



2021 South Dakota Legislature

House Bill 1225

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 enacts this legislation to put in place a statutory system of laws
 4 for the regulation of the sale, possession, and consumption of adult-use retail marijuana as
 5 authorized by the passage of Constitutional Amendment A at the general election on
 6 November 3, 2020. The Legislature does not endorse the decision of the voters to make lawful
 7 the sale, possession, and consumption of adult-use retail marijuana. However, in recognition
 8 of the voters' recent decision on Amendment A, the Legislature believes it is necessary to
 9 enact this legislation to properly ensure the regulated and enforceable administration of laws
 10 concerning the sale, possession, and consumption of adult-use retail marijuana.

11 **Section 2.** The provisions of this Act are essentially and inseparably connected and
 12 interdependent. It is the intent of this Legislature, that if at any time before or after the
 13 effective date of this legislation, the provisions of Constitutional Amendment A is declared
 14 invalid by the South Dakota Supreme Court, this legislation is repealed, effective immediately.

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

16 **35A-1-1. Definition of terms.**

17 Terms used in this Act mean:

- 18 (1) "Adult-use retail marijuana," marijuana that is sold and subject to tax in a South
 19 Dakota retail location pursuant to S.D. Const., Art. XXX, and not sold or provided
 20 by a medical cannabis dispensary, as that term is defined in § 34-20G-1;
 21 (2) "Adult-use marijuana retailer" or "retailer," any person who is licensed to sell
 22 marijuana for other than resale;
 23 (3) "Department," the Department of Revenue;

1 (4) "Manufacturer," any person who owns, has a controlling interest in, or aids in
2 operating any establishment involved in the production, cultivation, packaging,
3 processing, or transportation of marijuana in South Dakota;

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

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

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

15 (8) "Transporter," any common carrier or operator of a private vehicle transporting or
16 accepting for transportation any marijuana within the state.

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

18 **35A-1-2. Secretary of revenue to administer Act--Employment of personnel-**
19 **-Equipment and supplies.**

20 The secretary shall administer the law as set forth in this Act, and may employ
21 such help and purchase such equipment and supplies as are necessary for performance of
22 the secretary's duties.

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

24 **35A-1-3. Certain revenue department employees prohibited from engaging**
25 **in marijuana business.**

26 Neither the secretary nor any employee of the division within the department that
27 issues any adult-use retail marijuana license may have any interest, financial or otherwise,
28 in the production, transportation, storage, or sale of marijuana.

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

1 **35A-1-4. Traffic in marijuana prohibited--Exceptions.**

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

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

7 **35A-1-5. Unlicensed business prohibited--Violation as misdemeanor.**

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

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

13 **35A-1-6. False statement in application or report--Violation as felony.**

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

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

19 **35A-1-7. Sale or delivery for resale--Prohibited--Exceptions.**

20 No manufacturer or transporter may sell or deliver any package containing
21 marijuana manufactured or distributed for resale, unless the person to whom the package
22 is sold or delivered is authorized to receive the package as provided in this Act and under
23 rules promulgated by the department pursuant to chapter 1-26.

24 **Section 10.** That a NEW SECTION be added:

25 **35A-2-1. License application--Contents.**

26 Any application for an adult-use retail marijuana license as provided in this Act
27 shall be made on forms prescribed by the secretary. The application shall contain
28 information required by the secretary and necessary to determine the eligibility of the
29 applicant.

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

2 **35A-2-2. Applications submitted to local governing body--Fee--Approval.**

3 Any applicant for a new adult-use retail marijuana license or the transfer of an
4 existing adult-use retail marijuana license shall submit an application to the governing
5 body of the municipality in which the applicant intends to operate, or if outside the
6 corporate limits of a municipality, to the governing body of the county in which the
7 applicant intends to operate. The applicant shall submit the required fee with the
8 application. The governing body may approve the application for a new adult-use retail
9 marijuana license or the transfer of an existing adult-use retail marijuana license if the
10 governing body considers the applicant suitable to hold the adult-use retail marijuana
11 license and the governing board considers the proposed location to be suitable.

12 Any application for the reissuance of an adult-use retail marijuana license may be
13 approved by the municipal or county governing body without a hearing unless, in the past
14 year, the adult-use retail marijuana licensee or one or more of the adult-use retail
15 marijuana licensee's employees have been subjected to a criminal penalty for violation of
16 the adult-use retail marijuana law or the adult-use retail marijuana license has been
17 suspended.

