~ initiated or referred measure, ~~provided, any initiated or referred measure to prohibit the operation of marijuana~~

cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores must appear on a general election ballot.

~~(b)~~ A Section 26. That the code be amended by adding a NEW SECTION to read:

Any locality may enact ordinances or regulations not in conflict with this ~~chapter Act~~, or with regulations enacted pursuant to this ~~chapter Act~~, governing ~~the time, place, manner, and number of~~ marijuana establishment operations establishments. ~~A~~ Any locality may establish civil penalties for violation of ~~an~~ any ordinance or ~~regulations regulation~~ governing ~~the time, place, and manner of~~ a marijuana establishment ~~that may operate in such the~~ locality.

~~(c)~~ A Section 27. That the code be amended by adding a NEW SECTION to read:

Any locality may designate a local regulatory authority that is responsible for processing applications submitted for a registration to operate a marijuana establishment ~~within the boundaries of in~~ the locality.

~~(d)~~ A Section 28. That the code be amended by adding a NEW SECTION to read:

Any locality may establish procedures for the issuance, suspension, ~~and or~~ revocation of a registration issued by the locality ~~in accordance with this section~~.

~~(e)~~ A Section 29. That the code be amended by adding a NEW SECTION to read:

Any locality may establish a schedule of annual operating and registration fees for marijuana establishments.

~~Section 15 30. Places of employment.~~ That the code be amended by adding a NEW SECTION to read:

~~Nothing in this chapter is intended to require an~~ No employer ~~to may~~ permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the

workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees or discipline employees who are under the influence of marijuana in the workplace.

#### ~~Section 16. Driving under the influence prohibited.~~

~~Nothing in this chapter is intended to allow driving under the influence of marijuana or driving while impaired by marijuana or to supersede laws related to driving under the influence of marijuana or driving while impaired by marijuana.~~

#### ~~Section 17. Minors.~~

~~Nothing in this chapter is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of 21 or to allow a person under the age of 21 to purchase, possess, use, transport, grow, or consume marijuana.~~

#### ~~Section 18~~ 31. Private property rights. That the code be amended by adding a NEW SECTION to read:

~~Except as provided in this section, the provisions of this chapter do not require any person, corporation, or any other entity that occupies, owns, or controls a property to allow the consumption, cultivation, display, sale, or transfer of marijuana on or in that property.~~

~~In the case of the rental of a residential dwelling, a landlord~~ No lessor of residential real property ~~may~~ not prohibit the possession ~~of marijuana~~ or ~~the~~ consumption of marijuana by non-smoked means unless:

(1) The ~~tenant is a roomer who is not leasing the entire residential dwelling~~ lessee does not hold a lease for the entirety of the single-unit or multiple unit residential real property;

(2) The residence is incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;



(3) The residence is a transitional housing facility; or

(4) Failing to prohibit marijuana possession or consumption would ~~violate~~ constitute a violation of federal law or regulations or cause the landlord to lose a monetary or licensing-related benefit under federal law or regulations.

Section ~~19~~ 32. ~~Contracts enforceable.~~ That the code be amended by adding a NEW SECTION to read:

~~It is the public policy of this state that contracts~~ Any contract related to the operation of a marijuana establishment registered pursuant to this ~~chapter should be~~ Act is enforceable. ~~It is the public policy of this state that no~~ No contract entered into by a registered marijuana establishment or its employees or agents ~~as permitted~~ pursuant to a valid registration, or by those who allow property to be used by a registered establishment, its employees, or its agents ~~as permitted pursuant to a valid registration~~, shall be unenforceable on the basis that cultivating, obtaining, manufacturing, distributing, dispensing, transporting, selling, possessing, or using marijuana or hemp is prohibited by federal law.

~~Section 20~~ 33. ~~Marijuana Regulation Fund.~~ That the code be amended by adding a NEW SECTION to read:

The Marijuana Regulation Fund is hereby established within the state treasury consisting of ~~fees any fee~~ collected ~~and civil penalties or penalty~~ imposed under this ~~chapter~~ Act. The department shall administer the fund. Monies in the fund are continuously appropriated.

