



October 12, 2021

Hon. Steve Barnett  
Secretary of State  
500 E Capitol Avenue  
Pierre, SD 57501

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S.D. SEC. OF STATE

Dear Secretary Barnett,

The Legislative Research Council received an initiated measure (six sections) to legalize marijuana in small amounts for those twenty-one years of age or older. The initiated measure requires a fiscal note because it was determined it may have an impact on revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions. SDCL 2-9-31 requires the fiscal note be no longer than fifty words.

The corrected fiscal note examines the fiscal impacts associated with legalizing marijuana. The initiated measure seeks to legalize the possession, use, ingestion, transportation, processing, delivering without consideration, and distribution without consideration of one ounce or less of marijuana. In addition, the cultivation of three or fewer plants and the possession of the marijuana produced would also be legalized if the plants and marijuana grown are kept in a locked space and out of public view.

The sale of marijuana would not be legalized through this measure, and therefore no tax revenue from marijuana sales would come to the State. Additional tax revenue from the sale of marijuana accessories would be possible but is not calculable at this time. The State would also earn marginal additional revenue from fines collected from civil penalties created by the initiated measure.

There would be decreased expenses for the State due to decreased incarceration from the nullification of some marijuana-related laws, but the decrease in expenses is projected to be negligible at this time due to 1) the de minimis number of individuals in prison due to crimes related to an ounce or less of marijuana and 2) the unknown but likely minimal effect on marijuana laws related to the cultivation and possession of marijuana directly from plants. The decreased expenses for jails would be more significant.

Enclosed is a copy of the initiated measure, in final form, that was submitted to this office. In accordance with SDCL 2-9-31, I hereby submit the Legislative Research Council's fiscal note with respect to this initiated measure.

Sincerely,

A handwritten signature in blue ink that reads "Reed Holwegner". The signature is written in a cursive style.

Reed Holwegner  
Director

Enclosures  
Cc: Brendan Johnson

SOUTH DAKOTA LEGISLATIVE RESEARCH COUNCIL

CORRECTED FISCAL NOTE

INITIATED MEASURE

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AN INITIATED MEASURE TO LEGALIZE MARIJUANA (SIX SECTIONS).

The State and counties could see a minimal decrease in expenses due to decreased incarceration for marijuana-related offenses, and the State could see marginal additional revenue in the form of new civil penalty fines.

Approved: Reed Holwegner Date: October 12, 2021

Director, Legislative Research Council

Filed this 12<sup>th</sup> day of  
October, 2021  
Steve Barnett  
SECRETARY OF STATE

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

Section 1. That title 34 be amended by adding a NEW SECTION to read:

Terms used in this chapter mean:

- (1) "Hemp," the plant of the genus *cannabis*, and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not with a **delta-9 tetrahydrocannabinol** concentration of not more than three-tenths of one percent on a dry weight basis;
- (2) "Local government," means a county, municipality, town, or township;
- (3) "Marijuana," the plant of the genus *cannabis*, and any part of that plant, including, the seeds, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including hash and marijuana concentrate. The term includes an altered state of marijuana absorbed into the human body. The term does not include hemp, or fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products;
- (4) "Marijuana accessory," any equipment, product, material, which is specifically designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marijuana into the human body.

Section 2. That title 34 be amended by adding a NEW SECTION to read:

This chapter does not affect laws that otherwise regulate:

- (1) Delivery or distribution of marijuana or marijuana accessories, with or without consideration, to a person younger than twenty-one years of age;
- (2) Purchase, possession, use, or transport of marijuana or marijuana accessories by a person younger than twenty-one years of age;
- (3) Consumption of marijuana by a person younger than twenty-one years of age;
- (4) Operating or being in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of marijuana;
- (5) Consumption of marijuana while operating or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport, while it is being operated;
- (6) Smoking marijuana within a motor vehicle, aircraft, motorboat, or other motorized form of transport, while it is being operated;
- (7) Possession or consumption of marijuana or possession of marijuana accessories on the grounds of a public or private preschool, elementary school, or high school, in a school bus, or on the grounds of any correctional facility;
- (8) Smoking marijuana in a location where smoking tobacco is prohibited;
- (9) Consumption of marijuana in a public place, unless permitted by statute;
- (10) Consumption of marijuana as part of a criminal penalty or a diversion program;
- (11) Conduct that endangers others;
- (12) Undertaking any task under the influence of marijuana, if doing so would constitute negligence or professional malpractice; or
- (13) Performing solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food grade ethanol, unless permitted by statute.

**Section 3.** That title 34 be amended by adding a NEW SECTION to read:

This chapter does not:

- (1) Require that an employer permit or accommodate an employee to engage in conduct allowed by this chapter;
- (2) Affect an employer's ability to restrict the use of marijuana by employees;
- (3) Limit the right of a person who occupies, owns, or controls private property from prohibiting or otherwise regulating conduct permitted by this chapter on or in that property; or
- (4) Limit the ability of the state or a local government to prohibit or restrict any conduct otherwise permitted under this chapter within a building owned, leased, or occupied by the state or the local government.

**Section 4.** That title 34 be amended by adding a NEW SECTION to read:

Subject to the limitations in this chapter, and notwithstanding any other law, the following acts, if done by a person at least twenty-one years of age, may not be an offense under state or local law, regulation, or ordinance; be subject to a civil fine, penalty, or sanction; be a basis for detention, search, or arrest; be a basis for the denial of any right or privilege; or be a basis for asset seizure or forfeiture:

- (1) Possessing, using, ingesting, inhaling, processing, transporting, delivering without consideration, or distributing without consideration one ounce or less of marijuana, except that not more than eight grams of marijuana may be in a concentrated form;
- (2) Possessing, planting, cultivating, harvesting, drying, processing, or manufacturing not more than three marijuana plants and possessing the marijuana produced by the plants, if:
  - (a) The plants and any marijuana produced by the plants in excess of one ounce are kept at one private residence, are in a locked space, and are not visible by normal, unaided vision from a public place;
  - (b) Not more than six plants are kept in or on the grounds of a private residence at one time; and

(c) The private residence is located within the jurisdiction of a local government where there is no licensed retail store where marijuana is available for purchase pursuant to this chapter.

- (3) Assisting another person who is at least twenty-one years of age, or allowing property to be used, in any of the acts permitted by this section; and
- (4) Possessing, using, delivering, distributing, manufacturing, transferring, or selling to persons twenty-one years of age or older marijuana accessories.

**Section 5.** That title 34 be amended by adding a NEW SECTION to read:

A person who commits the following acts is subject to a civil penalty not exceeding the amount specified:

- (1) Violates section 4(2)(a) of this chapter by cultivating marijuana plants that are visible by normal, unaided vision from a public place, two hundred and fifty dollars.
- (2) Violates section 4(2)(a) of this chapter by cultivating marijuana plants that are not kept in a locked space, two hundred and fifty dollars.
- (3) Smokes marijuana in a public place, other than in an area licensed for such activity by the department, one hundred dollars.
- (4) Is under twenty-one years of age and possesses, uses, ingests, inhales, transports, delivers without consideration or distributes without consideration one ounce or less of marijuana or possesses, delivers without consideration, or distributes without consideration marijuana accessories, one hundred dollars. The person shall be provided the option of attending up to four hours of drug education or counseling in lieu of the civil penalty.

**Section 6.** That title 34 be amended by adding a NEW SECTION to read:

This chapter must be broadly construed to accomplish its purposes and intents.

Nothing in this chapter purports to supersede any applicable federal law, except where

allowed by federal law. If any provision in this chapter or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality may not affect other provisions or applications of the chapter that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this chapter are severable.