

2021 South Dakota Legislature

House Bill 1095**AMENDMENT 1095B FOR THE INTRODUCED BILL**

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

1 **An Act to establish criteria regarding marijuana and to provide a penalty therefor.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:

4 **34-20H-1. Definitions.**

5 Terms used in this Act mean:

6 (1) "Department," the Department of Revenue;

7 (2) "Local government," means a county, municipality, or township;

8 (3) "Marijuana," the plant of the genus cannabis, and any part of that plant, including
9 the seeds, the resin extracted from any part of the plant, and every compound,
10 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its
11 resin, including hash and marijuana concentrate. The term includes an altered state
12 of marijuana absorbed into the human body. The term does not include hemp, or
13 fiber produced from the stalks, oil or cake made from the seeds of the plant,
14 sterilized seed of the plant which is incapable of germination, or the weight of any
15 other ingredient combined with marijuana to prepare topical or oral
16 administrations, food, drink, or other products;

17 (4) "Marijuana accessory," any equipment, product, or material, which is specifically
18 designed for use in planting, propagating, cultivating, growing, harvesting,
19 manufacturing, compounding, converting, producing, processing, preparing,
20 testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling,
21 or otherwise introducing marijuana into the human body.

22 **Section 2.** That a NEW SECTION be added:

1 **34-20H-2. Civil penalties.**

2 The following civil penalties are established:

- 3 (1) A person who cultivates marijuana plants that are visible by normal, unaided vision
4 from a public place is subject to a civil penalty not exceeding two hundred and fifty
5 dollars;
- 6 (2) A person who cultivates marijuana plants that are not kept in a locked space is
7 subject to a civil penalty not exceeding two hundred and fifty dollars;
- 8 (3) A person who cultivates marijuana plants within the jurisdiction of a local
9 government where marijuana is available for purchase at a licensed retail store is
10 subject to a civil penalty not exceeding two hundred and fifty dollars, unless the
11 cultivation of marijuana plants is allowed through local ordinance or regulation
12 pursuant to § 34-20H-7; and
- 13 (4) A person who is under twenty-one years of age and possesses, uses, ingests,
14 inhales, transports, delivers without consideration or distributes without
15 consideration one ounce or less of marijuana or possesses, delivers without
16 consideration, or distributes without consideration marijuana accessories is subject
17 to a civil penalty not to exceed one hundred dollars. The person shall be provided
18 the option of attending up to four hours of drug education or counseling in lieu of
19 the fine.
- 20 Any civil penalty collected pursuant to this section shall be deposited into the state
21 general fund.

22 **Section 3.** That a NEW SECTION be added:

23 **34-20H-3. License types.**

- 24 The department shall accept applications for and issue, in addition to any other
25 types of licenses the department deems necessary:
- 26 (1) Licenses permitting commercial cultivators and manufacturers of marijuana to
27 cultivate, process, manufacture, transport, and sell marijuana to marijuana
28 wholesalers;
- 29 (2) Licenses permitting independent marijuana testing facilities to analyze and certify
30 the safety and potency of marijuana;
- 31 (3) Licenses permitting marijuana wholesalers to package, process, and prepare
32 marijuana for transport and sale to retail sales outlets; and
- 33 (4) Licenses permitting retail sales outlets to sell and deliver marijuana to consumers.

1 **Section 4.** That a NEW SECTION be added:

2 **34-20H-4. Promulgations--Rules.**

3 Not later than April 1, 2022, the department shall promulgate rules and issue
4 regulations, pursuant to chapter 1-26, on:

- 5 (1) Procedures for the issuance, renewal, suspension, and revocation of licenses;
6 (2) Application, licensing, and renewal fees, not to exceed the amount necessary to
7 cover the costs to the department of implementing and enforcing this Act;
8 (3) Time periods, not to exceed ninety days, by which the department must issue or
9 deny an application;
10 (4) Qualifications for licensees;
11 (5) Security requirements, including lighting and alarm requirements, to prevent
12 diversion;
13 (6) Testing, packaging, and labeling requirements, including maximum
14 tetrahydrocannabinol levels, to ensure consumer safety and accurate information;
15 (7) Restrictions on the manufacture and sale of edible products to ensure consumer
16 and child safety;
17 (8) Health and safety requirements to ensure safe preparation and to prohibit unsafe
18 pesticides;
19 (9) Inspection, tracking, and record-keeping requirements to ensure regulatory
20 compliance and to prevent diversion;
21 (10) Restrictions on advertising and marketing;
22 (11) Requirements to ensure that all applicable statutory environmental, agricultural,
23 and food and product safety requirements are followed;
24 (12) Requirements to prevent the sale and diversion of marijuana to persons under
25 twenty-one years of age; and
26 (13) Civil penalties for the failure to comply with rules adopted pursuant to this Act.