18 **Section 12.** That a NEW SECTION be added:

19 **35A-2-3. License applicant--Agreement--Access to premises and records.**

20 Each application for an adult-use retail marijuana license under this Act shall
21 include an agreement by the applicant that the applicant's premises, for the purposes of
22 search and seizure laws of the state and any ordinances of the municipality where the
23 adult-use retail marijuana license is issued, are considered public premises. In addition,
24 the agreement shall state:

25 (1) The premises and all buildings, safes, cabinets, lockers, and storerooms on the
26 premises are at all times, on demand of the secretary, the attorney general, or
27 officers charged with law enforcement in the county or municipality, open to
28 inspection;

29 (2) All of the applicant's records and books dealing with the sale and ownership of
30 marijuana are open to the secretary, attorney general, or officers charged with law
31 enforcement in the county or municipality for inspection; and

32 (3) The application and adult-use retail marijuana license issued on the application is
33 a contract between the applicant and the state and the county or municipality

1 having jurisdiction, entitling the state and the county or municipality, for the
2 purpose of enforcing the law, rules, and ordinances, to inspect the applicant's
3 premises and books at any time.

4 **Section 13.** That a NEW SECTION be added:

5 **35A-2-4. Hearing required before issuance.**

6 No license for an adult-use marijuana retailer may be issued to an applicant until
7 a public hearing is conducted pursuant to §§ 35A-2-5 and 35A-2-6.

8 **Section 14.** That a NEW SECTION be added:

9 **35A-2-5. Request for notice of hearing on application--Notice by mail**
10 **required.**

11 If any resident of an incorporated municipality files with the finance officer of the
12 municipality, or if any resident of a county files with the county auditor a written request
13 that the resident be notified of the time and place of hearing upon any specified application
14 for a license for adult-use retail marijuana, the finance officer or county auditor shall give
15 notice to the resident. The notice shall be sent by mail a sufficient length of time before
16 the hearing to allow the resident a reasonable opportunity to be present.

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

18 **35A-2-6. Time and place of hearing--Publication of notice.**

19 The governing body of any incorporated municipality or county being presented an
20 application for adult-use retail marijuana licenses shall fix the time and place for hearing
21 upon the application. The finance officer or county auditor shall publish one notice in the
22 official newspaper of the municipality or county. The notice shall be headed "Notice of
23 Hearing Upon Applications for Sale of Adult-use Retail Marijuana," shall state the time and
24 place when and where the application or applications will be considered and shall state
25 that any person interested in the approval or rejection of any application may appear and
26 be heard. The notice shall be published at least one week before the hearing. At the
27 hearing, the body shall consider each application and any objection to the application
28 before making a final decision on an application.

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

1 **35A-2-7. Character requirements.**

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

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

6 **35A-2-8. Transfer of licenses--Affidavit as to bulk sale--Payment of taxes--**
7 **Facts shown as to new location--Procedure and fee.**

8 Any adult-use retail marijuana license granted under this Act may be transferred
9 to a new location or to another person. If the transfer is to another person, the adult-use
10 retail marijuana licensee shall show in writing, under oath, that the adult-use retail
11 marijuana licensee has made a bulk sale of the business operated under the adult-use
12 retail marijuana license. The bulk sale may be conditioned upon the granting of a transfer
13 of the adult-use retail marijuana license. The transferee shall make an application as an
14 original applicant, and the application shall be acted upon in the same manner as an
15 original application. No transfer of any adult-use retail marijuana license to another person
16 may be granted until all taxes incurred by the transferor as a result of the operation of
17 the licensed premises, including municipal and state sales and use taxes, state
18 reemployment assistance or unemployment insurance tax, or any other state tax, are paid
19 or are not delinquent. No transfer of any adult-use retail marijuana license to another
20 person may be granted until all property taxes that are the liability of the adult-use retail
21 marijuana licensee and levied on the licensed premises are paid or are not delinquent. No
22 transfer of any adult-use retail marijuana license may be granted from an Indian tribe
23 operating in Indian country and controlled by the Indian tribe, or from an enrolled tribal
24 member operating in Indian country, until all use tax incurred as a result of the operation
25 of the licensed premises by nonmembers, and any other state tax, has been remitted or
26 is not delinquent. If the transfer is to a new location, the adult-use retail marijuana
27 licensee shall make application showing all the relevant facts for the new location. The
28 application shall be acted upon in the same manner as an original application. If an adult-
29 use retail marijuana license is transferred, a fee of one hundred fifty dollars is required to
30 continue the unexpired portion of the adult-use retail marijuana license.

