



2022 South Dakota Legislature

House Bill 1178

HOUSE TAXATION ENGROSSED

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

Introduced by: **Representative Derby**

1 **An Act to establish provisions concerning the sale of adult-use retail marijuana.**

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

3 **Section 1.** The Legislature does not endorse the sale, possession, and consumption of adult-
 4 use marijuana. Recognizing the possibility that the voters may approve an initiated measure
 5 authorizing the sale, possession, and consumption of adult-use marijuana at the next general
 6 election, the Legislature believes it necessary to establish provisions concerning the sale,
 7 possession, and consumption of adult-use marijuana. Accordingly, the Legislature enacts this
 8 legislation to put in place a system for the sale, possession, and consumption of adult-use
 9 marijuana that may be authorized by the passage of an initiated measure at the general
 10 election on November 8, 2022.

11 **Section 2.** If the voters approve an initiated measure authorizing the sale, possession, and
 12 consumption of adult-use marijuana at the general election on November 8, 2022:

13 (1) This Act, except section 9, is effective July 1, 2023; and
 14 (2) Notwithstanding § 2-1-12, section 9 is effective on the first day after the
 15 completion of the official canvass by the State Canvassing Board. As soon as
 16 practicable after the effective date of section 9, the secretary shall begin the rule
 17 promulgation process under the authority provided under section 9 with the
 18 intention that licenses authorized by this Act may be issued by the department
 19 beginning July 1, 2023.

20 **Section 3. That a NEW SECTION be added to title 34:**

21 Terms used in this Act mean:

22 (1) "Adult-use retail marijuana," marijuana that is sold in a retail dispensary location;
 23 (2) "Adult-use marijuana retailer" or "retailer," any person who is licensed to sell
 24 marijuana for other than resale;

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

2 (4) "Dispensary," an entity licensed pursuant to this chapter that acquires, possesses,
3 stores, delivers, transfers, transports, sells, supplies, or dispenses marijuana,
4 marijuana products, and related supplies to a consumer;

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

13 (6) "Sale," the transfer, for consideration, of title to any adult-use marijuana;

14 (7) "Secretary," the secretary of revenue.

15 **Section 4. That a NEW SECTION be added to title 34:**

16 The secretary shall administer this Act and may employ help and purchase
17 equipment and supplies that are necessary for performance of the secretary's duties.

18 **Section 5. That a NEW SECTION be added to title 34:**

19 Neither the secretary nor any employee of the department that issues any adult-
20 use retail marijuana license may have any interest, financial or otherwise, in the
21 production, transportation, storage, or sale of marijuana.

22 **Section 6. That a NEW SECTION be added to title 34:**

23 No person may produce, transport, store, or sell any marijuana except as
24 authorized under this Act and under rules promulgated by the department pursuant to
25 chapter 1-26. This section does not apply to medical cannabis pursuant to chapter 34-
26 20G.

27 **Section 7. That a NEW SECTION be added to title 34:**

28 No person may transact any business as an adult-use marijuana retailer without
29 an adult-use retail marijuana license as provided by this Act and under rules promulgated

1 by the department pursuant to chapter 1-26. A violation of this section is a Class 1
2 misdemeanor.

3 **Section 8. That a NEW SECTION be added to title 34:**

4 Any person who, in any application, report, or statement, knowingly makes a false
5 statement as to any matter required by any provision of this Act or under rules
6 promulgated by the department pursuant to chapter 1-26 to be set forth in the application,
7 report, or statement, is guilty of a Class 1 misdemeanor.

8 **Section 9. That a NEW SECTION be added to title 34:**

9 The secretary shall promulgate rules, pursuant to chapter 1-26, regarding the sale,
10 purchase, distribution, and licensing of adult-use retail marijuana for the effective
11 implementation and enforcement of this Act.

12 **Section 10. That a NEW SECTION be added to title 34:**

13 Any applicant for a new adult-use retail marijuana license or the transfer of an
14 existing adult-use retail marijuana license must submit an application to the governing
15 body of the municipality in which the applicant intends to operate, or if outside the
16 corporate limits of a municipality, to the governing body of the county in which the
17 applicant intends to operate. The governing body may approve the application for a new
18 adult-use retail marijuana license or the transfer of an existing adult-use retail marijuana
19 license if the governing body considers the applicant suitable to hold the adult-use retail
20 marijuana license and the governing board considers the proposed location to be suitable.

21 Any application for the reissuance of an adult-use retail marijuana license may be
22 approved by the municipal or county governing body without a hearing unless, in the past
23 year, the adult-use retail marijuana licensee or one or more of the adult-use retail
24 marijuana licensee's employees have been convicted of a violation of the adult-use retail
25 marijuana law or the adult-use retail marijuana license has been suspended.

26 **Section 11. That a NEW SECTION be added to title 34:**

27 Any adult-use retail marijuana licensee under this Act must be a person of good
28 moral character who has never been convicted of a felony. If the licensee is a corporation,
29 the managing officers of the corporation must meet the same qualifications.