27 If by April 1, 2022, the department fails to promulgate rules required by this Act,
28 or if the department adopts rules that are inconsistent with this Act, any resident of the
29 state may commence a mandamus action in circuit court to compel performance by the
30 department in accordance with this Act.

31 **Section 5.** That a NEW SECTION be added:

1 **34-20H-5. Number--Licenses.**

2 In determining the appropriate number of licenses to issue, as required under this
3 Act, the department shall:

- 4 (1) Issue enough licenses to substantially reduce the illicit production and sale of
5 marijuana throughout the state; and
6 (2) Limit the number of licenses issued, if necessary, to prevent an undue
7 concentration of licenses in any one municipality.

8 **Section 6.** That a NEW SECTION be added:

9 **34-20H-6. Permitted conduct--Contracts--Professional services.**

10 Actions and conduct by a licensee, a licensee's employee, and a licensee's agent,
11 as permitted pursuant to a license issued by the department, or by those who allow
12 property to be used by a licensee, a licensee's employee, or a licensee's agent, as
13 permitted pursuant to a license issued by the department, are not unlawful and shall not
14 be an offense under state law, or the laws of any local government within the state, or be
15 subject to a civil fine, penalty, or sanction, or be a basis for detention, search, or arrest,
16 or to deny any right or privilege, or to seize or forfeit assets under state law, or the laws
17 of any local government within the state.

18 No contract is unenforceable on the basis that marijuana is prohibited by federal
19 law.

20 A holder of a professional or occupational license is not subject to professional
21 discipline for providing advice or services related to marijuana licensees or applications on
22 the basis that marijuana is prohibited by federal law.

23 **Section 7.** That a NEW SECTION be added:

24 **34-20H-7. Local ordinances.**

25 A local government may enact ordinances or regulations governing the time, place,
26 manner, and number of licensees operating within its jurisdiction. A local government may
27 ban the establishment of licensees or any category of licensee within its jurisdiction. A
28 local government may not prohibit the transportation of marijuana through its jurisdiction
29 on public roads by any person licensed to do so by the department or as otherwise allowed
30 by this Act.

31 **Section 8.** That a NEW SECTION be added:

1 **34-20H-8. Excise tax--Use of revenue.**

2 An excise tax of fifteen percent is imposed upon the gross receipts of all sales of
3 marijuana sold by a person licensed by the department pursuant to this Act to a consumer.

4 The department shall establish a procedure, pursuant to chapter 1-26, for the
5 collection of this tax and shall collect the tax. The revenue collected under this section
6 shall be appropriated to the department to cover costs incurred by the department in
7 carrying out its duties under this Act.

8 Fifty percent of the remaining revenue shall be appropriated by the Legislature for
9 the support of South Dakota public schools and the remainder shall be deposited into the
10 state general fund.

11 **Section 9.** That a NEW SECTION be added:

12 **34-20H-9. Annual report.**

13 The department shall publish an annual report that includes the number and type
14 of licenses issued, demographic information on licensees, a description of any enforcement
15 or disciplinary action taken against licensees, a statement of revenues and expenses of
16 the department related to the implementation, administration, and enforcement of this
17 Act, and a statement of taxes collected in accordance with this Act, and an accounting for
18 how those revenues were disbursed.

19 **Section 10.** That § 22-42-1 be AMENDED.