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

1 **35A-2-9. Continuation of business by representative of deceased--**
2 **Responsibility of representative--Bonds continued.**

3 If an adult-use retail marijuana licensee under this Act dies, the personal
4 representative of the deceased adult-use retail marijuana licensee may succeed to all the
5 rights of the deceased adult-use retail marijuana licensee under the license if the personal
6 representative satisfies the provisions of § 35A-2-7. By operating under the adult-use
7 retail marijuana license, the personal representative agrees to all the terms and conditions
8 of the adult-use retail marijuana license and is subject to all the liabilities and
9 responsibilities of the adult-use retail marijuana licensee. Any bond executed under this
10 Act includes the personal representative as a principal if the adult-use retail marijuana
11 license passes to the personal representative.

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

13 **35A-2-10. License termination--Sale of stock.**

14 Any retailer authorized to deal in marijuana, upon termination of the adult-use
15 retail marijuana license, may, at any time within thirty days after the termination of the
16 adult-use retail marijuana license, sell the whole or any part of the marijuana included in
17 the retailer's stock in trade at the time of the termination, back to the manufacturer from
18 whom the retailer purchased the marijuana.

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

20 **35A-2-11. Conditions under which license may not be revoked or suspended**
21 **for sale to persons under twenty-one--Civil penalty.**

22 No adult-use retail marijuana license may be revoked or suspended because of a
23 violation of any statute, ordinance, rule, or regulation prohibiting the sale or service of
24 any marijuana to a person under the age of twenty-one years if the violation was
25 committed by an employee or agent of the adult-use retail marijuana licensee and the
26 adult-use retail marijuana licensee has not had more than two violations of any statute,
27 ordinance, rule, or regulation prohibiting the sale of adult-use marijuana to a person under
28 the age of twenty-one years on the premises where the violation occurred in the previous
29 twenty-four months.

30 If the adult-use retail marijuana licensee meets the requirements of the conditions
31 of this section, the secretary shall impose a civil penalty of five hundred dollars for a first
32 violation and one thousand dollars for a second violation, to be deposited in the general
33 fund. However, if the employee or agent has not been certified by a training program,

1 approved by the department, that provides instruction on techniques to prevent persons
2 under the age of twenty-one years from purchasing or consuming adult-use retail
3 marijuana, the secretary shall impose a civil penalty of one thousand dollars for a first
4 violation and two thousand dollars for a second violation, to be deposited in the general
5 fund.

6 An adult-use retail marijuana licensee may request an administrative hearing,
7 pursuant to chapter 1-26, to contest the imposition of a civil penalty.

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

9 **35A-2-12. Directory of training programs--Department website--**
10 **Attendance--Penalty reduction--Burden of proof.**

11 The department shall maintain on its public internet website, a directory listing all
12 training programs that are approved by the department. Any adult-use retail marijuana
13 licensee making a prohibited sale or service of adult-use retail marijuana to a person under
14 the age of twenty-one years has the burden of proof to show that the adult-use retail
15 marijuana licensee's employees have attended an approved adult-use retail marijuana
16 training program to be eligible for any reduction in the penalty imposed for the violation.

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

18 **35A-2-13. Compliance checks--Sale to persons under age twenty-one.**

19 Any enforcement entity that conducts compliance checks using underaged
20 informants to determine if an adult-use retail marijuana licensee will sell adult-use retail
21 marijuana to a person under the age of twenty-one shall inform the licensee in writing of
22 the results of any compliance check within forty-eight hours after the compliance check
23 takes place. No licensed premises may be subject to more than one compliance check
24 within a forty-eight-hour period.

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

26 **35A-2-14. Local governing body recommendations--Suspension or**
27 **revocation--Grounds--Action by secretary.**

28 The governing body of a municipality or county may recommend to the secretary
29 following a hearing that any adult-use retail marijuana license issued under this Act be
30 suspended or revoked for violation of any of the provisions of this Act or for violations of
31 any ordinance or regulation of the governing body relevant to adult-use retail marijuana

1 control that occurs on the premises of the adult-use retail marijuana licensee. Upon receipt
2 of the recommendation, the secretary shall proceed as provided in this Act.

3 **Section 24.** That a NEW SECTION be added:

4 **35A-2-15. Violation--Suspension or revocation.**

5 The secretary, in compliance with chapter 1-26, may revoke or suspend any adult-
6 use retail marijuana license issued under this Act upon proof of violation by the adult-use
7 retail marijuana licensee, or by the adult-use retail marijuana licensee's agents or
8 employees, of any of the following:

9 (1) Any provision of this Act;

10 (2) Any rule promulgated pursuant to this Act; or

11 (3) Any ordinance or regulation relevant to marijuana control adopted by the governing
12 body issuing the adult-use retail marijuana license.

13 **Section 25.** That a NEW SECTION be added:

14 **35A-2-16. Information--Investigation--Substantial evidence to proceed.**

15 If the secretary receives information of a violation by any adult-use retail marijuana
16 licensee of any provision of this Act, the secretary shall investigate the alleged violation.
17 If there is substantial evidence to support that a violation of any provision of this Act has
18 occurred, the secretary shall proceed in accordance with the provisions of this Act.

