



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
- <http://atg.sd.gov/>

RECEIVED

MAR 27 2017

S.D. SEC. OF STATE

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

March 27, 2017

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

RE: Attorney General's Statements for initiated measures legalizing marijuana

Dear Secretary Krebs,

This Office received proposed initiated measures that the sponsor will seek to place on the November 2018 general election ballot. Enclosed is a copy of each of the initiated measures, 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 both measures.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Marty J. Jackley".

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc/enc.: Melissa Mentele
Jason Hancock, Director of LRC

RECEIVED

MAR 27 2017

S.D. SEC. OF STATE

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to legalize certain amounts of marijuana, drugs made from marijuana, and drug paraphernalia, and to regulate and tax marijuana establishments.

Explanation:

The measure makes it lawful under the laws of a political subdivision (county, city, etc.) to possess, grow, use, process, purchase, transport, or distribute certain amounts of marijuana and drugs made from marijuana. This includes some drugs that are felony controlled substances under existing State law. It also legalizes drug paraphernalia for people over age 21.

The measure prevents the State from seizing or forfeiting assets of a person involved in manufacturing, possessing, transporting, or trafficking certain amounts of marijuana or some kinds of controlled substances.

The measure authorizes local jurisdictions and the State Department of Revenue to regulate marijuana establishments. It imposes an excise tax payable by marijuana cultivation facilities for marijuana sales to other establishments.

For people who have already been convicted or incarcerated for non-violent drug-related offenses that this measure legalizes, their cases must be reviewed or sentences commuted.

With limited exceptions, the acts described in the measure would remain illegal under State or Federal law. This 35-section measure has numerous conflicts with other State laws and within the measure itself. Because its full scope and effect are unclear, judicial or legislative clarification will likely be necessary. A court may find portions of the measure unconstitutional.

An Act to provide for the regulation and taxation of cannabis and cannabis products.

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA

Section 1. Terms used in this Act shall mean:

1. "Consumer" means a person twenty one years of age or older who purchases cannabis or cannabis products for personal use, but not for resale.
2. "Department" means South Dakota Department of Revenue.
3. "Immature cannabis plant" any cannabis plant that has not flowered and that does not have buds that may be observed by visual examination.
4. "Hemp" means any plant within the genus cannabis and any part of the plant, whether growing or not growing, with a delta-9 tetrahydrocannabinol concentration that does not exceed three tenths of a percent on a dry weight basis of any part of the plant, or per volume or weight of cannabis product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant regardless of moisture content.
5. "Locality" means any municipality or county.
6. "Local regulatory authority" the office or entity designated to process cannabis establishment applications by a county.
7. "Cannabis" the plant of the genus cannabis, the seeds,, the resin extracted from any part of the plant, compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including cannabis concentrate. The term does not include hemp, or any fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with the plant to prepare topical or oral administrations, food, drink, or any other product.
8. "Cannabis accessories" any equipment, product, or other material that is used, intended to be used, or designed to be used in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis into the human body.
9. "Cannabis cultivation facility" an entity registered to cultivate, prepare or package and sell cannabis to a cannabis establishment, but not to consumers. No cannabis cultivation facility may produce cannabis concentrates, tinctures, extracts, or other cannabis products.
10. "Cannabis establishment" means a cannabis cultivation facility, cannabis testing facility, cannabis product manufacturing facility, or retail cannabis store.
11. "Cannabis product manufacturing facility" any entity registered pursuant to this Act to purchase cannabis, manufacture, prepare, or package cannabis products; or sell cannabis and cannabis products to cannabis product manufacturing facilities or retail cannabis stores, but not to consumers.

12. "Cannabis products" products that are comprised of cannabis and other ingredients and are intended for use or consumption

13. "Cannabis testing facility" an entity registered pursuant to this Act to test cannabis for potency or contaminants.

14. "Possession limit" the amount of cannabis that may be possessed at any one time by any individual pursuant to this Act.

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

- a. One ounce of cannabis, no more than five grams of which may be concentrated cannabis;
- b. Five cannabis plants; and
- c. Any additional cannabis produced by the person's cannabis plants, provided that any amount of cannabis in excess of one ounce of cannabis must be possessed in the same secure facility where the plants were cultivated.

(2) For a non resident of South Dakota, the possession limit is no more than one- fourth of an ounce of cannabis, including up to one gram of concentrated cannabis.

15. "Public place" any place to which the general public has access.