20 **22-42-1. Definitions.**

21 Terms used in this chapter mean:

- 22 (1) "Controlled drug or substance," a drug or substance, or an immediate precursor of
23 a drug or substance, listed in Schedules I through IV. The term includes an altered
24 state of a drug or substance listed in Schedules I through IV absorbed into the
25 human body;
- 26 (2) "Counterfeit substance," a controlled drug or substance which, or the container of
27 labeling of which, without authorization, bears the trade-mark, trade name, or other
28 identifying mark, imprint, number, or device, or any likeness thereof, of a
29 manufacturer, distributor, or dispenser other than the person or persons who
30 manufactured, distributed, or dispensed such substance and which thereby falsely
31 purports or is represented to be the product of, or to have been distributed by, such
32 other manufacturer, distributor, or dispenser;

- 1 (3) "Deliver" or "delivery," the actual or constructive transfer of a controlled drug,
2 substance, or marijuana whether or not there exists an agency relationship;
- 3 (4) "Dispense," to deliver a controlled drug or substance to the ultimate user or human
4 research subject by or pursuant to the lawful order of a practitioner, including the
5 prescribing, administering, packaging, labeling, or compounding necessary to
6 prepare the substance for such delivery, and a dispenser is one who dispenses;
- 7 (5) "Distribute," to deliver a controlled drug, substance, or marijuana. Distribution
8 means the delivery of a controlled drug, substance, or marijuana;
- 9 (6) "Manufacture," the production, preparation, propagation, compounding, or
10 processing of a controlled drug or substance, either directly or indirectly by
11 extraction from substances of natural origin, or independently by means of chemical
12 synthesis or by a combination of extraction and chemical synthesis. A manufacturer
13 includes any person who packages, repackages, or labels any container of any
14 controlled drug or substance, except practitioners who dispense or compound
15 prescription orders for delivery to the ultimate user;
- 16 (7) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not,
17 in its natural and unaltered state, except for drying or curing and crushing or
18 crumbling. The term includes an altered state of marijuana absorbed into the human
19 body. The term does not include fiber produced from the mature stalks of such
20 plant, or oil or cake made from the seeds of such plant. The term does not include
21 the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof
22 and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of
23 isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration
24 of not more than three-tenths of one percent on a dry weight basis;
- 25 (8) "Marijuana concentrate," the resin extracted from any part of a marijuana plant and
26 every compound, manufacture, salt, derivative, mixture, or preparation from such
27 resin;
- 28 (9) "Practitioner," a doctor of medicine, osteopathy, podiatry, dentistry, optometry, or
29 veterinary medicine licensed to practice his profession, or pharmacists licensed to
30 practice their profession; physician's assistants certified to practice their profession;
31 government employees acting within the scope of their employment; and persons
32 permitted by certificates issued by the Department of Health to distribute, dispense,
33 conduct research with respect to, or administer a substance controlled by chapter
34 34-20B;

1 ~~(9)~~(10) "Precursor" or "immediate precursor," a substance which the Department of
2 Health has found to be and by rule designates as being a principal compound
3 commonly used or produced primarily for use, and which is an immediate chemical
4 intermediary used or likely to be used, in the manufacture of a controlled drug or
5 substance, the control of which is necessary to prevent, curtail, or limit such
6 manufacture;

7 ~~(10)~~(11) "Schedule I," "Schedule II," "Schedule III," and "Schedule IV," those
8 schedules of drugs, substances, and immediate precursors listed in chapter 34-20B;

9 ~~(11)~~(12) "Ultimate user," a person who lawfully possesses a controlled drug or
10 substance for that person's own use or for the use of a member of that person's
11 household or for administration to an animal owned by that person or by a member
12 of that person's household.

13 **Section 11.** That § 22-42-2 be AMENDED.

14 **22-42-2. Unauthorized manufacture, distribution, counterfeiting or**
15 **possession of Schedule I or II substances--Felony--Mandatory sentences.**

16 Except as authorized by this chapter or chapter 34-20B, no person may
17 manufacture, distribute, or dispense a substance listed in Schedules I or II; possess with
18 intent to manufacture, distribute, or dispense a substance listed in Schedules I or II;
19 create or distribute a counterfeit substance listed in Schedules I or II; or possess with
20 intent to distribute a counterfeit substance listed in Schedules I or II. A violation of this
21 section is a Class 4 felony. However, a violation of this section is a Class 3 felony if the
22 person is in possession of three or more of the following:

- 23 (1) Three hundred dollars or more in cash;
24 (2) A firearm or other weapon pursuant to §§ 22-14-6, 22-14-15, 22-14-15.1, 22-14-
25 15.3, and subdivision 22-1-2(8);
26 (3) Bulk materials used for the packaging of controlled substances;
27 (4) Materials used to manufacture a controlled substance including recipes, precursor
28 chemicals, laboratory equipment, lighting, ventilating or power generating
29 equipment; or
30 (5) Drug transaction records or customer lists.

