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APR 26 2019

S.D. SEC. OF STATE

April 25, 2019

Ms. Melissa Mentele
New Approach SD
241 N. 7th Street
Emery, SD 57332

Dear Ms. Mentele:

This office is required to review each initiated measure to determine whether it is written in a clear and coherent manner in the style and form of other legislation and worded so that the effect of the measure is not misleading or likely to cause confusion among voters in accordance with SDCL 12-13-24. Further, in accordance with SDCL 12-13-25, this office is required to provide written comments for the purpose of assisting the measure's sponsor in complying with SDCL 12-13-24, including assistance regarding the substantive content of the measure in order to minimize any conflict with existing law and ensure the measure's effective administration. 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 and 12-13-25.

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 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 "Cannabis cultivation facility" and "Possession limit" should be moved to their own section of the measure as they regulate activities related to these terms and do not merely provide a clarifying definition. We have relocated the substantive components of these definitions to their own sections at the end of the measure.

With regard to the definition of "Possession limit," there is a likely constitutional question under the Constitution of the United States (dormant commerce clause), as this section would apply two separate standards of possession limits for persons in the state based on their state residency. To avoid this question, you would need to make the possession limits identical for both residents and non-residents.

Sections 8 to 12, inclusive, of the measure 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 measure is not attempting to carve out an exception to existing law that would remain intact if the measure were adopted, but instead seeks to overturn existing marijuana prohibitions, the language of existing statutes should be amended to accomplish the measure's goal, or the measure would likely "cause confusion among voters." Consider amending SDCL 22-42-6, 22-42-7, and 34-20B-70. We have provided recommended amendments to these code sections in sections 38 – 40 of the measure.

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Section 15 of the measure requires the Department of Revenue to promulgate rules. Two of the rule requirements are broadly written in the measure and would require greater specificity for more effective administration of the law. Subdivision (4) regarding “security requirements” and subdivision (6) regarding “employment and training requirements” should be made more specific to ensure the department knows exactly what rules are to be promulgated so they may be more effectively enforced. We have provided suggested language for these two subdivisions for you to review.

Section 31 of the measure provides that contracts related to the operation of a marijuana establishment would be enforceable under South Dakota law. If this measure were adopted by voters, this section would be in direct conflict with SDCL 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 measure and instead amending SDCL 53-9-1 to achieve the objective of the measure and avoid any “confusion among voters.” We have provided suggested language to this code section in section 41 of the measure.

Section 34 of the measure may create a constitutional question under Article 12 of the South Dakota Constitution regarding appropriations. Under section 34, revenue in excess of that which is necessary for the enforcement of the measure is to be deposited into a special fund called the “cannabis regulation fund” and then distributed in five different manners. Because the revenue is not being deposited into the state general fund, this may be considered a special appropriation. Under Article 12, § 2 of the state constitution, a special appropriation must be made by a separate bill in the Legislature and requires a two-thirds vote of each chamber. The constitution does not provide for any appropriation—special or general—by initiated measure. To avoid this constitutional question, we recommend removing section 34 of the measure.

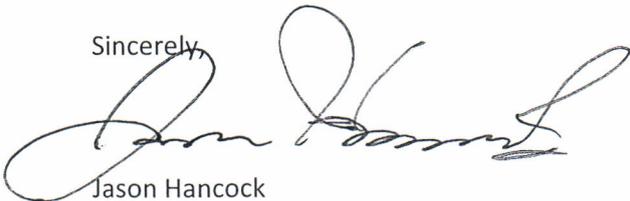
Attached is a copy of your proposed initiated measure with all our suggested changes.

If you have any questions regarding our comments or with any of our suggested changes, please feel free to contact us.

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 the amendment as submitted in final form to the Attorney General, so we can develop any fiscal note as required by SDCL 2-9-30.

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 not imply that this office endorsed or approves your proposal.

Sincerely,



Jason Hancock
Director

JH/DO/ct
Enclosure

CC: The Honorable Steve Barnett, Secretary of State
The Honorable Jason Ravnsborg, Attorney General

FOR AN ACT ENTITLED, An Act to provide for the regulation and taxation of cannabis and cannabis products.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF SOUTH DAKOTA:

Section 1. That the code be amended by adding a NEW SECTION to read:

Terms used in this Act shall mean:

- (1) "Consumer," means a person ~~twenty-one~~ 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~~ the 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~~ 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~~ locality;

(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 other 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) (15) "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)~~ (16) "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. That the code be amended by adding a NEW SECTION to read:

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

- (1) Possessing, consuming, growing, using, processing, purchasing, or transporting an amount of cannabis that does not exceed the possession limit;
- ~~(b)~~(2) Transferring one ounce or less of cannabis and up to six immature cannabis plants to a person who is ~~twenty-one~~ twenty-one years of age or older without remuneration;
- ~~(c)~~(3) Controlling property where actions described by this Act occur; ~~and~~ or
- ~~(d)~~(4) Assisting any other person who is ~~twenty-one~~ twenty-one years of age or older in any of the acts described in this Act.