Section ~~21~~ 34. ~~Excise tax on marijuana.~~ That the code be amended by adding a NEW SECTION to read:

~~An~~ There is hereby imposed an excise tax ~~is imposed~~ on the sale or transfer of marijuana from a marijuana cultivation facility to a retail marijuana store, a marijuana lounge, or marijuana product manufacturing facility at the rate of:

(1) ~~\$50~~ Fifty dollars per ounce on all marijuana flowers;

(2) ~~\$15-Fifteen dollars~~ per ounce on all part of marijuana other than marijuana flowers and immature marijuana plants; and

(3) ~~\$25-Twenty-five dollars~~ per immature marijuana plant.

The rates of tax imposed by this section apply proportionately to quantities of less than one ounce. The department shall adjust the rates annually, through rules adopted pursuant to chapter 1-26, to account for inflation or deflation based on the Consumer Price Index. ~~17~~

~~On the 15th day of each month, every~~ Any marijuana cultivation facility shall pay ~~the no later than the fifteenth day of each month any~~ excise taxes due on the marijuana that the marijuana cultivation facility transferred or sold in the prior calendar month.

Section ~~22~~ 35. ~~Apportionment of revenue.~~ That the code be amended by adding a NEW SECTION to read:

Revenues generated in excess of the amount needed to implement and enforce this act by the marijuana excise tax shall be distributed every three months as follows:

~~(a)~~ (1) Forty percent shall be distributed to the South Department of Education to retain and recruit educators. Five percent of the forty percent is to be set aside into an account to provide supplies and aid to all classrooms in South Dakota; including but not limited to classroom supplies, A/V equipment, computers, field trips and unpaid nutrition accounts.

~~(b)~~ (2) Ten percent shall be distributed to the South Dakota Department of Health for use in evidence-based, voluntary programs for the prevention or treatment of alcohol, tobacco, heroin, methamphetamine, prescription drugs, and marijuana abuse;

~~(e)~~ (3) Ten percent shall be distributed to the South Dakota Department of Health for a scientifically and medically accurate public education campaign educating youth and adults about the health and safety risks of alcohol, tobacco, heroin, methamphetamine, prescription drug and marijuana;

~~(d)~~ (4) Thirty percent shall be distributed to the General Fund; and

~~(e)~~ (5) Ten Percent shall be distributed to South Dakota Law Enforcement for training, detection dogs, equipment and educational programs to aid in youth diversion.

~~Section 23. Self-executing, severability, conflicting provisions. All provisions of this chapter are severable, and, except where otherwise indicated in the text, shall supersede conflicting statutes, local charter, ordinance, or resolution, and other state and local provisions.~~

~~Section 24. Effective date.~~

~~This Act shall take effect immediately upon passage.~~

~~Section 25 36. Commutation of non violent cannabis offenders.~~ That the code be amended by adding a NEW SECTION to read:

~~No Not later than 180 than one hundred eighty days of following passage of this Act, any prisoners prisoner in the SD State Prisons state penitentiary, County jails and those waiting to be sentenced or in any county jail who was sentenced under any provision of law that is legal under this Act, or any person who is awaiting sentence following conviction of any provision of law that is legal under this Act, will have their cases that person's case reviewed and sentences or sentence commuted if they meet criteria.:~~

~~(a) Conviction/Charges must be of a non violent nature. (1) The conviction or charge did not include any act that was violent; and~~

~~(b) Conviction/Charges must be for cannabis only. (2) The conviction or charge was for cannabis.~~



Section ~~26~~: 37. South Dakota Native American Tribal Cannabis Laws That the code be amended by adding a NEW SECTION to read:

No Native American ~~tribes~~ tribe in South Dakota ~~are not~~ is required to participate in any marijuana legalization ~~laws passed by the state of SD adopted by the state~~. ~~Tribes~~ Any tribe in the state may continue to ~~remain non-legal for~~ prohibit the use, production, sale, or possession of cannabis ~~use unless they through their own voting process legalize cannabis for medicinal or recreational purposes~~. No Native American ~~Tribes are not~~ tribe is required to participate in the state registration program or ~~the be~~ subject to any state tax ~~structure on marijuana~~. ~~All taxes~~ Any tax collected ~~by~~ through tribal cannabis sales are to be used for reservation improvement of infrastructure, housing and education.