31 The distribution of a substance listed in Schedules I or II to a minor is a Class 2 felony.
32 A first conviction under this section shall be punished by a mandatory sentence in the
33 state penitentiary of at least one year, which sentence may not be suspended. Probation,
34 suspended imposition of sentence, or suspended execution of sentence may not form the

1 basis for reducing the mandatory time of incarceration required by this section. A second
2 or subsequent conviction under this section shall be punished by a mandatory sentence in
3 the state penitentiary of at least ten years, which sentence may not be suspended.
4 Probation, suspended imposition of sentence, or suspended execution of sentence may
5 not form the basis for reducing the mandatory time of incarceration required by this
6 section. However, a first conviction for distribution to a minor under this section shall be
7 punished by a mandatory sentence in the state penitentiary of at least five years, which
8 sentence may not be suspended. Probation, suspended imposition of sentence, or
9 suspended execution of sentence may not form the basis for reducing the mandatory time
10 of incarceration required by this section. A second or subsequent conviction for distribution
11 to a minor under this section shall be punished by a mandatory sentence in the state
12 penitentiary of at least fifteen years, which sentence may not be suspended. Probation,
13 suspended imposition of sentence, or suspended execution of sentence, may not form the
14 basis for reducing the mandatory time of incarceration required by this section.

15 Any person who, for consideration, intentionally distributes any controlled substance
16 or counterfeit substance in violation of this section and another person dies as a direct
17 result of using that substance, the sentence for the principal felony shall be enhanced by
18 increasing the class of the principal felony two levels. The enhancement may not exceed
19 the sentence for a Class C felony.

20 A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction
21 of a violation of this section not to exceed ten thousand dollars. A conviction for the
22 purposes of the mandatory sentence provisions of this chapter is the acceptance by a
23 court of any plea, other than not guilty, including nolo contendere, or a finding of guilt by
24 a jury or court.

25 A charge for unauthorized manufacture, distribution, or possession with intent to
26 manufacture or distribute marijuana concentrate shall be charged under § 22-42-7.5 or
27 22-42-7.6.

28 **Section 12.** That § 22-42-5 be AMENDED.

29 **22-42-5. Unauthorized possession--Controlled drug or substance--Felony.**

30 No person may knowingly possess a controlled drug or substance unless the
31 substance was obtained directly or pursuant to a valid prescription or order from a
32 practitioner, while acting in the course of the practitioner's professional practice or except
33 as otherwise authorized by chapter 34-20B. A charge for unauthorized possession of
34 controlled substance when absorbed into the human body as set forth in subdivision 22-

1 42-1(1) shall only be charged under the provisions of § 22-42-5.1. A violation of this
2 section for a substance in Schedules I or II is a Class 5 felony. A violation of this section
3 for a substance in Schedule III and IV is a Class 6 felony. A charge for unauthorized
4 possession of marijuana concentrate shall be charged under § 22-42-7.4.

5 **Section 13.** That § 22-42-5.1 be AMENDED.

6 **22-42-5.1. Unauthorized ingestion--Controlled drug or substance--Felony.**

7 No person may knowingly ingest a controlled drug or substance or have a controlled
8 drug or substance in an altered state in the body unless the substance was obtained
9 directly or pursuant to a valid prescription or order from a practitioner, while acting in the
10 course of the practitioner's professional practice or except as otherwise authorized by
11 chapter 34-20B. A violation of this section for a substance in Schedules I or II is a Class
12 5 felony. A violation of this section for a substance in Schedules III or IV is a Class 6
13 felony. This section does not apply to ingesting marijuana concentrate or having marijuana
14 concentrate in an altered state in the body.

15 **Section 14.** That § 22-42-6 be AMENDED.