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

20 **35A-2-17. Right to hearing--Application or license.**

21 An applicant or adult-use retail marijuana licensee under this Act or any interested
22 person or governing body has a right to a hearing in relation to any action taken upon the
23 application or adult-use retail marijuana license. The hearing shall be held in the county
24 where the adult-use retail marijuana license has been applied for or issued under the
25 provisions of chapter 1-26. However, if the parties agree, a hearing to determine whether
26 the secretary may suspend or revoke an adult-use retail marijuana license may be held
27 at a location other than the county where the adult-use retail marijuana license has been
28 applied for or issued.

29 **Section 27.** That a NEW SECTION be added:

1 **35A-2-18. Revocation--Termination of rights--Exception.**

2 Upon service of notice of a decision or order for revocation of the adult-use retail
3 marijuana license on the adult-use retail marijuana licensee, the adult-use retail
4 marijuana licensee's rights under the adult-use retail marijuana license terminate, except
5 in the event of a stay on appeal.

6 **Section 28.** That a NEW SECTION be added:

7 **35A-2-19. Annual waiting period after revocation--No interest in retail**
8 **marijuana.**

9 No adult-use retail marijuana licensee under this Act, whose adult-use retail
10 marijuana license is revoked, may hold an interest in any adult-use retail marijuana
11 license under this Act for one year after the revocation.

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

13 **35A-2-20. Suspension in lieu of revocation--Maximum period--Compromise**
14 **settlement.**

15 If a violation is established in any proceeding under this Act, but the secretary
16 determines due to the nature and the circumstances of the violation, a suspension of the
17 adult-use retail marijuana license is adequate, the secretary may, instead of revoking the
18 adult-use retail marijuana license, suspend the adult-use retail marijuana license for a
19 period not exceeding sixty days. During the period of the suspension, the adult-use retail
20 marijuana licensee may not exercise any rights or privileges under the adult-use retail
21 marijuana license. The secretary may, in lieu of suspending or revoking the adult-use
22 retail marijuana license, accept a monetary settlement of any proceeding under this Act.
23 The amount of the settlement may not exceed seventy-five thousand dollars, to be
24 deposited in the general fund. The secretary may also recover the actual costs of
25 investigation and prosecution.

26 **Section 30.** That a NEW SECTION be added:

27 **35A-2-21. Requirements for reissuance.**

28 No adult-use retail marijuana license granted under this Act may be reissued until
29 all taxes incurred by the adult-use retail marijuana licensee as a result of the operation of
30 the licensed premises, including municipal and state sales and use taxes, state
31 reemployment assistance or unemployment insurance tax, or any other state tax, are paid

1 or are not delinquent. No adult-use retail marijuana license granted under this Act may
2 be reissued until all property taxes which are the liability of the adult-use retail marijuana
3 licensee levied on the licensed premises are paid or are not delinquent. No adult-use retail
4 marijuana license granted under this Act may be reissued to an Indian tribe operating in
5 Indian country and controlled by the Indian tribe, or to an enrolled tribal member
6 operating in Indian country and controlled by the enrolled tribal member's tribe, until the
7 Indian tribe or enrolled tribal member remits to the department all use tax incurred by
8 nonmembers as a result of the operation of the licensed premises, and any other state
9 tax has been remitted or is not delinquent.

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

11 **35A-2-22. Adult-use retail marijuana licenses--Requirements.**

12 An applicant for an adult-use retail marijuana license shall meet the following
13 criteria:

- 14 (1) Obtained a sales tax license pursuant to chapter 10-45, if applicable, or a use tax
15 license pursuant to chapter 10-46, if applicable;
16 (2) Obtained a malt beverage license pursuant to chapter 35-2;
17 (3) Submits to a background investigation. If the applicant is a partnership or
18 corporation, the requirement for a background check includes each partner of a
19 partnership and each director and officer and all stockholders in the corporation,
20 its parent corporation, or its subsidiary corporation; and
21 (4) Is a resident of this state. If the applicant is a partnership or corporation, the
22 majority of ownership interest shall be held by residents of this state.

23 **Section 32.** That a NEW SECTION be added:

24 **35A-2-23. Licensees or employees--Felony charges--Prohibited from**
25 **licensed premises.**

26 Any adult-use retail marijuana licensee or employee of an adult-use retail
27 marijuana licensee who is charged with a felony offense involving a minor, a crime of
28 violence pursuant to subdivision 22-1-2(9), or a felony drug-related offense committed
29 on the licensed premises may, as a condition of bond, be prohibited from entering onto
30 the licensed premises.