Section 3. That the code be amended by adding a NEW SECTION to read:

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 is 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. The penalty shall be deposited in the cannabis regulation fund established by section 32 of this Act.

Section 4. That the code be amended by adding a NEW SECTION to read:

If any person smokes cannabis in a public place the department may impose a civil penalty of up to one hundred dollars. The penalty shall be deposited in the cannabis regulation fund established by section 32 of this Act.

Section 5. That the code be amended by adding a NEW SECTION to read:

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 Δ violation of § 32-23-1 is this section for a first offense, such person is guilty of is 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 Δ violation of § 32-23-1 is this section for a second or subsequent offense, such person is guilty of~~

is a Class 1 misdemeanor, and the court shall, ~~in pronouncing sentence,~~ unconditionally revoke the defendant's driving ~~privilege~~ privileges for a period of not less than one year.

Section 6. That the code be amended by adding a NEW SECTION to read:

No person who is under ~~twenty-one~~ 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~~ provision of this section the department may impose a civil penalty of not less than two hundred dollars and not more than four hundred dollars. The penalty shall be deposited in the cannabis regulation fund established by section 32 of this Act.

Section 7. That the code be amended by adding a NEW SECTION to read:

No person, other than a registered cannabis product ~~manufacturer~~ manufacturing facility, 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 violation of this section is a Class 6 felony.

Section 8. That the code be amended by adding a NEW SECTION to read:

Notwithstanding any other law of this state, it is not ~~unlawful under the law of the state,~~ or ~~be~~ a basis for seizure or forfeiture of assets for any person who is ~~twenty-one~~ 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~~ twenty-one years of age or older.

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

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

~~No person other than a~~ 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 products to a cannabis testing facility; ~~or~~
and
- (5) Deliver, distribute, or sell cannabis or cannabis products to consumers or retail cannabis stores.

Section 10. That the code be amended by adding a NEW SECTION to read:

~~No person other than a~~ 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 possess 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~~ and
- (5) Receive cannabis seeds or immature cannabis plants.

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

~~No person other than a~~ A registered cannabis product manufacturing facility, or a person who is an owner, employee, or agent of a cannabis 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; and
- (5) Purchase cannabis or cannabis products from a cannabis product manufacturing facility.

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

~~No person other than a~~ A registered cannabis testing facility or a person who is an owner, employee, or agent of a cannabis testing facility may:

- (1) Possess, cultivate, process, repackage, store, transport, or display cannabis or cannabis products;

(2) Receive cannabis or cannabis products from a cannabis establishment or a person ~~twenty-one~~ twenty-one years of age or older; and

(3) Return cannabis or cannabis products to a cannabis establishment, or a person ~~twenty-one~~ twenty-one years of age or older; or

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

No cannabis establishment or any agent or employee of a cannabis establishment may sell, deliver, give, transfer, or otherwise provide cannabis to any person who is under the age of ~~twenty one~~ twenty-one.

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

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

(2) Before selling, giving, or otherwise furnishing cannabis, cannabis products, or cannabis paraphernalia to a the other person ~~who is under twenty one years of age~~, the person who sold, gave, or otherwise furnished the cannabis or cannabis 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 that indicated the other person to whom the cannabis or cannabis paraphernalia was sold, given, or otherwise furnished was twenty-one was twenty-one years of age or older at the time the cannabis or cannabis paraphernalia was sold, given, or otherwise furnished to the other person.

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

The complete defense set forth in ~~this~~ section 13 of this Act does not apply if:

- (1) The document that was shown to the person who sold, gave, or otherwise furnished the cannabis, cannabis products, or cannabis paraphernalia was counterfeit, forged, altered, or issued to a person other than the person to whom the cannabis, cannabis products or cannabis 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 cannabis, cannabis products, or cannabis paraphernalia was sold, given, or otherwise furnished. Reasonable reliance upon proof of age of the purchaser or the recipient of the cannabis is a complete defense to any action brought against a person for a violation of ~~this~~ section 13 of this Act.

