

## 2022 South Dakota Legislature

**Senate Bill 25****AMENDMENT 25A FOR THE INTRODUCED BILL****1 An Act to provide for the taxation of marijuana.**

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

**3 Section 1. That a NEW SECTION be added to title 10:**

4 Terms used in sections 1 to 6, inclusive, of this Act mean:

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

8 ~~(2) "Manufacturer," a licensed entity that acquires, possesses, manufactures, delivers,~~  
9 ~~transfers, transports, supplies, or sells marijuana products to a marijuana facility;~~

10 ~~(3)(2) "Marijuana facility," an entity licensed to cultivate, test, manufacture, or dispense~~  
11 ~~marijuana or marijuana products;~~

12 ~~(4)(3) "Marijuana," as defined in § 22-42-1;~~

13 ~~(5)(4) "Marijuana concentrate," the resin extracted from any part of a marijuana plant~~  
14 ~~and every compound, manufacture, salt, derivative, mixture, or preparation from~~  
15 ~~such resin;~~

16 ~~(6)(5) "Marijuana product," any product infused with marijuana concentrate and intended~~  
17 ~~for use or consumption by humans.~~

**18 Section 2. That a NEW SECTION be added to title 10:**

19 ~~There is hereby levied on all marijuana an excise tax of fifteen percent that must~~  
20 ~~be calculated based on the average market rate. A manufacturer shall pay the marijuana~~  
21 ~~excise tax on all marijuana manufactured and sold directly to a dispensary. In order to~~  
22 ~~calculate the tax using the average market rate, the weight or unit of marijuana sold must~~  
23 ~~be multiplied by the average market rate and the result must be multiplied by fifteen~~

1 ~~percent. For purposes of this section, the term, average market rate, means the average~~  
2 ~~prices as determined by the department on all marijuana sold or transferred from~~  
3 ~~manufacturer to dispensary.~~ There is imposed an excise tax at the rate of eight and one-  
4 half percent on the gross receipts from the sale of marijuana, marijuana concentrate, and  
5 marijuana products by a dispensary. The excise tax imposed under this chapter does not  
6 apply to gross receipts from the sale of marijuana, marijuana concentrate, and marijuana  
7 products to a cardholder as defined in § 34-20G-1(6).

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

9 ~~The excise tax revenue collected pursuant to section 2 of this Act must be divided~~  
10 ~~proportionally amongst the counties based on where the revenue was generated. The~~  
11 ~~revenue must be distributed to the county by September first of each year. Each county~~  
12 ~~shall use the revenue for necessary expenses incurred by the county under the provisions~~  
13 ~~of chapters 7-12, 7-16, 7-16A, and 23A-40.~~

14 **Section 4. That a NEW SECTION be added to title 10:**

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 5. That a NEW SECTION be added to title 10:**

19 ~~The excise tax revenue collected pursuant to section 4 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 4 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 6. That a NEW SECTION be added to title 10:**

27 ~~In lieu of any other tax imposed under chapters 10-45 or 10-46, there is imposed~~  
28 ~~an excise tax at the rate of one and one-half percent on the gross receipts from the sale~~  
29 ~~of marijuana, marijuana concentrate, and marijuana products by a dispensary.~~

1 **Section 7. That a NEW SECTION be added to title 10:**

2 There is hereby created within the state treasury the marijuana fund into which all  
3 funds collected under section 6 shall be deposited. Expenditures from the fund must be  
4 appropriated through the normal budget process.

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

6 The excise taxes imposed under sections 2, 4, and 6 of this Act shall be collected  
7 and remitted pursuant to chapter 10-45 and administered pursuant to chapter 10-59.

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

9 ~~Each manufacturer liable for the payment of taxes levied under this chapter shall file with the~~  
10 ~~secretary of revenue a return, on a form prescribed by the secretary, showing the kind and~~  
11 ~~quantity of marijuana manufactured, received, and in the manufacturer's possession, together~~  
12 ~~with the names of the persons from whom received, the amount of tax due, and any other~~  
13 ~~information prescribed by the secretary. The return, covering the period of one calendar~~  
14 ~~month, together with payment of the tax due, must be transmitted to the Department of~~  
15 ~~Revenue on or before the twenty fifth day of the second month following the close of the~~  
16 ~~reporting period. A violation of this section is a Class 1 misdemeanor.~~

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

18 ~~Any manufacturer required to file returns or reports under this chapter, who fails to file a~~  
19 ~~return or report or pay the tax when due, is subject to interest and penalty at the rates set~~  
20 ~~forth in § 10-59-6. For reasonable cause shown, the secretary of revenue may reduce or~~  
21 ~~eliminate the penalty. If any manufacturer files a false or fraudulent return, an amount equal~~  
22 ~~to the tax evaded, or attempted to be evaded, shall be added to the tax. Penalty and interest~~  
23 ~~are considered the same as tax for the purposes of collection and enforcement, including~~  
24 ~~liens, distress warrants, and criminal violations. Any payment received for taxes, penalty, or~~  
25 ~~interest is applied first to tax, beginning with the oldest delinquency, then to interest, and~~  
26 ~~then to penalty. No court may enjoin the collection of the tax or civil penalty.~~

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

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1 ~~Any manufacturer liable for the payment of the taxes shall keep, in current and available form~~  
2 ~~on the licensed premises, records of all purchases, sales, quantities on hand, and any other~~  
3 ~~information the secretary of revenue may prescribe by rule promulgated pursuant to chapter~~  
4 ~~1-26. The secretary of revenue may require from a manufacturer any report necessary to~~  
5 ~~administer the requirements of this chapter. The secretary may require the production of any~~  
6 ~~book, record, document, invoice, and voucher kept, maintained, received, or issued by the~~  
7 ~~manufacturer in connection with the manufacturer's business that, in the judgment of the~~  
8 ~~secretary, may be necessary to administer and discharge the secretary's duties, to secure the~~  
9 ~~maximum of revenue to be paid, and to carry out the requirements of this chapter. A violation~~  
10 ~~of this section is a Class 1 misdemeanor.~~

11 ~~If default is made, or if any manufacturer fails or refuses to furnish any other relevant reports~~  
12 ~~or information upon request, the secretary may enter the manufacturer's premises where the~~  
13 ~~records are kept and examine the records as necessary to compile the required report. The~~  
14 ~~cost of the examination must be paid by the manufacturer whose reports are in default.~~

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

16 ~~There is hereby created within the state treasury the marijuana fund into which all funds~~  
17 ~~collected under this chapter shall be deposited. Expenditures from the fund must be~~  
18 ~~appropriated through the normal budget process.~~

19 **Section 13. That chapter 10-45 be amended with a NEW SECTION:**

20 ~~The tax imposed by this chapter applies to the gross receipts of all marijuana and marijuana~~  
21 ~~products sold to any person by a dispensary.~~

22 **Section 14. That chapter 10-46 be amended with a NEW SECTION:**

23 ~~The tax imposed by this chapter applies to the gross receipts of all marijuana and marijuana~~  
24 ~~products sold to any person by a dispensary.~~

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