31 **Section 33.** That a NEW SECTION be added:

1 **35A-2-24. License--Fee.**

2 The fee for an adult-use retail marijuana license shall be established by rules
3 promulgated by the department, pursuant to chapter 1-26, not to exceed one-thousand
4 dollars.

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

6 **35A-2-25. Possession of multiple licenses--Multiple types--Exercise of**
7 **privileges.**

8 Any adult-use retail marijuana license issued under this Act may also hold other
9 license types issued by the department under rules promulgated pursuant to chapter 1-
10 26, except independent testing facilities. A licensee holding two or more licenses pursuant
11 to this section may exercise the privileges granted under each license.

12 **Section 35.** That a NEW SECTION be added:

13 **35A-2-26. Duration and expiration of retail licenses--Full fee charged for**
14 **part of year.**

15 The period covered by adult-use retail marijuana licenses under this Act is from
16 twelve o'clock midnight on the thirty-first day of December to twelve o'clock midnight on
17 the thirty-first day of the next December. However, the adult-use retail marijuana license
18 is valid for an additional three days if a proper application for a new adult-use retail
19 marijuana license is in the possession of the secretary before midnight on the thirty-first
20 day of December when the adult-use retail marijuana license expires. The full fee shall be
21 charged for an adult-use retail marijuana license for any portion of the period.

22 **Section 36.** That a NEW SECTION be added:

23 **35A-2-27. Distribution of fees and penalties.**

24 Fifty percent of all license and transfer fees received pursuant to this Act shall
25 remain in the municipality in which the licensee paying the fee is located. If the licensee
26 is located outside the corporate limits of a municipality, fifty percent of the fees shall
27 remain in the county in which the licensee is located. The remainder of all license, transfer
28 fees, and penalties received shall be credited to the general fund.

29 **Section 37.** That a NEW SECTION be added:

1 **35A-3-1. Times for selling--Violation as misdemeanor.**

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

4 **Section 38.** That a NEW SECTION be added:

5 **35A-3-2. Display of health warning sign--Violation as petty offense.**

6 All premises licensed to sell adult-use retail marijuana shall prominently display
7 the sign provided for in § 35A-3-3. The sign shall be displayed in such a manner as to
8 provide an unobstructed view to the customers of an adult-use retail marijuana licensee.
9 Failure to display such sign is a petty offense.

10 **Section 39.** That a NEW SECTION be added:

11 **35A-3-3. Health warning sign--Contents--Copy provided to licensees.**

12 The Department of Social Services shall create a nine-inch-by-twelve-inch sign to
13 be displayed pursuant to § 35A-3-2. The sign shall explain the dangers posed by
14 consuming marijuana. The language in the sign shall be approved by the secretary of
15 health. The Department of Social Services shall provide a copy of the sign to each adult-
16 use retail marijuana licensee required by § 35A-3-2 to display the sign.

17 **Section 40.** That a NEW SECTION be added:

18 **35A-3-4. Sale of retail marijuana below cost prohibited--Exception.**

19 No adult-use retail marijuana may be sold below the cost the adult-use marijuana
20 retailer paid to the manufacturer, unless the sale constitutes the termination of the sale
21 of the adult-use retail marijuana on the licensed premises. Any adult-use retail marijuana
22 offered for sale at less than the cost paid to the manufacturer may not be offered again
23 for sale on the licensed premises for a period of less than one year after termination of
24 the sale of the product on the licensed premises. The cost paid to the manufacturer is the
25 consideration paid by a retailer to a manufacturer to acquire adult-use retail marijuana
26 and includes the cost of doing business, which is presumed to be fifteen percent of the
27 price paid by the retailer to the manufacturer, the purchase price, and transportation
28 charges.

29 **Section 41.** That a NEW SECTION be added:

1 **35A-3-5. Department to promulgate rules regarding types of marijuana**
2 **products that may be sold.**

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

5 **Section 42.** That a NEW SECTION be added:

6 **35A-3-6. Marijuana excise tax.**

7 An excise tax on adult-use marijuana shall be imposed and disbursed in accordance
8 with S.D. Const., Art. XXX, § 11.

9 **Section 43.** That a NEW SECTION be added:

10 **35A-3-7. Valid proof of age identification of consumer required.**

11 An adult-use marijuana retailer may not sell marijuana to any person unless the
12 person produces a valid, unexpired government-issued identification showing that the
13 person is twenty-one years of age or older. Identification presented to satisfy this section
14 must contain a photograph and the date of birth of the person.

15 **Section 44.** That a NEW SECTION be added:

16 **35A-3-8. Unlicensed delivery prohibited--Violation as misdemeanor.**

17 No adult-use marijuana retailer may make any delivery of marijuana outside of the
18 premises described in the adult-use retail marijuana license. A violation of this section is
19 a Class 2 misdemeanor.