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

Not later than one hundred eighty days after the effective date of this Act, the department shall ~~adopt~~ promulgate rules pursuant to chapter ~~1-25~~ 1-26 that are necessary for the implementation of this Act. No rule adopted by the department may prohibit the operation of cannabis establishments, either expressly or through regulations that make their operation unreasonably impracticable. Rules adopted by the department shall include:

- (1) Procedures for the issuance, renewal, suspension, and revocation of a registration to operate a cannabis establishment;
- (2) A schedule of fees for any application, registration, or renewal not to exceed five thousand dollars adjusted annually for inflation, unless the department determines a greater fee is necessary to carry out its responsibilities under this ~~chapter~~ Act;
- (3) Qualifications for registration that are related to the operation of a cannabis establishment;
- (4) Security requirements for cannabis establishments to include, as deemed necessary by the department, private security personnel;
- (5) Requirements for the transportation and storage of cannabis and cannabis products by cannabis establishments;
- (6) Employment and training requirements for employees of cannabis establishments by operators of cannabis establishments for their employees to ensure compliance with this Act;
- (7) Requirements and standards for each cannabis establishment to create an identification badge for each employee or agent;
- (8) Requirements designed to prevent the sale or diversion of cannabis and cannabis products to persons under the age of ~~21~~ twenty-one;
- (9) Standards for cannabis product manufacturers to determine the amount of cannabis to which cannabis products are considered an equivalent-~~to~~;

- (10) Requirements for cannabis and cannabis products sold or distributed by a cannabis establishment;
- (11) Contents of cannabis product labels including:
 - (a) The length of time it typically takes for a product to take effect;
 - (b) The amount of cannabis to which the product is considered an equivalent;
 - (c) Disclosure of ingredients and any possible allergens; and
 - (d) A nutritional fact panel;
- (12) Requirements for opaque, child resistant packaging, 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);
- (13) Requirements that edible cannabis products be clearly identifiable, when practicable, with a standard symbol indicating that it contains cannabis;
- (14) Health and safety regulations and standards for the manufacture of cannabis products and both the indoor and outdoor cultivation of cannabis by cannabis establishments;
- (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;
- (16) Restrictions on the display of cannabis and cannabis products;

- (17) Restrictions or prohibitions on additives to cannabis and cannabis-infused products, including those that are toxic, designed to make the product more addictive, designed to make the product more appealing to children, or misleading to consumers; Any prohibition under this subdivision may not include common baking or cooking items;
- (18) Restrictions on the use of pesticides on cannabis plants that are injurious to human health;
- (19) Regulations governing visits to cultivation facilities and product manufacturers, including requiring the cannabis establishment to keep a log of visitors;
- (20) A definition of the amount of delta-9 tetrahydrocannabinol that constitutes a single serving in a cannabis product;
- (21) Standards for the safe manufacture of cannabis extracts and concentrates;
- (22) Requirements that educational materials be disseminated to consumers who purchase cannabis-infused products;
- (23) Requirements for random sample testing to ensure quality control, including by ensuring that cannabis and cannabis 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 microbes such as E. Coli or salmonella and pesticides;

- (24) Standards for the operation of testing laboratories, including requirements for equipment and qualifications for personnel;
- (25) Civil penalties for the failure to comply with ~~regulations made pursuant~~ any rule promulgated under to this ~~chapter~~ Act; and
- (26) Procedures for collecting taxes levied on cannabis cultivation facilities.

The department may not require a consumer to provide a retail cannabis store with personal information other than proof of the consumer's age. No retail cannabis store may be required to acquire and record personal information about consumers.

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

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

Section 17. That the code be amended by adding a NEW SECTION to read:

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

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

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

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

No more than ninety days following receipt of an application or renewal application, the department shall issue an annual registration to the applicant, unless the department determines the applicant is not in compliance with ~~regulations~~ rules enacted pursuant to this Act or the department is notified by the local regulatory authority that the applicant is not in compliance with ordinances or ~~regulations~~ rules enacted pursuant to this Act.

Section 20. That the code be amended by adding a NEW SECTION to read:

If a locality has ~~enacted~~ placed by ordinance a limit on the number of cannabis establishments within that locality and a greater number of applicants ~~seeks a~~ seek 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.

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

~~Upon~~ For any denial of any an application submitted under this Act, the department shall provide the applicant with the specific reason for the denial.

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

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

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

The department may inspect any cannabis establishment and any record maintained or created by any cannabis establishment in accordance with this Act.

