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SOUTH DAKOTA
LEGISLATURE
LEGISLATIVE RESEARCH COUNCIL

June 25, 2021

Mr. Payton Behrend
paytonbehrend1@gmail.com

Re: LRC Review of Proposed Initiated Measure Amending SDCL 22-42-5.1

Dear Mr. Behrend:

In accordance with SDCL 12-13-24 and 12-13-25, the Legislative Research Council (LRC) is required to review each initiated measure submitted to it by a sponsor for the purpose of determining whether the measure is "written in a clear and coherent manner in the style and form of other legislation" and for the purpose of ensuring that the "effect of the measure is not misleading or likely to cause confusion among voters." Based on this review, the LRC provides written comments to the measure's sponsor for the purpose of assisting the sponsor in meeting these requirements. This includes providing "assistance . . . to minimize any conflict with existing law and to ensure the measure's . . . effective administration." While there is no obligation to accept any of the suggestions contained in this letter, you, as the sponsor, are asked to keep in mind the legal standards established in SDCL 12-13-24 and 12-13-25.

After reviewing the proposed initiated measure amending SDCL 22-42-5.1 that you submitted via e-mail on June 16, 2021, the LRC has the following suggestions:

- By establishing one penalty for ingestion of a controlled drug or substance and unauthorized substance absorbed into one's person, no matter the scheduling of the substance, the distinction between Schedule I and II substances and Schedule III and IV substances becomes redundant. Therefore, the redundant language should be struck to eliminate confusion that the distinction between scheduled substances remains in the statute. The enclosed material shows this proposed strike.

- By making ingestion of a Schedule I, II, III, or IV substance a petty offense, SDCL 23A-27-53's deferred imposition of sentence and incentive to complete a course of substance abuse treatment would likely no longer apply to violations of SDCL 22-42-5.1. Petty offenses are civil proceedings, per SDCL 22-6-7, and no plea is taken in a civil proceeding. *See* SDCL 23-1A-10. SDCL 23A-27-53 requires a plea of guilty to defer imposition of sentence for violations of SDCL 22-42-5.1. This issue is noted solely for the purpose of minimizing potential conflict with existing law.

- Under SDCL 32-12-52.3, a driver license or driving privilege is revoked for a conviction or adjudication of delinquency under SDCL 22-42-5.1 when the violation occurred in a vehicle. By making ingestion of a Schedule I, II, III, or IV substance a petty offense, the provisions of SDCL 32-12-52.3 would likely no longer apply to convictions under SDCL 22-42-5.1 for similar reasons as described regarding SDCL 23A-27-53. If a plaintiff prevails in a petty offense proceeding, a civil judgment is entered against a defendant, rather than a criminal conviction. *See* SDCL 23-1A-21.

Additionally, an adjudication of delinquency will not result from a petty offense proceeding. Rather, a state's attorney "may dismiss a petty offense complaint issued to a minor any time before judgment is entered and try the minor instead as a juvenile delinquent." *See* SDCL 23-1A-6. This issue is noted solely for the purpose of minimizing potential conflict with existing law.

Our suggested style and form changes enclosed with this letter are based upon the Guide to Legislative Drafting (https://mylrc.sdlegislature.gov/api/Documents/127102.pdf). Specifically, our suggested overstrike is distinguished by red font from the revisions to the measure you provided us. Should you have any questions about these changes, or about the suggestions made in this letter, please feel free to contact this office.

In addition, it has been determined during this review that this measure may have an impact on revenues, expenditures, or fiscal liability of the state and its agencies and political subdivisions. Please provide the LRC a copy of the measure as submitted in final form to the Attorney General, so we can develop any fiscal note required by SDCL 2-9-30.

This letter constitutes neither an endorsement of the proposed measure nor a guarantee of its sufficiency. It is a recognition that your responsibility to submit the draft measure to the LRC for review and comment, as required by SDCL 12-13-25, has been fulfilled. If you proceed with the initiated measure, please ensure neither your statements nor any advertising imply that this office has endorsed or approved the measure.

Sincerely,

Reed Holwegner

Reed Holwegner
Director

RH/jg/bh

Enclosure

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

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

That § 22-42-5.1 be AMENDED to read:

No person may knowingly ingest a controlled drug or substance or have a controlled drug or substance in an altered state in the body unless the substance was obtained directly or pursuant to a valid prescription or order from a practitioner, while acting in the course of the practitioner's professional practice or except as otherwise authorized by chapter 34-20B. A violation of this section ~~for a substance in Schedules I or II is a Class 5 felony~~ petty offense~~. A violation of this section for a substance in Schedules III or IV~~ is a ~~Class 6 felony~~ petty offense.