20 **Section 45.** That a NEW SECTION be added:

21 **35A-3-9. Consumption on retailer property prohibited.**

22 An adult-use marijuana retailer may not permit any person to consume marijuana
23 on the property of the retailer.

24 **Section 46.** That a NEW SECTION be added:

25 **35A-4-1. Furnishing to a minor prohibited--Violation as misdemeanor.**

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

28 **Section 47.** That a NEW SECTION be added:

1 **35A-4-2. Furnishing to a person eighteen years or older but less than**
2 **twenty-one years prohibited--Violation as misdemeanor.**

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

5 **Section 48.** That a NEW SECTION be added:

6 **35A-4-3. Reasonable attempt to investigate age.**

7 Any person charged with a violation of § 35A-4-1 or 35A-4-2 may offer evidence,
8 as a defense, that the person made a reasonable attempt to investigate the age of the
9 person by examining an age-bearing identification document that would have appeared
10 valid to a reasonable and prudent person.

11 **Section 49.** That a NEW SECTION be added:

12 **35A-4-4. Sale to underage person based on false identification document--**
13 **Conviction barred.**

14 No person may be convicted of illegally selling any adult-use retail marijuana to
15 any underage person pursuant to § 35A-4-1 or 35A-4-2, if the underage person was in
16 possession of, and the seller relied upon, any false age-bearing identification document
17 that was furnished to the underage person by any state agency or local law enforcement
18 agency or any agent, employee, contractor, or associate of any state agency or local law
19 enforcement agency for the purpose of attempting to illegally purchase any adult-use
20 retail marijuana.

21 **Section 50.** That a NEW SECTION be added:

22 **35A-4-5. Furnishing to underage person--No criminal penalty imposed--**
23 **Circumstances.**

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

- 26 (1) The person making the sale in violation of § 35A-4-1 or 35A-4-2 is an employee or
27 agent of the adult-use retail marijuana licensee;
28 (2) The employee or agent does not own a controlling interest in the adult-use retail
29 marijuana licensee; and
30 (3) The adult-use marijuana licensee or person having a controlling interest in the
31 adult-use retail marijuana licensee is not present at the time of the sale.

1 **Section 51.** That a NEW SECTION be added:

2 **35A-4-6. Furnishing to underage person--Fine imposed in lieu of criminal**
3 **offense.**

4 If a sale is in violation of § 35A-4-1 or 35A-4-2 and does not constitute a criminal
5 offense against the adult-use retail marijuana licensee, the state's attorney for the county
6 in which the sale took place may, as part of any proceeding against the person making
7 the sale, request that the court require the adult-use retail marijuana licensee to pay a
8 fine in accordance with § 35A-4-7.

9 **Section 52.** That a NEW SECTION be added:

10 **35A-4-7. Hearing on liability for furnishing adult-use retail marijuana to**
11 **underage person--Amount of fine.**

12 Upon a request from the state's attorney and notice to the adult-use retail
13 marijuana licensee, the court shall conduct a hearing to determine if the adult-use retail
14 marijuana licensee is liable under §§ 35A-4-5 and 35A-4-6, inclusive, and upon a finding
15 that the adult-use retail marijuana licensee is liable, the court may order the adult-use
16 retail marijuana licensee to pay a fine not to exceed:

17 (1) Five hundred dollars upon the first violation within two years;

18 (2) Seven hundred fifty dollars upon the second violation within two years; and

19 (3) One thousand dollars for the third violation within two years.

20 For a fourth violation within two years, the court may order the adult-use marijuana
21 licenses revoked.

22 **Section 53.** That a NEW SECTION be added:

23 **35A-4-8. Purchase, possession, or consumption by person under twenty-one**
24 **years prohibited--Exception--Misrepresentation of age--Violation as**
25 **misdemeanor.**

26 It is a Class 2 misdemeanor for any person under the age of twenty-one years to
27 purchase or attempt to purchase adult-use retail marijuana or to misrepresent the
28 person's age with the use of any document for the purpose of purchasing or attempting
29 to purchase adult-use retail marijuana from any adult-use retail marijuana licensee under
30 this Act.