Section 24. That the code be amended by adding a NEW SECTION to read:

~~Any~~ A locality may prohibit the operation of cannabis cultivation facilities, cannabis product manufacturing facilities, cannabis testing facilities, or retail cannabis store through initiated measure or referred ~~measure~~ law, on a general election ballot.

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

~~Any~~ A locality may enact ~~ordinances or regulations~~ an ordinance not in conflict with this Act, or with ~~regulations enacted~~ any rule adopted pursuant to this Act, governing cannabis establishments. ~~Any~~ The locality may establish a civil ~~penalties~~ penalty for violation of any ordinance ~~or regulation~~ governing a cannabis establishment in the locality.

Section 26. That the code be amended by adding a NEW SECTION to read:

~~Any~~ A locality may designate a local regulatory authority that is responsible for processing applications submitted for a registration to operate a cannabis establishment in the locality.

Section 27. That the code be amended by adding a NEW SECTION to read:

~~Any~~ A locality may establish procedures for the issuance, suspension, or revocation of a registration issued by the locality.

Section 28. That the code be amended by adding a NEW SECTION to read:

~~Any~~ A locality may establish a schedule of annual operating and registration fees for cannabis establishments.

Section 29. That the code be amended by adding a NEW SECTION to read:

No employer may permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of cannabis in the workplace.

Section 30. That the code be amended by adding a NEW SECTION to read:

No lessor of residential real property may prohibit the possession or the consumption of cannabis by ~~non-smoked~~ nonsmoked means unless:

- (1) The 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 cannabis possession or consumption would ~~Constitute~~ 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 31. That the code be amended by adding a NEW SECTION to read:~~

~~Any contract related to the operation of a cannabis establishment registered pursuant to this Act is enforceable. No contract entered into by a registered cannabis 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, shall be unenforceable on the basis that cultivating, obtaining, manufacturing, distributing, dispensing, transporting, selling, possessing, or using cannabis or hemp is prohibited by federal law.~~

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

The cannabis ~~Regulation Fund~~ regulation fund is hereby established within the state treasury consisting of any fee collected or penalty imposed under this Act. The department shall administer the fund. ~~Monies~~ Moneys in the fund are continuously appropriated.

Section 33. That the code be amended by adding a NEW SECTION to read:

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

- (1) Two ~~hundreds~~ hundred dollars per pound on all cannabis flowers;
- (2) Fifty dollars per pound on all ~~part~~ parts of cannabis other than cannabis flowers and immature cannabis plants; and
- (3) Fifteen dollars per immature cannabis plant.

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

Any cannabis cultivation facility shall pay no later than the fifteenth day of each month any excise taxes due on the cannabis that the cannabis cultivation facility transferred or sold in the prior calendar month.

Section 34. That the code be amended by adding a NEW SECTION to read:

~~Revenues~~ Any revenue generated pursuant to section 33 of this Act in excess of the amount needed to implement and enforce this act ~~by the cannabis excise tax Act~~ shall be deposited in the cannabis regulation fund and shall be distributed every three months as follows:

- (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~~; this state including ~~but not limited to~~ classroom supplies, A/V equipment, computers, field trips, and unpaid nutrition accounts;
- (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 cannabis abuse;
- (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~~ drugs, and cannabis;
- (4) ~~Twenty Percent~~ percent shall be distributed to ~~South Dakota Law Enforcement state, county, municipal, and tribal law enforcement~~ for officer training, detection dogs, equipment and educational programs to aid in youth diversion; and
- (5) ~~Twenty Percent to the General Fund~~ percent to the general fund.

Section 35. That the code be amended by adding a NEW SECTION to read:

Not later than one hundred eighty days following passage the effective date of this Act, any prisoner in the state penitentiary, or in any county jail who was sentenced under any provision of law that is ~~legal~~ legalized under this Act, or any person who is awaiting sentence following conviction of any provision of law that is ~~legal~~ legalized under this Act, will have that person's case reviewed or sentence commuted if:

- (1) The conviction or charge did not include any act that was violent; and
- (2) The conviction or charge was for cannabis.

Section 36. That the code be amended by adding a NEW SECTION to read:

A cannabis cultivation facility may not produce cannabis concentrates, tinctures, extracts, or other cannabis products.

Section 37. That the code be amended by adding a NEW SECTION to read:

The amount of cannabis that may be possessed at any one time by any individual pursuant to this Act:

- (1) For a resident of this state, 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.; and

- (2) For a nonresident of this state, the possession limit is no more than one-fourth of an ounce of cannabis, including up to one gram of concentrated cannabis.