1 **Section 12. That a NEW SECTION be added to title 34:**

2 An applicant for an adult-use retail marijuana license must meet the following
3 criteria:

4 (1) Obtain a license pursuant to subdivision 35-4-2(3) or 35-4-2(16) prior to applying
5 for a license under this chapter; and

6 (2) Submit to a background investigation. If the applicant is a partnership or
7 corporation, the requirement for a background check includes each partner of a
8 partnership and each director and officer and all stockholders in the corporation,
9 its parent corporation, or its subsidiary corporation.

10 **Section 13. That a NEW SECTION be added to title 34:**

11 No adult-use retail marijuana licensee may sell any adult-use retail marijuana
12 between the hours of two a.m. and seven a.m. A violation of this section is a Class 2
13 misdemeanor.

14 **Section 14. That a NEW SECTION be added to title 34:**

15 The department shall promulgate rules, pursuant to chapter 1-26, establishing the
16 types of marijuana products that may be sold by an adult-use marijuana retailer.

17 **Section 15. That a NEW SECTION be added to title 34:**

18 It is a Class 1 misdemeanor for an adult-use retail marijuana licensee to furnish
19 marijuana to any person under the age of eighteen years.

20 **Section 16. That a NEW SECTION be added to title 34:**

21 It is a Class 2 misdemeanor for an adult-use retail marijuana licensee to furnish
22 marijuana to any person eighteen years or older but less than twenty-one years.

23 **Section 17. That a NEW SECTION be added to title 34:**

24 No person may be convicted of illegally selling any adult-use retail marijuana to
25 any underage person pursuant to section 15 or 16 of this Act if the underage person was
26 in possession of, and the seller relied upon, any false, age-bearing identification document
27 that was furnished to the underage person by any state agency or local law enforcement
28 agency or any agent, employee, contractor, or associate of any state agency or local law

1 enforcement agency for the purpose of attempting to illegally purchase any adult-use
2 retail marijuana.

3 **Section 18. That a NEW SECTION be added to title 34:**

4 No criminal penalty may be imposed on an adult-use retail marijuana licensee
5 licensed pursuant to this Act if:

6 (1) The person making the sale in violation of section 15 or 16 of this Act is an
7 employee or agent of the adult-use retail marijuana licensee;

8 (2) The employee or agent does not own a controlling interest in the adult-use retail
9 marijuana licensee; and

10 (3) The adult-use marijuana licensee or person having a controlling interest in the
11 adult-use retail marijuana licensee is not present at the time of the sale.

12 **Section 19. That a NEW SECTION be added to title 34:**

13 It is a Class 2 misdemeanor for any person under the age of twenty-one years to
14 purchase or attempt to purchase adult-use retail marijuana or to misrepresent the
15 person's age with the use of any document for the purpose of purchasing or attempting
16 to purchase adult-use retail marijuana from any adult-use retail marijuana licensee.

17 **Section 20. That a NEW SECTION be added to title 34:**

18 No person under the age of twenty-one years may be subject to any penalty arising
19 out of underage consumption or possession of marijuana if that person contacts law
20 enforcement or emergency medical services and reports that a person needs medical
21 assistance due to marijuana consumption and that person remains and cooperates with
22 medical assistance and law enforcement personnel on the scene.

23 **Section 21. That a NEW SECTION be added to title 34:**

24 It is a Class 1 misdemeanor for any person twenty-one years of age or older to
25 purchase or otherwise acquire adult-use retail marijuana from a retailer and to give or
26 resell the adult-use retail marijuana to any person under the age of twenty-one years.

27 **Section 22. That a NEW SECTION be added to title 34:**

28 No social host or adult-use retail marijuana licensee is civilly liable to any injured
29 person or the injured person's estate for any injury suffered, including any action for

1 wrongful death, or property damage suffered, because of the sale or consumption of any
2 marijuana in violation of the provisions of this chapter.

3 **Section 23. That a NEW SECTION be added to title 34:**

4 Any structure, conveyance, or place where marijuana is manufactured, sold, kept,
5 bartered, given away, found, consumed, or used in violation of the laws of the state
6 relating to adult-use retail marijuana, and all marijuana and property kept and used in
7 maintaining the same, is a common nuisance, and any person who maintains such a
8 common nuisance is guilty of a Class 1 misdemeanor.

9 **Section 24. That a NEW SECTION be added to title 34:**

10 If a person has knowledge or reason to believe that the person's structure,
11 conveyance, or place is occupied or used for the manufacture, sale, bartering, giving away,
12 keeping, consuming, or using of marijuana, contrary to the provisions of the laws of the
13 state, and if the person allows the structure, conveyance, or place to be so occupied or
14 used, the structure, conveyance, or place is subject to a lien for and may be sold to pay
15 all fines and costs assessed against the person guilty of such nuisance for such violation.
16 The lien may be enforced by action in any court having jurisdiction.

17 **Section 25. That a NEW SECTION be added to title 34:**

18 An action to enjoin any nuisance as defined in section 23 of this Act may be brought
19 in the name of the state by the attorney general or by the state's attorney of the county
20 in which the property constituting the nuisance is located. Any action to abate or to enjoin
21 the nuisance may be commenced and conducted as other actions or proceedings for
22 injunction. However, the complaint or affidavit used may be made on information and
23 belief and no bond is required in instituting the proceedings or to secure the issuance of
24 any such injunction.