16 **22-42-6. Possession--Marijuana--Misdemeanor or felony.**

17 ~~No person may knowingly possess marijuana. It is a Class 1~~ Class 2 ~~misdemeanor~~
18 ~~to possess more than two ounces of marijuana or less but less than eight ounces of~~
19 ~~marijuana. It is a Class 6 felony~~ Class 1 ~~misdemeanor to possess more than two ounces~~
20 ~~of marijuana but less than one-half pound~~ eight to sixteen ounces ~~of marijuana. It is a~~
21 ~~Class 5~~ Class 6 ~~felony to possess one-half pound but less than one pound~~ more than
22 sixteen ounces ~~of marijuana. It is a Class 4 felony to possess one to ten pounds of~~
23 ~~marijuana. It is a Class 3 felony to possess more than ten pounds of marijuana. A civil~~
24 ~~penalty may be imposed, in addition to any criminal penalty, upon a conviction of a~~
25 ~~violation of this section not to exceed ten thousand dollars. This section does not apply to~~
26 any person licensed or registered with the state to undertake an activity involving the
27 possession of marijuana who acts in compliance with the authorizing law. This section
28 does not apply to any person possessing marijuana complying with the provisions of
29 chapter 34-20G.

30 **Section 15.** That § 22-42-7 be AMENDED.

1 **22-42-7. Distribution--Possession with intent to distribute--Marijuana--**
2 **Misdemeanor or felony.**

3 The distribution, or possession with intent to distribute, ~~of less than one-half ounce~~
4 ~~of marijuana without consideration is a Class 1 misdemeanor; otherwise, the distribution,~~
5 ~~or possession with intent to distribute, of one ounce or less of marijuana is a Class 6 felony~~
6 more than one ounce but less than two ounces of marijuana is a Class 2 misdemeanor.
7 The distribution, or possession with intent to distribute, ~~of more than one ounce but less~~
8 ~~than one-half pound of marijuana is a Class 5 felony~~ more than two ounces but less than
9 sixteen ounces of marijuana is a Class 1 misdemeanor. The distribution, or possession
10 with intent to distribute, ~~of one-half pound but less than one pound of marijuana is a Class~~
11 ~~4 felony~~ more than sixteen ounces but less than five pounds of marijuana is a Class 6
12 felony. The distribution, or possession with intent to distribute, ~~of one pound or more of~~
13 ~~marijuana is a Class 3 felony.~~ The distribution, or possession with intent to distribute, ~~of~~
14 ~~less than one-half ounce of marijuana to a minor without consideration is a Class 6 felony;~~
15 ~~otherwise, the distribution, or possession with intent to distribute, of one ounce or less of~~
16 ~~marijuana to a minor is a Class 5 felony.~~ The distribution, or possession with intent to
17 ~~distribute, of more than one ounce but less than one-half pound of marijuana to a minor~~
18 ~~is a Class 4 felony.~~ The distribution, or possession with intent to distribute, ~~of one-half~~
19 ~~pound but less than one pound of marijuana to a minor is a Class 3 felony.~~ The distribution,
20 or possession with intent to distribute, ~~of one pound or more of marijuana to a minor is a~~
21 ~~Class 2 felony.~~ A first conviction of a felony under this section shall be punished by a
22 mandatory sentence in the state penitentiary or county jail of at least thirty days, which
23 sentence may not be suspended. A second or subsequent conviction of a felony under this
24 section shall be punished by a mandatory sentence of at least one year. Conviction of a
25 Class 1 misdemeanor under this section shall be punished by a mandatory sentence in
26 county jail of not less than fifteen days, which sentence may not be suspended. A civil
27 penalty, ~~not to exceed ten thousand dollars, may be imposed, in addition to any criminal~~
28 ~~penalty, upon a conviction of a felony violation of this section~~ five pounds but less than
29 ten pounds of marijuana is a Class 4 felony. The distribution, or possession with intent to
30 distribute, ten to fifty pounds of marijuana is a Class 3 felony. The distribution, or
31 possession with intent to distribute, more than fifty pounds of marijuana is a Class 2
32 felony. This section does not apply to any person licensed or registered with the state to
33 undertake an activity involving the distribution, or possession with intent to distribute,
34 marijuana who acts in compliance with the authorizing law. This section does not apply to

1 any person distributing, or possessing with the intent to distribute, marijuana complying
2 with the provisions of chapter 34-20G.

