

## 2022 South Dakota Legislature

**House Bill 1178****AMENDMENT 1178B 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 provisions concerning the sale of~~**  
2 **adult-use retail marijuana.**

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

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

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

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

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

22 Terms used in this Act mean:

- 1 (1) "Adult-use retail marijuana," marijuana that is sold in a retail dispensary location;  
2 (2) "Adult-use marijuana retailer" or "retailer," any person who is licensed to sell  
3 marijuana for other than resale;  
4 (3) "Department," the Department of Revenue;  
5 (4) "Dispensary," an entity licensed pursuant to this chapter that acquires, possesses,  
6 stores, delivers, transfers, transports, sells, supplies, or dispenses marijuana,  
7 marijuana products, and related supplies to a consumer;  
8 (5) "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. The term includes an altered state of marijuana absorbed into the human  
12 body. The term does not include hemp, or fiber produced from the stalks, oil or  
13 cake made from the seeds of the plant, sterilized seed of the plant that is incapable  
14 of germination, or the weight of any other ingredient combined with marijuana to  
15 prepare topical or oral administrations, food, drink, or other products;  
16 (6) "Sale," the transfer, for consideration, of title to any adult-use marijuana;  
17 (7) "Secretary," the secretary of revenue.

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

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

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

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

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

26 No person may produce, transport, store, or sell any marijuana except as  
27 authorized under this Act and under rules promulgated by the department pursuant to  
28 chapter 1-26. This section does not apply to medical cannabis pursuant to chapter 34-  
29 20G.

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

1           No person may transact any business as an adult-use marijuana retailer without  
2           an adult-use retail marijuana license as provided by this Act and under rules promulgated  
3           by the department pursuant to chapter 1-26. A violation of this section is a Class 1  
4           misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

- 7 (1) Obtain a license pursuant to subdivision 35-4-2(3) or 35-4-2(16) prior to applying  
8 for a license under this chapter; and  
9 (2) Submit to a background investigation. If the applicant is a partnership or  
10 corporation, the requirement for a background check includes each partner of a  
11 partnership and each director and officer and all stockholders in the corporation,  
12 its parent corporation, or its subsidiary corporation.

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

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

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

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

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

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

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

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

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

1           No person may be convicted of illegally selling any adult-use retail marijuana to  
2 any underage person pursuant to section 15 or 16 of this Act if the underage person was  
3 in possession of, and the seller relied upon, any false, age-bearing identification document  
4 that was furnished to the underage person by any state agency or local law enforcement  
5 agency or any agent, employee, contractor, or associate of any state agency or local law  
6 enforcement agency for the purpose of attempting to illegally purchase any adult-use  
7 retail marijuana.

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

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

- 11 (1) The person making the sale in violation of section 15 or 16 of this Act is an  
12 employee or agent of the adult-use retail marijuana licensee;  
13 (2) The employee or agent does not own a controlling interest in the adult-use retail  
14 marijuana licensee; and  
15 (3) The adult-use marijuana licensee or person having a controlling interest in the  
16 adult-use retail marijuana licensee is not present at the time of the sale.

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

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

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

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

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

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

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

5 No social host or adult-use retail marijuana licensee is civilly liable to any injured  
6 person or the injured person's estate for any injury suffered, including any action for  
7 wrongful death, or property damage suffered, because of the sale or consumption of any  
8 marijuana in violation of the provisions of this chapter.

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

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

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

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

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

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

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

2 If, in an action pursuant to section 25 of this Act, it is made to appear by affidavits  
3 or otherwise, to the satisfaction of the court, or judge in vacation, that a nuisance exists,  
4 a temporary writ of injunction shall be issued, restraining the defendant from conducting  
5 or permitting the continuance of the nuisance until the conclusion of the trial. If a  
6 temporary injunction is sought, the court may issue an order restraining the defendant  
7 and all other persons from removing, or in any way interfering, with the marijuana or  
8 fixtures, or other things used in connection with the violation of the laws of this state  
9 constituting the nuisance.

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

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

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

19 Each county shall use the revenue distributed under section 31 of this Act for  
20 necessary expenses incurred by the county under the provisions of chapters 7-12, 7-16,  
21 7-16A, and 23A-40.

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

23 Terms used in this chapter mean:  
24 (1) "Dispensary," a licensed entity that acquires, possesses, stores, delivers, transfers,  
25 transports, sells, supplies, or dispenses marijuana, marijuana products, and  
26 related supplies to a consumer;  
27 (2) "Marijuana," as defined in § 22-42-1;  
28 (3) "Marijuana concentrate," the resin extracted from any part of a marijuana plant  
29 and every compound, manufacture, salt, derivative, mixture, or preparation from  
30 such resin;

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

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

4 There is imposed an excise tax at the rate of eight and one-half percent on the  
5 gross receipts from the sale of marijuana, marijuana concentrate, and marijuana products  
6 by a dispensary. The excise tax imposed under this chapter does not apply to gross  
7 receipts from the sale of marijuana, marijuana concentrate, and marijuana products to a  
8 cardholder as defined in § 34-20G-1.

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

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

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

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

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

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

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

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

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

25 The excise tax revenue collected pursuant to section 34 of this Act must be divided  
26 proportionally amongst the municipalities based on where the revenue was generated. All  
27 moneys received and collected on behalf of a municipality by the department, pursuant to

1 section 34 of this Act, shall be credited to a special municipal tax fund and after deducting  
2 the amount of refunds made, the amounts necessary to defray the cost of collecting the  
3 tax, and the administrative expenses incident thereto, shall be paid within thirty days after  
4 collection to the municipality entitled thereto.

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

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

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

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

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

13 The excise taxes imposed under sections 30, 34, and 36 of this Act shall be  
14 collected and remitted pursuant to chapter 10-45 and administered pursuant to chapter  
15 10-59.