25 **Section 26. That a NEW SECTION be added to title 34:**

26 If, in an action pursuant to section 25 of this Act, it is made to appear by affidavits
27 or otherwise, to the satisfaction of the court, or judge in vacation, that a nuisance exists,
28 a temporary writ of injunction shall be issued, restraining the defendant from conducting
29 or permitting the continuance of the nuisance until the conclusion of the trial. If a
30 temporary injunction is sought, the court may issue an order restraining the defendant

1 and all other persons from removing, or in any way interfering, with the marijuana or
2 fixtures, or other things used in connection with the violation of the laws of this state
3 constituting the nuisance.

4 **Section 27. That a NEW SECTION be added to title 34:**

5 It is not necessary in an action pursuant to section 25 of this Act for the court to
6 find the property involved was being unlawfully used as described in section 23 of this Act
7 at the time of the hearing. However, on finding that the material allegations of the petition
8 are true, the court shall order that no marijuana may be manufactured, sold, bartered, or
9 stored in the structure, conveyance, or place. Upon judgment of the court ordering the
10 nuisance to be abated, the court may order that the structure, conveyance, or place not
11 be occupied or used for one year thereafter.

12 **Section 28. That chapter 10-45 be amended with a NEW SECTION:**

13 Each county shall use the revenue distributed under section 31 of this Act for
14 necessary expenses incurred by the county under the provisions of chapters 7-12, 7-16,
15 7-16A, and 23A-40.

16 **Section 29. That a NEW SECTION be added to title 10:**

17 Terms used in this chapter mean:

18 (1) "Dispensary," a licensed entity that acquires, possesses, stores, delivers, transfers,
19 transports, sells, supplies, or dispenses marijuana, marijuana products, and
20 related supplies to a consumer;

21 (2) "Marijuana," as defined in § 22-42-1;

22 (3) "Marijuana concentrate," the resin extracted from any part of a marijuana plant
23 and every compound, manufacture, salt, derivative, mixture, or preparation from
24 such resin;

25 (4) "Marijuana product," any product infused with marijuana concentrate and intended
26 for use or consumption by humans.

27 **Section 30. That a NEW SECTION be added to title 10:**

28 There is imposed an excise tax at the rate of eight and one-half percent on the
29 gross receipts from the sale of marijuana, marijuana concentrate, and marijuana products
30 by a dispensary. The excise tax imposed under this chapter does not apply to gross

1 receipts from the sale of marijuana, marijuana concentrate, and marijuana products to a
2 cardholder as defined in § 34-20G-1.

3 **Section 31. That a NEW SECTION be added to title 10:**

4 The excise tax revenue collected pursuant to section 30 of this Act must be divided
5 proportionally amongst the counties based on where the revenue was generated. The
6 revenue must be distributed to the county by September first of each year to be used for
7 the purposes set forth in section 28 of this Act.

8 **Section 32. That a NEW SECTION be added to title 10:**

9 The excise tax imposed under section 30 of this Act shall be collected and remitted
10 pursuant to chapter 10-45 and administered pursuant to chapter 10-59.

11 **Section 33. That a NEW SECTION be added to title 10:**

12 There is hereby created within the state treasury the marijuana fund into which all
13 funds collected under this chapter shall be deposited.

14 **Section 34. That chapter 10-52 be amended with a NEW SECTION:**

15 In lieu of any tax imposed under chapter 10-52A, there is imposed an excise tax
16 at the rate of five percent on the gross receipts from the sale of marijuana, marijuana
17 concentrate, and marijuana products by a dispensary.

18 **Section 35. That chapter 10-52 be amended with a NEW SECTION:**

19 The excise tax revenue collected pursuant to section 34 of this Act must be divided
20 proportionally amongst the municipalities based on where the revenue was generated. All
21 moneys received and collected on behalf of a municipality by the department, pursuant to
22 section 34 of this Act, shall be credited to a special municipal tax fund and after deducting
23 the amount of refunds made, the amounts necessary to defray the cost of collecting the
24 tax, and the administrative expenses incident thereto, shall be paid within thirty days after
25 collection to the municipality entitled thereto.

26 **Section 36. That chapter 10-45 be amended with a NEW SECTION:**

1 In lieu of any other tax imposed under this chapter, there is imposed an excise tax
2 at the rate of one and one-half percent on the gross receipts from the sale of marijuana,
3 marijuana concentrate, and marijuana products by a dispensary.

4 **Section 37. That chapter 10-45 be amended with a NEW SECTION:**

5 The excise tax revenue collected pursuant to section 36 of this Act must be
6 distributed to the marijuana fund.

7 **Section 38. That chapter 10-45 be amended with a NEW SECTION:**

8 The excise taxes imposed under sections 30, 34, and 36 of this Act shall be
9 collected and remitted pursuant to chapter 10-45 and administered pursuant to chapter
10 10-59.