3 **Section 16.** That a NEW SECTION be added:

4 **22-42-7.1. Open and public use--Marijuana--Marijuana concentrate--Civil**
5 **penalty.**

6 No person may openly consume or display one ounce or less of marijuana or eight
7 grams or less of marijuana concentrate in a public place other than an area licensed for
8 such activity under the laws of this state. The court may impose a civil penalty for a
9 violation of this section not to exceed one hundred dollars. Any civil penalty collected
10 pursuant to this section shall be deposited into the state general fund.

11 **Section 17.** That a NEW SECTION be added:

12 **22-42-7.2. Distribution--Possession with intent to distribute--Marijuana--**
13 **Minor--Felony.**

14 It is a Class 6 felony to distribute to a minor, or possess with the intent to distribute
15 to a minor, less than one ounce of marijuana. It is a Class 3 felony to distribute to a minor,
16 or possess with the intent to distribute to a minor, one ounce but less than eight ounces
17 of marijuana. It is a Class 2 felony to distribute to a minor, or possess with the intent to
18 distribute to a minor, eight ounces to two pounds of marijuana. It is a Class 1 felony to
19 distribute to a minor, or possess with the intent to distribute to a minor, more than two
20 pounds of marijuana. This section does not apply if the distribution, or possession with
21 intent to distribute, to a minor complies with the provisions of chapter 34-20G.

22 **Section 18.** That a NEW SECTION be added:

23 **22-42-7.3. Possession--Marijuana plants--Felony.**

24 It is a Class 6 felony to possess four to twelve marijuana plants. It is a Class 4
25 felony to possess more than twelve marijuana plants. This section does not apply to any
26 person licensed or registered with the state to possess marijuana plants who acts in
27 compliance with the authorizing law. This section does not apply to any person possessing
28 marijuana plants complying with the provisions of chapter 34-20G.

29 **Section 19.** That a NEW SECTION be added:

1 **22-42-7.4. Possession--Marijuana concentrate--Misdemeanor or felony.**

2 It is a Class 1 misdemeanor to possess more than eight grams but less than two
3 ounces of marijuana concentrate. It is a Class 6 felony to possess two to five ounces of
4 marijuana concentrate. It is a Class 4 felony to possess more than five ounces of marijuana
5 concentrate. This section does not apply to any person licensed or registered with the
6 state to undertake an activity involving the possession of marijuana concentrate who acts
7 in compliance with the authorizing law. This section does not apply to any person
8 possessing marijuana concentrate complying with the provisions of chapter 34-20G.

9 **Section 20.** That a NEW SECTION be added:

10 **22-42-7.5. Manufacture--Distribution--Possession with intent to distribute--**
11 **Marijuana concentrate--Misdemeanor or felony.**

12 It is a Class 1 misdemeanor to manufacture, distribute, or possess with the intent
13 to distribute, more than eight grams but less than sixteen grams of marijuana concentrate.
14 It is a Class 6 felony to manufacture, distribute, or possess with the intent to distribute,
15 sixteen grams but less than five ounces of marijuana concentrate. It is a Class 4 felony to
16 manufacture, distribute, or possess with intent to distribute, five ounces but less than five
17 pounds of marijuana concentrate. It is a Class 3 felony to manufacture, distribute, or
18 possess with intent to distribute, five to twenty-five pounds of marijuana concentrate. It
19 is a Class 2 felony to manufacture, distribute, or possess with intent to distribute, more
20 than twenty-five pounds of marijuana concentrate. This section does not apply to any
21 person licensed or registered with the state to undertake an activity involving the
22 manufacture, distribution, or possession with intent to distribute, marijuana concentrate
23 who acts in compliance with the authorizing law. This section does not apply to any person
24 manufacturing, distributing, or possessing with the intent to distribute, marijuana
25 concentrate complying with the provisions of chapter 34-20G.