31 **Section 54.** That a NEW SECTION be added:

1 **35A-4-9. Merchant may detain person under twenty-one who purchases,**
2 **attempts to purchase or possesses--Conditions.**

3 Any merchant who is an adult-use retail marijuana licensee under this Act, or the
4 merchant's employee, who has reasonable grounds to believe a person under the age of
5 twenty-one has illegally purchased, attempted to purchase, or has misrepresented the
6 person's age with the use of any document for purposes of purchasing or attempting to
7 purchase adult-use retail marijuana from the merchant or the merchant's employee, may
8 detain the person, on the premises of the merchant's establishment, in a reasonable
9 manner and for a reasonable length of time solely to:

10 (1) Request identification;

11 (2) Verify the identification;

12 (3) Make reasonable inquiry as to whether the person has violated § 35A-4-8;

13 (4) Inform a law enforcement officer of the detention of the person and surrender that
14 person to the custody of a law enforcement officer; or

15 (5) In the case of a minor, inform a law enforcement officer or the parents, guardian,
16 or other private person interested in the welfare of that minor of this detention and
17 to surrender custody of the minor to that person.

18 **Section 55.** That a NEW SECTION be added:

19 **35A-4-10. Merchant may detain--Must post notice.**

20 If a merchant chooses to implement the provisions of § 35A-4-9, the merchant
21 shall conspicuously post a notice, on the merchant's premises, stating that any person
22 who the merchant reasonably believes was under the age of twenty-one and has
23 attempted to purchase adult-use retail marijuana, will be detained and surrendered to a
24 law enforcement officer.

25 **Section 56.** That a NEW SECTION be added:

26 **35A-4-11. Purchase by adult for person under twenty-one as misdemeanor.**

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

30 **Section 57.** That a NEW SECTION be added:

1 **35A-4-12. Immunity for possession and consumption--Underage person**
2 **who reports need of emergency assistance.**

3 No person under the age of twenty-one years may be subject to any penalty arising
4 out of underage consumption or possession of marijuana if that person contacts law
5 enforcement or emergency medical services and reports that a person is in need of medical
6 assistance due to marijuana consumption and that person remains and cooperates with
7 medical assistance and law enforcement personnel on the scene.

8 **Section 58.** That a NEW SECTION be added:

9 **35A-4-13. Underage purchase, possession, or consumption--Venue--**
10 **Criminal proceeding.**

11 In any arrest, citation, or prosecution arising from a violation of § 35A-4-8, if the
12 person is apprehended for the purchase or attempted purchase of adult-use marijuana,
13 the venue is the locality where the purchase or attempted purchase occurred.

14 **Section 59.** That a NEW SECTION be added:

15 **35A-4-14. Underage purchase, possession, or consumption--Venue--**
16 **Juvenile proceeding.**

17 In any juvenile adjudication arising from a violation of § 35A-4-8, if the person is
18 apprehended for the purchase or attempted purchase of adult-use marijuana, the venue
19 is the locality where the purchase or attempted purchase occurred or the juvenile's county
20 of residence.

21 **Section 60.** That a NEW SECTION be added:

22 **35A-4-15. No civil liability for social hosts and licensees.**

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

27 **Section 61.** That a NEW SECTION be added:

28 **35A-5-1. Promulgation of rules.**

29 The secretary shall promulgate rules, pursuant to chapter 1-26, regarding the sale,
30 purchase, distribution, and licensing of adult-use retail marijuana under this Act.

1 **Section 62.** That a NEW SECTION be added:

2 **35A-5-2. Notice of convictions mailed to local and state licensing**
3 **authorities.**

4 If any adult-use retail marijuana licensee or employee is convicted of:

5 (1) A violation of any provision of this Act, or any law or ordinance regulating the sale
6 of adult-use retail marijuana; or

7 (2) Any violation of law or ordinance in the operation of the licensed premises,
8 the court or magistrate shall, within ten days after the conviction, mail a written notice of
9 conviction to the finance officer of the municipality or the county auditor of the county
10 having jurisdiction to approve adult-use retail marijuana licenses for the premises. A copy
11 of the notice shall also be mailed to the department.

12 **Section 63.** That a NEW SECTION be added:

13 **35A-5-3. Marijuana unlawfully used or possessed as contraband--Conviction**
14 **as confiscation--Return to owner on dismissal.**

15 Any marijuana used or possessed in violation of provisions of this Act constitutes
16 contraband, and is subject to confiscation as provided in this Act. Any judgment of
17 conviction of illegal use or possession against the person from whom the marijuana was
18 taken constitutes a confiscation of the marijuana unless the marijuana, within twenty days
19 after the judgment, is claimed by some other person who establishes to the satisfaction
20 of the court that the person is the true owner and had no participation in the illegal use
21 or possession. If prosecution on any such charge terminates in a dismissal of the charge,
22 any marijuana, if previously seized, shall be returned to the owner.