16. "Retail cannabis store" an entity registered pursuant to this Act to purchase cannabis from cannabis cultivation facilities or cannabis and cannabis products from cannabis product manufacturing facilities and to sell cannabis and cannabis products to consumers.

17. "Unreasonably impracticable" 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 cannabis establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

Section 2.

Notwithstanding any other law, the following acts are not unlawful under law of any subdivision or be a basis for seizure or forfeiture of assets under South Dakota law

- (a) Possessing, consuming, growing, using, processing, purchasing, or transporting an amount of cannabis that does not exceed the possession limit;
- (b) Transferring one ounce or less of cannabis and up to six immature cannabis plants to a person who is twenty one years of age or older without remuneration;
- (c) Controlling property where actions described by this Act occur; and
- (d) Assisting any other person who is twenty one years of age or older in any of the acts described in this Act.

Section 3.

No person may cultivate cannabis in a location where the plant is subject to public view, or subject to view from any other private property, without the use of binoculars, aircraft, or other optical aids.

Any person who cultivates cannabis shall take reasonable precautions to ensure any plant are secure from unauthorized access.

A person may cultivate cannabis on any property in the person's lawful possession or any property in the lawful possession of any other person who consents to the cultivation of cannabis

If a person violates the provisions of this section the department may impose a civil penalty of up to seven hundred fifty dollars.

Section 4.

If any person smokes cannabis in a public place the department may impose a civil penalty of up to one hundred dollars.

Section 5.

No person may consume cannabis while operating a motor vehicle, boat, vessel, aircraft, or any other motorized device used for transportation.

Punishment for prohibited driving--First offense. If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less than thirty days.

Punishment for second offense--Revocation of driving privilege--Jail sentence for driving while privilege revoked--Limited driving privilege for certain purposes. If conviction for a violation of § 32-23-1 is for a second offense, such person is guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally revoke the defendant's driving privilege for a period of not less than one year.

Section 6.

No person who is under twenty one years of age may purchase, attempt to purchase, or otherwise procure or attempt to procure cannabis; or gain access to a cannabis establishment.

If any person violates any provisions of this section the department may impose a civil penalty of not less than two hundred dollars and not more than four hundred dollars.

Section 7.

No person, other than a registered cannabis product manufacturer, may perform solvent-based extractions on cannabis using solvents other than water or vegetable glycerin.

Any person who violates the provisions of this section is guilty of a Class 6 felony.

Section 8.

Notwithstanding any other law, it is not unlawful under the law of the state or the subdivision, or be a basis for seizure or forfeiture of assets for any person who is twenty one years of age or older to manufacture, possess, or purchase cannabis accessories, or to distribute or sell cannabis accessories to any other person who is twenty one years of age or older.

Any person who is twenty one years of age or older is authorized to manufacture, possess, and purchase cannabis accessories, and to distribute or sell cannabis accessories to any other person twenty one years of age or older.

Section 9.

No person other than a registered retail cannabis store, or any person who is an owner, employee, or agent of a retail cannabis store may:

1. Possess, display, store, or transport cannabis or cannabis products;
2. Purchase cannabis from a cannabis cultivation facility
3. Purchase cannabis or cannabis products from a cannabis product manufacturing facility;
4. Deliver or transfer cannabis or cannabis to a cannabis testing facility; or
5. Deliver, distribute, or sell cannabis or cannabis products to consumers or retail cannabis stores.

Section 10.

No person other than a registered cannabis cultivation facility , or any person who is an owner, employee, or agent of a cannabis cultivation facility may:

1. Cultivate, harvest, process, package, transport, display, store, or process cannabis;
2. Deliver or transfer cannabis to a cannabis testing facility;
3. Deliver, distribute, or sell cannabis to a cannabis cultivation facility, a cannabis product manufacturing facility, or a retail cannabis store;
4. Receive or purchase cannabis from a cannabis cultivation facility; or
5. Receive cannabis seeds or immature plants.

Section 11.

No person other than a registered product manufacturing facility, or a person who is an owner, employee, or agent of a product manufacturing facility may;

1. Package, process, transport, manufacture, display or possess cannabis or cannabis products;
2. Deliver or transfer cannabis or cannabis products to a cannabis testing facility;
3. Deliver or sell cannabis or cannabis products to a retail cannabis store, or a cannabis product manufacturing facility;
4. Purchase cannabis from a cannabis cultivation facility;
5. Purchase cannabis or cannabis products from a cannabis product manufacturing facility.

Section 12.