26 **Section 21.** That a NEW SECTION be added:

27 **22-42-7.6. Distribution--Possession with intent to distribute--Marijuana**
28 **concentrate--Minor--Felony.**

29 It is a Class 6 felony to distribute to a minor, or possess with the intent to distribute
30 to a minor, one gram or less of marijuana concentrate. It is a Class 4 felony to distribute
31 to a minor, or possess with the intent to distribute to a minor, more than one gram but
32 less than one ounce of marijuana concentrate. It is a Class 2 felony to distribute to a
33 minor, or possess with the intent to distribute to a minor, one ounce to one pound of

1 marijuana concentrate. It is a Class 1 felony to distribute to a minor, or possess with the
 2 intent to distribute to a minor, more than one pound of marijuana concentrate. This section
 3 does not apply if the distribution, or possession with intent to distribute, to a minor
 4 complies with the provisions of chapter 34-20G.

5 **Section 22.** That § 22-42-10 be AMENDED.

6 **22-42-10. Keeping place for use or sale of controlled substances as felony.**

7 Any person who keeps or maintains a place which is resorted to by persons using
 8 controlled drugs and substances for the purpose of using such substances when such use
 9 is in violation of this chapter, or which is used for the keeping or selling of such substances
 10 in violation of this chapter, is guilty of a Class 5 felony.

11 **Section 23.** That § 22-42-15 be AMENDED.

12 **22-42-15. Ingesting substance, except alcoholic beverages, for the purpose**
 13 **of becoming intoxicated as misdemeanor--Venue for violation.**

14 Any person who intentionally ingests, inhales, or otherwise takes into the body any
 15 substance, except alcoholic beverages as defined in § 35-1-1, marijuana, or any substance
 16 derived from marijuana, for purposes of becoming intoxicated, unless such substance is
 17 prescribed by a practitioner of the medical arts lawfully practicing within the scope of the
 18 practitioner's practice, is guilty of a Class 1 misdemeanor. The venue for a violation of this
 19 section exists in either the jurisdiction in which the substance was ingested, inhaled, or
 20 otherwise taken into the body or the jurisdiction in which the substance was detected in
 21 the body of the accused.

22 **Section 24.** That § 22-42-19 be AMENDED.

23 **22-42-19. Drug free zones created--Violation as felony--Sentence--Defense.**

24 ~~Any person who commits~~ A person is guilty of a Class 4 felony if they commit a
 25 violation of § 22-42-2, 22-42-3, ~~or~~ 22-42-4, 22-42-7.2, 22-42-7.3, 22-42-7.6, or a felony
 26 violation of § 22-42-7 or 22-42-7.5, and, if such activity has taken place:

- 27 (1) In, on, or within one thousand feet of real property comprising a public or private
 28 elementary or secondary school or a playground; or
 29 (2) In, on, or within five hundred feet of real property comprising a public or private
 30 youth center, public swimming pool, or video arcade facility; ~~is guilty of a Class 4~~
 31 ~~felony.~~
 felony.

1 The sentence imposed for a conviction under this section carries a minimum
2 sentence of imprisonment in the state penitentiary of five years. Any sentence imposed
3 under this section shall be consecutive to any other sentence imposed for the principal
4 felony. The court may not place on probation, suspend the execution of the sentence, or
5 suspend the imposition of the sentence of any person convicted of a violation of this
6 section. However, the sentencing court may impose a sentence other than that specified
7 in this section if the court finds that mitigating circumstances exist which require a
8 departure from the mandatory sentence provided for in this section. The court's finding of
9 mitigating circumstances allowed by this section and the factual basis relied upon by the
10 court shall be in writing.

11 It is not a defense to the provisions of this section that the defendant did not know
12 the distance involved. It is not a defense to the provisions of this section that school was
13 not in session.

14 **Section 25.** That § 32-23-8 be AMENDED.

15 **32-23-8. Other evidence on being under the influence of alcoholic beverage.**

16 The provisions of §§ 32-23-7 and 32-23-7.1 may not be construed as limiting
17 the introduction of any other competent evidence bearing upon the question whether or
18 not the defendant was under the influence of an alcoholic beverage or delta-9
19 tetrahydrocannabinol.

20 **Section 26.** That a NEW SECTION be added:

21 **32-33-14.2. Saliva tests--Temporary Roadblocks.**

22 No law enforcement officer may request that a person occupying a motor vehicle
23 stopped at the temporary roadblock submit to a test designed to detect the presence of
24 drugs in the person's saliva unless specific and articulable facts taken together with
25 rational inferences from those facts reasonably warrant the request.