Section 38. That § 22-42-6 be amended to read:

No person may knowingly possess marijuana, except as provided in sections 8 to 12 of this Act, inclusive. It is a Class 1 misdemeanor to possess two ounces of marijuana or less. It is a Class 6 felony to possess more than two ounces of marijuana but less than one-half pound of marijuana. It is a Class 5 felony to possess one-half pound but less than one pound of marijuana. It is a Class 4 felony to possess one to ten pounds of marijuana. It is a Class 3 felony to possess more than ten pounds of marijuana. A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand dollars.

Section 39. That § 22-42-7 be amended to read:

~~The~~ Except as provided in sections 8 to 12 of this Act, inclusive, the distribution, or possession with intent to distribute, of less than one-half ounce of marijuana without consideration is a Class 1 misdemeanor; otherwise, the distribution, or possession with intent to distribute, of one ounce or less of marijuana is a Class 6 felony. The distribution, or possession with intent to distribute, of more than one ounce but less than one-half pound of marijuana is a Class 5 felony. The distribution, or possession with intent to distribute, of one-half pound but less than one pound of marijuana is a Class 4 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana is a Class 3 felony. The distribution, or possession with intent to distribute, of less than one-half ounce of marijuana to a minor without consideration is a Class 6 felony; otherwise, the distribution, or possession with intent to distribute, of one ounce or less of marijuana to a minor is a Class 5 felony. The distribution, or possession with intent to distribute,

of more than one ounce but less than one-half pound of marijuana to a minor is a Class 4 felony. The distribution, or possession with intent to distribute, of one-half pound but less than one pound of marijuana to a minor is a Class 3 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana to a minor is a Class 2 felony. A first conviction of a felony under this section shall be punished by a mandatory sentence in the state penitentiary or county jail of at least thirty days, which sentence may not be suspended. A second or subsequent conviction of a felony under this section shall be punished by a mandatory sentence of at least one year. Conviction of a Class 1 misdemeanor under this section shall be punished by a mandatory sentence in county jail of not less than fifteen days, which sentence may not be suspended. A civil penalty, not to exceed ten thousand dollars, may be imposed, in addition to any criminal penalty, upon a conviction of a felony violation of this section.

Section 40. That § 34-20B-70 be amended to read:

The Except as permitted under sections 8 to 12 of this Act, inclusive, the following are subject to forfeiture pursuant to chapter 23A-49 and no property right exists in them:

- (1) All controlled drugs and substances and marijuana which have been manufactured, distributed, dispensed, or acquired in violation of the provisions of this chapter or chapter 22-42;
- (2) All raw materials, products, and equipment of any kind which are used or intended for use, in manufacturing, compounding, processing, importing, or exporting any controlled drug or substance or marijuana in violation of the provisions of this chapter or chapter 22-42;

- (3) All property which is used, or intended for use, as a container for property described in subdivisions (1) and (2);
- (4) All conveyances including aircraft, vehicles, or vessels, which transport, possess, or conceal, or which are used, or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, possession, or concealment of marijuana in excess of one-half pound or any quantity of any other property described in subdivision (1) or (2), except as provided in §§ 34-20B-71 to 34-20B-73, inclusive. This subdivision includes those instances in which a conveyance transports, possesses or conceals marijuana or a controlled substance as described herein without the necessity of showing that the conveyance is specifically being used to transport, possess, or conceal or facilitate the transportation, possession, or concealment of marijuana or a controlled substance in aid of any other offense;
- (5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter;
- (6) Any funds or other things of value used for the purposes of unlawfully purchasing, attempting to purchase, distributing, or attempting to distribute any controlled drug or substance or marijuana;
- (7) Any assets, interest, profits, income, and proceeds acquired or derived from the unlawful purchase, attempted purchase, distribution, or attempted distribution of any controlled drug or substance or marijuana.

Property described in subdivision (1) shall be deemed contraband and shall be summarily forfeited to the state, property described in subdivisions (2), (3), (5), (6), and (7) is subject to

forfeiture under the terms of § 23A-49-14, and property described in subdivision (4) is subject to forfeiture under the terms of § 23A-49-15.

Section 41. That § 53-9-1 be amended to read:

A contract provision contrary to an express provision of law or to the policy of express law, though not expressly prohibited or otherwise contrary to good morals, is unlawful. This section does not apply to any contract related to the operation of a cannabis establishment registered pursuant to this Act.

No contract entered into by a registered cannabis 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, shall be unenforceable under the laws of this state on the basis that cultivating, obtaining, manufacturing, distributing, dispensing, transporting, selling, possessing, or using cannabis or hemp is prohibited by federal law.