23 **Section 64.** That a NEW SECTION be added:

24 **35A-5-4. Application by officer for judicial determination as to marijuana --**
25 **Notice of time and place of hearing.**

26 If there is no dismissal of prosecution or no judgment of conviction of illegal use or
27 possession of marijuana, any officer seizing the marijuana may apply to the court that
28 issued the search warrant under which the marijuana was seized, or if the marijuana was
29 not seized under a search warrant, to any court of record for the county where the
30 marijuana was seized, for an order determining whether the marijuana was, in fact,
31 possessed or used in violation of the provisions of this Act. The court shall thereupon make
32 an order fixing a time and place for hearing and providing for reasonable notice of the

1 hearing to the person from whom the marijuana was seized and to any probable claimant
2 of the marijuana. If the person or claimant is unknown, the notice may be by posting or
3 publication as the court directs.

4 **Section 65.** That a NEW SECTION be added:

5 **35A-5-5. Determination as to status of marijuana seized--Order for return to**
6 **owner or confiscation.**

7 Upon hearing, the court shall determine whether marijuana seized was in fact used
8 or possessed in violation of provisions of this Act. If the court finds there was no such
9 illegal use or possession, the court shall order the marijuana returned to or held for the
10 owner of the marijuana. If the court determines that there was use or possession in
11 violation of provisions of this Act, the court shall adjudge the confiscation of the marijuana.

12 **Section 66.** That a NEW SECTION be added:

13 **35A-5-6. Report of marijuana confiscated--Destruction of unsalable**
14 **marijuana.**

15 Upon any adjudication in any form of confiscation of marijuana, the officer having
16 custody of the marijuana shall make a full report to the secretary setting forth the
17 quantity, kind, and probable value of the marijuana. If the marijuana is of such character
18 that the marijuana cannot lawfully be sold, or is of insufficient value to justify an attempted
19 sale, the secretary shall order the marijuana destroyed. The officer in custody of the
20 marijuana shall comply with the order and shall report to the secretary that the order has
21 been carried out.

22 **Section 67.** That a NEW SECTION be added:

23 **35A-5-7. Sale by secretary of confiscated marijuana --Disposition of**
24 **proceeds.**

25 If confiscated marijuana accumulates in sufficient quantities, the secretary shall
26 notify all adult-use marijuana retailers as to kinds and types of marijuana in the secretary's
27 custody for sale. The secretary shall receive bids, and sales shall be made based on the
28 bids as the secretary deems advantageous to the state. All proceeds of any such sale by
29 the secretary shall be deposited with the state treasurer and credited to the general fund.

30 **Section 68.** That a NEW SECTION be added:

1 **35A-5-8. Place used for violation of marijuana laws as common nuisance--**
2 **Maintenance as misdemeanor.**

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

8 **Section 69.** That a NEW SECTION be added:

9 **35A-5-9. Lien against place of violation for fines and costs assessed--**
10 **Enforcement of lien.**

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

18 **Section 70.** That a NEW SECTION be added:

19 **35A-5-10. Action to enjoin nuisance--Bond not required.**

20 An action to enjoin any nuisance, as defined in § 35A-5-8, may be brought in the
21 name of the State of South Dakota by the attorney general or by the state's attorney of
22 the county in which the property constituting the nuisance is located. Any action to abate
23 or to enjoin the nuisance may be commenced and conducted as other actions or
24 proceedings for injunction. However, the complaint or affidavit used may be made on
25 information and belief and no bond is required in instituting the proceedings or to secure
26 the issuance of any such injunction.

27 **Section 71.** That a NEW SECTION be added:

28 **35A-5-11. Temporary injunction in action to enjoin nuisance.**

29 If, in an action pursuant to § 35A-5-10, it is made to appear by affidavits or
30 otherwise, to the satisfaction of the court, or judge in vacation, that a nuisance exists, a
31 temporary writ of injunction shall be issued, restraining the defendant from conducting or

1 permitting the continuance of the nuisance until the conclusion of the trial. If a temporary
2 injunction is sought, the court may issue an order restraining the defendant and all other
3 persons from removing, or in any way interfering, with the marijuana or fixtures, or other
4 things used in connection with the violation of the laws of this state constituting the
5 nuisance.

6 **Section 72.** That a NEW SECTION be added:

7 **35A-5-12. Order prohibiting manufacture, sale, or storage of marijuana and**
8 **occupancy of place of violation**

9 It is not necessary in an action pursuant to § 35A-4-10 for the court to find the
10 property involved was being unlawfully used as described in § 35A-5-8 at the time of the
11 hearing. However, on finding that the material allegations of the petition are true, the
12 court shall order that no marijuana may be manufactured, sold, bartered, or stored in the
13 structure, conveyance, or place. Upon judgment of the court ordering the nuisance to be
14 abated, the court may order that the structure, conveyance, or place not be occupied or
15 used for one year thereafter.