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S.D. SEC. OF STATE

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HAND DELIVERED

July 8, 2015

Hon. Shantel Krebs
Secretary of State
500 E. Capitol
Pierre, SD 57501

Re: **Attorney General's Statement—initiated measure to decriminalize possession of one ounce or less of marijuana and marijuana paraphernalia**

Dear Secretary Krebs,

This Office received an initiated measure to decriminalize the possession of one ounce or less of marijuana and marijuana paraphernalia. Enclosed is a copy of the initiated measure, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to this measure. Any fiscal impact statement prepared pursuant to SDCL 2-1-19 will be filed separately by LRC.

By copy of this letter, I am providing a copy of the Attorney General's Statement to the sponsor of the initiated measure pursuant to SDCL 12-13-25.1.

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc w/enc.: Ryan Gaddy
Jason Hancock, Director of LRC

Filed this 8th day of July 2015

SECRETARY OF STATE

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INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to decriminalize the possession of one ounce or less of marijuana and marijuana paraphernalia

Explanation:

Under the measure, it will no longer be a state crime to possess one ounce or less of marijuana, including metabolites of marijuana within the body, and marijuana paraphernalia. Adults possessing one ounce or less of marijuana or marijuana paraphernalia are subject to a civil penalty, and minors are required to complete a drug awareness program. The marijuana may be forfeited.

Except as provided by the measure or by federal law, the State and its political subdivisions cannot penalize, sanction, restrict, or disqualify a person in any way for possessing one ounce or less of marijuana or marijuana paraphernalia.

The measure does not prohibit political subdivisions from regulating public consumption of marijuana and imposing penalties, as long as the penalties do not exceed those for public consumption of alcohol.

The measure does not change existing state law regarding possession of more than one ounce of marijuana, or its distribution. Marijuana possession remains illegal under federal law.

The purpose and effect of many provisions of the measure are unclear and will require legislative or judicial clarification if the measure is approved.

Filed this 8th day of

July 2015

Shantel Krebs

SECRETARY OF STATE

An Act to decriminalize the possession and use of one ounce or less of marijuana.

Be it enacted by the people of South Dakota:

Section 1. Notwithstanding any law to the contrary, any person eighteen years of age or older who possesses one ounce or less of marijuana may be subject to a civil penalty of one hundred dollars and forfeiture of the marijuana. Any unpaid fine shall double if not paid within ninety days of the offense. An offender under the age of eighteen shall be subject to the same forfeiture of the marijuana and shall complete a drug awareness program that meets the criteria set forth in this Act. If the parents or legal guardian of any drug offender under the age of eighteen fails within one year of the notice to complete a drug awareness program, a civil penalty of up to three hundred fifty dollars may be imposed pursuant to this Act.

Section 2. Except as specifically provided in this Act, neither the state nor any of its political subdivisions may impose any form of penalty, sanction, restriction or disqualification on a person for possessing one ounce or less of marijuana or paraphernalia for marijuana use, nor may any penalties or obligations exceeding those outlined in Section 1 of this Act be imposed by the state or any of its political subdivisions for having cannabinoids or cannabinoid metabolites in any tissue or fluid of the human body. Neither Possession of one ounce or less of marijuana, or possession of paraphernalia for marijuana use, or the presence of cannabinoids or cannabinoid metabolites in any tissue or fluid of the human body may provide a basis to deny a person student financial aid, public housing, or any form of public assistance including unemployment benefits, to deny a person the right to operate a motor vehicle, or to disqualify a person from serving as a foster parent or adoptive parent. However, nothing contained in this Act permits the operation of motor vehicles or other actions taken while under the influence of marijuana. Any records concerning the offense of possession of one ounce or less of marijuana may not be recorded in any database of criminal offenders.

Section 3. As used in this Act, the term "possession of one ounce or less of marijuana," includes possession of one ounce or less of marijuana, or any mixture or preparation thereof, and does not include the weight of other ingredients in marijuana prepared for

consumption as food or drink. The term include the possession of paraphernalia for the ingestion, use, inhalation, preparation, or storage of marijuana or person use.

Section 4. Nothing contained in this Act may be construed to repeal or modify any law concerning the medical use of marijuana or tetrahydrocannabinol in any other form, or the possession of more than one ounce of marijuana or the selling, manufacturing, or trafficking of marijuana.

Section 5. Nothing contained in this Act prohibits a political subdivision of the state from enacting ordinances or bylaws regulating or prohibiting the consumption of marijuana or tetrahydrocannabinol in public places and providing for additional penalties for the public use of marijuana, if the additional penalties are no greater than those related to the public consumption of alcohol.

Section 6. No violation of this Act shall be considered a violation of parole or probation.

Section 7. Any person in possession of a license or other form of identification who fails to produce the same upon request of a law enforcement officer who informs the person that he or she has been found in possession of what appears to be an ounce or less of marijuana, or any person without any form of identification who fails or refuses to truthfully provide his or her name, address and date of birth to law enforcement officer who intends to provide the person with a citation for possession of an ounce or less of marijuana may be charged with SDCL chapter 22-42-6, Class 1 misdemeanor to possess more than one ounce but less than two ounces of marijuana.

Section 8. Any offender under the age of eighteen shall complete a drug awareness program within one year of when his or her parents or legal guardian are given notice of the offense and available drug awareness programs. Failure of such an offender to complete such program may be basis for imposing a civil penalty of up to three hundred fifty dollars pursuant to Section 1 of this Act.

Section 9. The drug awareness program must provide at least four hours of classroom instruction or group discussion and ten hours of community service. In addition to the programs and curricula it must establish and maintain, the Department of Health shall develop a compliant drug awareness program specific to the use and abuse of

marijuana, alcohol and controlled substances. The department shall set fees for the program sufficient to cover all costs of administering the program, which may not exceed one hundred fifty dollars. All fees shall be paid by the offender upon entry in the drug awareness program.

Section 10. A law enforcement officer shall comply with the provisions of Chapter 23-1A when issuing any citation pursuant to this Act.

Section 11. A copy of the notice delivered, pursuant to Section 1 of this Act, to an offender under the age of eighteen shall be mailed or delivered to at least one of that offender's custodial parents or, where there is no such person, to that offender's legal guardian at the last known address. If the offender or a parent or legal guardian fails to file with the clerk of court, a certificate that the offender has completed a drug awareness program in accordance with this Act within one year of the relevant offense; the clerk shall notify the offender, parent or guardian, and the enforcing person who issued the original notice of a hearing to show cause why a civil penalty of up to three hundred fifty dollars should not be imposed. Factors to be considered by the court in weighing cause shall be limited to financial capacity to pay any increase, the offender's ability to participate in a compliant drug awareness program, and the offender's willingness to complete such program within a timeframe to be determined by the court.

Section 12. Fifty percent of the revenue generated from civil penalties imposed under the provisions of this Act shall be released to the municipality or county where the offense occurred. The remaining fifty percent of the revenue generated from civil penalties imposed under the provisions of this Act shall be transmitted to the Department of Health to fund awareness and substance abuse treatment.

Section 13. SDCL 22-42-6. Possession of marijuana prohibited--Degrees according to amount; needs to be amended to include Class 1 misdemeanor to possess more than one ounce but less than two ounces of marijuana. All other laws stand as is.